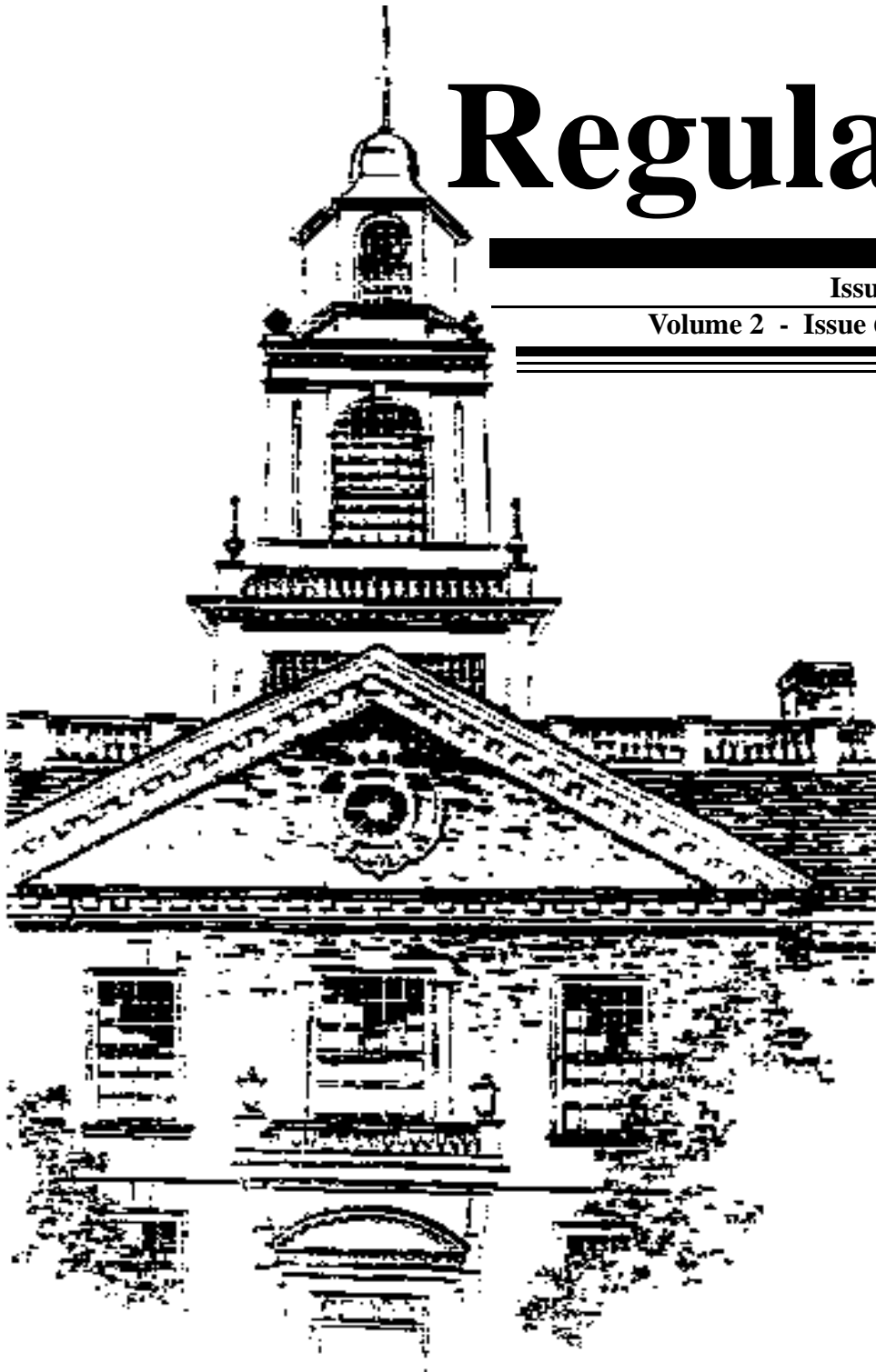

Delaware Register of Regulations



Issue Date: December 1, 1998

Volume 2 - Issue 6

Pages 796 -1040

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

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DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more

information contact the Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
JANUARY 1	DECEMBER 15	4:30 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.
MAY 1	APRIL 15	4:30 P.M.

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

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Subdivision Plan Review Fee Procedures.....	2:4 Del.R. 693 (Final)
 Governor's Office	
Appointments & Nominations.....	2:1 Del.R. 145
	2:2 Del.R. 322
	2:3 Del.R. 425
	2:4 Del.R. 696
	2:5 Del.R. 790
Executive Order No. 54	2:1 Del.R. 143

Public Service Commission

PSC Regulation Docket No. 4, Minimum Filing Requirements for all Regulated

Companies Subject to the Jurisdiction of the Public Service Commission.....2:1 **Del.R.** 81 (Prop.)

PSC Regulation Docket No. 12 (Track III), Rules to Govern Payphone Services.....2:4 **Del.R.** 695 (Final)

PSC Regulation Docket No. 41, Implementation of the Telecommunications Technology

Investment Act2:2 **Del.R.** 280 (Final)

PSC Regulation Docket No. 44, Information Required to be Filed by a Manufacturer to

Establish an Additional Dealer or to Relocate an Existing Dealership Pursuant to

6 Del.C. 4915(a)2:4 **Del.R.** 679 (Prop.)

State Fire Prevention Commission

Part V, Chapter 5, Standard for the Marking, Identification, and Accessibility of Fire Lanes,

Exits, Fire Hydrants, Sprinkler and Standpipe Connections.....2:5 **Del.R.** 765 (Prop.)

Violent Crimes Compensation Board

Rules XXVI, XXVIII, XXIX, XXX.....2:5 **Del.R.** 773 (Prop.)

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION

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

* PLEASE NOTE THAT THE FOLLOWING REGULATORY ACTIONS WILL BE PRESENTED TO THE STATE BOARD OF EDUCATION AT ITS MONTHLY MEETING IN DECEMBER.

* PLEASE REFER TO THE SCHOOL CONSTRUCTION MANUAL AVAILABLE FROM THE DEPARTMENT OF EDUCATION FOR ORIGINAL TEXT.

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

SCHOOL CONSTRUCTION**A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary seeks the approval of the State Board of Education to amend the regulations on School Construction. These regulations are found in the School Construction Manual, May 1991. The School Construction Manual is a combination of technical assistance, Department of Education Regulations and sections of the Delaware Code, particularly Title 14, Chapter 20, Standard School

Construction and Title 29, Chapter 75, School Construction Capital Improvements. The purpose of the amendment is to isolate the regulatory sections from the technical assistance and the Del. C. citations. Three main regulations have been identified. They include Major Capital Improvement Programs, Minor Capital Improvement Programs and Satellite Schools. These regulations define the process and procedures that local school districts must follow for Major and Minor Capital Improvement Projects and when opening a satellite school.

C. IMPACT CRITERIA

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

The amended regulations address school construction, not student achievement.

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

The amended regulations address school construction, not equity issues.

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

The amended regulations will involve health and safety issues as a part of school construction decisions.

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

The amended regulations address school construction issues, not students' legal rights.

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

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

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

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

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

The decision making authority and accountability for addressing the amended regulations will remain in the same entity.

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

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

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

The amended regulations simply clarify the language in existing regulations.

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

There is no additional cost to the state or the local boards for compliance with these amended regulations.

AS AMENDED

SCHOOL CONSTRUCTION

Major Capital Improvement Programs

1. Major Capital Improvement Programs are projects in excess of \$250,000.

2. Procedures for Approval of a Site for School Construction

a. Local school districts shall contact the State Department of Education for a site review when they

propose to purchase a site for school purposes. All prospective sites shall be reviewed at one time. It is preferable that at least four (4) sites be considered.

b. The Department of Education will forward all prospective sites to the following agencies for their review and comments. The Department of Education will consolidate the responses of the other agencies in order to review and rank the prospective sites and list all reasons for approval or rejection. The Department shall then notify the school district concerning their final decision.

(1) State Planning Coordination Office

(2) The Budget Office

(3) The Department of Natural Resources and Environmental Control

(4) The Department of Agriculture

(5) The Department of Transportation

(6) The Local Planning Agency having jurisdiction

3. Educational Specifications, Schematic Plans, Preliminary Plans, and Final Plan Approvals

a. Educational Specifications are defined as a document which presents to an architect what is required of an educational facility to house and implement the educational philosophy and institutional program in an effective way.

(1) Educational Specifications shall be approved by the local school board and the State Department of Education. The State Department will require ten working days for completion of the review and approval process.

b. All Schematic Plans shall be approved by the local school board and the Department of Education and these approved plans should be sent to the county or city planning office for information purposes only.

c. All Preliminary Plans shall be approved by the local school board and the State Department of Education.

d. All final plans shall be approved by the local school board and the State Department of Education.

e. The Local School District must involve the following groups in reviewing these plans prior to the final approval.

(1) Fire Marshal to review the plans for fire safety.

(2) Division of Public Health, Bureau of Environmental Health, Sanitary Engineering for Swimming Pools, and the County Health Unit for information on Kitchens and Cafeterias.

(3) Division of Facilities Management, Chief of Engineering & Operations for compliance with building codes.

(4) Division of Highways for review of the Site Plan showing entrances and exits.

(5) Architectural Accessibility Board for access for persons with disabilities.

4. Certificates of Necessity

a. The Certificate of Necessity is a document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project.

b. Certificates of Necessity shall be obtained sufficiently in advance to meet all prerequisites for the holding of a local referendum as it must be quoted in the advertisement for the referendum and shall be issued only at the written request of the local school district.

5. Notification, Start of Construction, Completion of Construction and Certificate of Occupancy

a. The school district shall submit to the State Department of Education and the State Budget Director a construction schedule, showing start dates, intermediate stages and final completion dates.

b. The school district shall notify the State Department of Education, the State Budget Director and the Insurance Coverage Office at the completion of the construction, which is defined as when the school district, with the concurrence of the architect, accepts the building as complete.

c. The school district shall notify the State Department of Education, the State Auditor, and the State Budget Director upon approval of the Certificate of Occupancy.

d. Local school districts shall submit to the Department of Education a copy of the electronic autocad files. Electronic autocad files shall be submitted no later than 30 calendar days after the completion of any major renovation or addition to an existing facility.

6. Purchase Orders

All purchase orders for any major capital improvement project shall be approved by both the State Department of Education and the Director of Capital Budget and Special Projects prior to submission to the Division of Accounting.

7. Change Orders

a. Change Orders are changes in the construction contract negotiated with the contractor. The main purpose is to correct design omissions, faults of unforeseen circumstances which arise during the construction process.

b. All Change Orders must be agreed upon by the architect, the school district and the contractor and shall be forwarded to the State Department of Education.

(1) Submission of a Change Order must include the following documents: Completed purchase order as applicable; Local Board of Education minutes identifying and approving the changes; Completed AIA document G701; Correspondence which gives a breakdown in materials, mark-up and other expenses; and, if not contained in any of the preceding, an explanation of need plus any drawings needed to explain the requested change.

8. Transfer of funds between Projects

a. The transfer of funds between projects during the

bidding and construction process shall have the written approval of the State Department of Education. Acceptability of the transfer of funds will meet the following criteria:

(1) No project may have more than 10% of its funding moved to another project. For example -no more than \$10,000 could be transferred from a \$100,000 project to any other project.

(2) No project may have more than 10% added to its initial funding. For example - no more than \$10,000 would be transferred from all other projects to a project originally budgeted at \$100,000.

9. Educational Technology

All school buildings being constructed or renovated under the Major Capital Improvement Program shall include, in the project, wiring for technology that meets the Delaware Center for Educational Technology standards appropriate to the building type, such as high school, administration, etc. The cost of such wiring shall be borne by project funds.

10. Administration of the New School

a. The principle administrator of a new school may be hired for up to one (1) year prior to student occupancy to organize and hire staff. The State portion of salary/benefits may be paid from Major Capital Improvement Programs.

Minor Capital Improvement Program

1. The Minor Capital Improvement Program is a program to provide for the planned and programmed maintenance and repair of the school plant. The program's primary purpose is to keep real property assets in their original condition of completeness and efficiency on a scheduled basis. It is not for increasing the plant inventory, changing its composition or more frequent maintenance activities. Minor Capital Improvement projects are projects that cost less than \$250,000 unless the project is for roof repair. The three year program is submitted annually and should be comprised of work necessary for good maintenance practice.

a. Minor Capital Improvement projects shall be submitted to the State Division of Accounting prior to any work being done. A separate purchase order must be submitted for each project. (One copy of the approved purchase order will be returned to the district for their information and record.)

b. The local school district shall send a copy of the purchase order to the State Department of Education.

c. The following areas are authorized for Minor Capital Improvement Project funds: roofs, heating system, ventilation & air conditioning systems, plumbing & water systems, electrical systems, windows, (sashes, frames), doors, floors, ceilings, masonry, structural built-in equipment, painting (fire suppression and life safety),

maintenance of site, typewriters and office machines used for instructional purposes only, renovations/alterations/modernization that does not require major structural changes.

d. Use of Funds

Funds allocated for a specific project shall be used only for that project. Program funds may not be used for routine janitorial supplies, upkeep of grounds nor any movable equipment. Recurring items such as broken glass and torn window screens, may not be repaired or replaced with these funds.

e. Invoices

Invoices may be sent directly to the Division of Accounting for processing after work has been completed and accepted, except for invoices with an adjustment which must be approved by the State Department of Education before transmittal to the Division of Accounting.

2. Vocational Equipment Replacement Requests

a. Requests for the replacement of vocational equipment may be made under the Minor Capital Improvement Program. Requests shall be made when the equipment is within three years of its estimated life so districts can accumulate the necessary dollars to purchase the item.

b. Equipment shall be defined as a movable or fixed unit, not built-in, that:

(1) retains its original shape and appearance with use.

(2) is non-expendable, i.e., is not consumed in use.

(3) represents an investment in money which makes it feasible and advisable to capitalize.

(4) does not lose its identity through incorporation into a different or more complex unit.

c. The equipment shall meet the following criteria to be replaced:

(1) Item is non-expendable.

(2) Item has a minimum 10-year life expectancy.

(3) Item has a unit cost of \$500 or more.

(4) Item is worn-out or not repairable.

(5) Item is obsolete and five or more years old.

(6) Item was originally purchased with State, State and local, or local funds only.

d. Funds

Funds shall be allocated based on the percentage of a district's Vocational Division II Units to the total of such units of all participating districts. This percentage is applied to the total funds available in a given year for capital equipment. Vocational schools are 100% State funded and all others are funded 60% State and 40% local.

e. Purchase Orders

Funds may be expended anytime during the life of

the Act which appropriated the funds, usually, a three-year period. Appropriations may be accumulated over those three years and expended for a major replacement when a sufficient balance is attained. However, should funds prove insufficient after three years of appropriations, the district must supplement the program from their own or other resources. Funds unexpended when the appropriating Act expires will revert to the State.

3. Cost Limitations

The maximum cost of a Minor Capital Improvement project is \$250,000 except roof repairs/replacements which are not cost limited. Non-roof projects exceeding the ceiling shall be requested in the Major Capital Improvement Program.

4. Temporary Employees

a. Workers may be hired under the Minor Capital Improvement Program provided they are temporary hires and directly involved in the planning, constructing, or record maintenance of the construction project.

Satellite School Agreements

1. Satellite school facilities shall be subject to the same health and safety codes required of other public school facilities. Plans and specifications of proposed satellite school facilities shall be submitted for review and approval, as appropriate, to the following agencies by the local district or charter school board:

a. Fire Marshal of Appropriate Jurisdiction.

b. Architectural Accessibility Board.

c. Division of Public Health for food preparation and serving area and swimming pools.

d. Department of Natural Resources & Environmental Control, wastewater and erosion control.

e. Local Building Officials to provide Certificate of Occupancy or Approval.

f. State Risk Manager.

g. State Department of Education.

2. Documentary evidence of review and approval by the authorities listed as a. through g. shall be provided to the State Department of Education.

3. Upon receipt of the aforementioned documentary evidence, the State Department of Education shall cause a review of the plans or inspection of the proposed facilities to be conducted by appropriate Department staff to determine the adequacy of the facilities for the intended educational purpose considering such items as size, adequacy of sanitary facilities, adequacy of lighting and ventilation, etc.

4. Certificates of Occupancy or Occupancy Permits shall be obtained from the appropriate jurisdictional authorities prior to occupancy of the facilities by the satellite school. A copy of such certificate or permit shall be provided to the State Department of Education. The satellite school facilities shall be subject to the same periodic inspections for health and safety as other public schools.

5. The reorganized school district or charter school shall confer with the State Risk Manager regarding any liabilities that they and their employees may be subject to and shall provide appropriate protection and coverage for same.

**DEPARTMENT OF HEALTH &
SOCIAL SERVICES**

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 505 (31 Del. C. 505)

PUBLIC NOTICE

Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its Community Support Services/Mental Health, Community Support Services/Alcohol & Drug Abuse, Practitioner, Non-Emergency Medical Transportation, Out-Patient Hospital, Private Duty Nursing, and General Policy provider manual(s).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by January 1, 1999.

REVISION:

Community Support Services/Alcohol-Drug Abuse
Provider Manual

OVERVIEW

This manual contains the standards by which the Department of Health and Social Services (DHSS), Division of Alcoholism, Drug Abuse and Mental Health (the Division) certifies community support programs for persons with alcoholism and drug addiction. Certification is required for provider enrollment with the DHSS Division of Social Services, Medical Assistance Program, for Medicaid reimbursement through the rehabilitative service option of Title XIX of the Social Security Amendments.

Through an Inter-agency Agreement, the Division has been delegated authority for the administration of certain

provisions of the Medicaid program pertaining to optional rehabilitative services. These provisions include the following:

- certification of programs for provider enrollment;
- rate setting; and
- quality assurance.

Delegated quality assurance functions include:

- program monitoring;
- utilization control;
- training; and
- technical assistance.

This manual addresses Continuous Treatment Team (CTT) programs and the Psychosocial Rehabilitation Center (PRC) programs operated in conjunction with CTT programs for persons with psychiatric disabilities. This community support program model was developed through extensive consultation with the Wisconsin Office of Mental Health and the Program of Assertive Community Treatment (PACT) of the Mendota Mental Health Institute in Madison Wisconsin.

The Delaware Medical Assistance Program (DMAP) covers rehabilitative services provided to eligible Medicaid recipients by eligible providers. Rehabilitative services are medically related treatment, rehabilitative, and support services for persons with disabilities caused by mental illness, alcoholism or drug addiction. The CTT and PRC programs are categories of community support programs that the Division certifies for Medicaid provider enrollment. An alcohol and drug abuse CTT program operates 7-days per week, with a maximum staff to client ratio of 1:12. The CTT programs are capable of providing comprehensive treatment, rehabilitation and support services as self-contained units. Services are provided whenever, wherever, and for as long as medically necessary, to assist service recipients to cope with the symptoms of their illnesses, minimize the effects of their disabilities on their capacity for independent living and prevent or limit periods of inpatient treatment.

I. CERTIFICATION FOR PROVIDER PARTICIPATION

Authority

Through an Inter-Agency Agreement, the DHSS, Division of Social Services (DSS), DMAP has delegated the function of certifying organizations for enrollment as providers of community support services to the Division.

Certification Criteria

Organizations eligible to apply for provider certification and enrollment with DSS for Medicaid reimbursement of community support services include:

- Private non-profit human service corporations;

- Private for-profit human service corporations;
- State, county or municipal government operated health and human services departments.

The Division bases its certification of programs and enrollment recommendation to DSS upon the organization's compliance with state-level organizational, administrative and program standards, and with federal requirements for the administration of Medicaid services as contained in federal statutes, regulations and guidelines. The Division may establish and apply minimum compliance guidelines to be used in making certification determinations.

The Division uses a certification survey to measure compliance with organizational, administrative and program standards. The determination with regard to a program's certification by the Division to DSS is based on:

- Statements of the organization's authorized representatives;
- Documents provided to the Division by the organization;
- Documented compliance with organizational, program and administrative standards;
- On-site observations by surveyors.

Procedure

Enrolled provider status under the DMAP shall be obtained from DSS in accordance with the following procedure:

- Upon request to the Division, the organization shall receive a certification survey package and a date for a certification survey site visit from the Division.
- Re-certification of enrolled providers shall be determined annually. The Division will forward a certification package containing a certification application and set a date for a certification survey within 90 days of the expiration of the provider's existing certification.
- The organization shall return the completed certification application contained in the certification package within 30 days of receipt.
- Upon receipt of the completed certification application, the Division will conduct a preliminary review to ensure that all pre-survey information is complete. If additional information is required, the Division will send a written request specifying the additional information needed.
- When all application form information is complete, the Division will conduct an on-site inspection of the applicant organization.
- Upon completion of the site visit, the Division surveyor will submit an inspection report to the Director of the Division describing the findings of the review of the certification application and the site visit. The inspection report, along with the application, will form the basis for the

review process and certification determination.

- The Division shall complete its certification survey and make a certification determination within 60 days of forwarding the certification package to the organization/enrolled provider. The Director of the Division shall notify the organization of its certification determination.
 - The Division shall forward to the provider and to DSS notice of certification for provision of community support services to Medicaid beneficiaries.
 - Upon receipt of initial certification, the provider may enroll as a provider of community support services programs under the DMAP, in accordance with policies and procedures established by DSS for such enrollment.
- To facilitate the determination by the Division of the organization's eligibility for certification, the organization shall make all necessary documentation available for the Division's review including:
- Policies and procedures;
 - Staff qualifications and work schedules;
 - Client records; and
 - Client billing records, etc.

The Division surveyor may meet with the organization's director, members of the board of directors, staff members and clients in the process of conducting a site visit to evaluate the applicant organization's adherence to organizational, administrative and program standards.

Ongoing Monitoring

As an authorized representative of DSS, the Division has the right to access any information directly related to the provider's administration of the Medicaid program. The Division may conduct on-site visits to a provider and review client records periodically to monitor ongoing compliance with certification standards. The Division will notify a provider in writing of any deficiencies found during a monitoring visit. The provider shall submit a plan of correction of any deficiencies within 30 days of notification.

Suspension or Revocation of Certification

The Division may suspend provider certification at any time upon 15 days written notice to the provider of the intent to suspend when the provider fails to satisfy or continue to meet the requirements for certification.

- The Division shall advise the provider of the reason(s) for suspension.
- Upon receipt of the written notice of the Division's intent to suspend provider certification, the affected provider may request a hearing with the Division's Director for the purpose of demonstrating that the reasons for suspension have been corrected.
- Failure of the provider to demonstrate the

correction of the reason(s) for suspension within 60 days of receipt of the notice of intent to suspend shall result in the revocation of the provider's certification. The Division Director may extend the period of suspension, without revocation, by not more than 30 days.

● Upon revocation of a provider's certification, the Division shall notify DSS of such revocation and the concomitant failure of the provider to meet the requirements to be recognized as an enrolled provider under the DMAP.

The Division may revoke a provider's certification and so advise DSS without prior written notice to the provider in the event that the provider has evidenced conduct which has caused or which can reasonably be expected to cause harm to program participants. The Division shall provide written notification of revocation to the affected provider within 5 working days of the effective date of such revocation

Failure of the Division to timely reissue a certification to a provider on the anniversary of an existing certification shall be construed as, and have the effect of, the issuance and concurrent suspension of certification unless such failure is caused by action taken by the Division. No written notice of intent to suspend shall be required upon the failure of the Division to timely reissue a certification on the anniversary of an existing certification.

II. CLINICAL STAFF AUTHORIZED TO PROVIDE SERVICES

The provider may bill for only those services rendered by members of its clinical staff who hold the credentials required by each covered billable activity. The categories of clinical staff and their definitions are as follows:

Physician—a person with a Medical Degree or Doctor of Osteopathy degree, who is licensed to practice medicine in Delaware, and has completed (or is enrolled in) an accredited residency training program in psychiatry, internal medicine or family practice, or addictions.

Clinician—a clinical staff person qualifying for the category of clinician must have the following qualifications:

● A person holding a doctorate in psychology, counseling, social work, nursing, rehabilitation, or related field from an accredited college or university and is a Certified Alcoholism Counselor (C.A.C.), a Certified Drug Counselor (C.D.C.), or a Certified Alcoholism and Drug Counselor (C.A.D.C.). A person with a doctorate degree may also be qualified as a clinician if he/she has 10,000 hours of work experience in the alcohol or drug abuse treatment field and does not have certification;

● A person holding a master's degree in psychology, counseling, social work, nursing, rehabilitation, or related field from an accredited college or university and is a

C.A.D.C., a C.A.C., or a C.D.C.;

● A person licensed as a RN, or a LPN with a chemical dependency certificate, or a person with bachelor's degree in psychology, counseling, social work, nursing, rehabilitation, or related field from an accredited college or university and who is a C.A.D.C. with 4,000 hours of post certification work experience in the alcohol or drug abuse treatment field, or a C.A.C., or a C.D.C. with 6,000 hours of post certification work experience in the alcohol or drug abuse treatment field;

● A person licensed as a LPN or who has a high school degree (or equivalency) and who is a C.A.D.C. with 6,000 hours of post certification work experience in the alcohol or drug abuse treatment field, or a C.A.C., or a C.D.C. with 8,000 hours of post certification work experience in the alcohol or drug abuse treatment field.

Associate Clinician—A clinical staff person qualifying for the category of associate clinician must have the following qualifications:

● A person holding a master's degree in psychology, counseling, social work, nursing, rehabilitation, or related field from an accredited college or university and is not certified;

● A person licensed as a RN or has a bachelor's degree in psychology, counseling, social work, nursing, rehabilitation, or related field from an accredited college or university and is a C.A.D.C., or a C.A.C., or a C.D.C.;

● A person licensed as a LPN with a chemical dependency certificate and is not certified;

● A person licensed as a LPN and who is a C.A.D.C., or a C.A.C., or a C.D.C.;

● A person holding a high school diploma equivalency, and who is a C.A.D.C. with 2,000 hours of post certification work experience in the alcohol or drug abuse treatment field, or a C.A.C., or a C.D.C. with 4,000 hours of post certification work experience in the alcohol or drug abuse treatment field.

Assistant Clinician—A clinical staff person qualifying for the category of assistant clinician must have the following qualifications:

● A person licensed as a RN or holding a bachelor's degree in psychology, counseling, social work, nursing, rehabilitation, or related field from an accredited college or university and is not certified;

● A person licensed as a LPN with a chemical dependency certificate and who is not certified;

● A person licensed as a LPN and who is a C.A.D.C., or a C.A.C., or a C.D.C., or a Certified Associate Addiction Counselor (C.A.A.C.) with 2,000 hours of post certification work experience in the alcohol or drug abuse treatment field;

• A person holding a high school diploma or equivalency and who is a C.A.D.C., or a C.A.C., or a C.D.C., or a C.A.A.C. with 2,000 hours of post certification work experience in the alcohol or drug abuse treatment field.

III. RECIPIENT ELIGIBILITY

Eligible recipients are Medicaid recipients who are certified by the CTT program physician as being in medical need of program services in accordance with an assessment procedure approved by the Division for use in determining that persons are severely disabled according to criteria for severity of disability associated with alcoholism and drug abuse.

The Division must certify that the assessment procedure has been appropriately conducted prior to the acceptance of a recipient as an eligible recipient.

The Division may require a full review of medical necessity in the event that a determination of medical necessity by the program physician does not appear to the Division to be supported by the assessment materials.

Determination of client eligibility for Medicaid benefits is the sole responsibility of DSS.

IV. COVERED SERVICES

Community Support Services may be billed to the DMAP for eligible Medicaid recipients for the following activities:

Comprehensive Medical/Psychosocial Evaluation: a multi-functional assessment of the client, conducted by a physician (psychiatrist, internist or family practitioner), and clinicians under the supervision of the physician, to establish the medical necessity of provision of services by the continuous treatment team program and to formulate a treatment plan. The comprehensive medical/psychosocial evaluation will be conducted within 45 days of admission to the program and at least annually thereafter. It must be documented in the client's record on forms approved by the Division and establish the basis for the physician's determination of the medical necessity for entry into or continued provision of Community Support Service. Appropriate components of the evaluation must be repeated whenever a client experiences a significant change in psychosocial function or life change and in preparation for treatment plan reviews.

Physician Services: services provided within the scope of practice of medicine or osteopathy, as defined by State law, and by, or under, the personal supervision of an individual licensed under State law to practice medicine or osteopathy. Physician services refer to medical or psychiatric assessment, treatment, and prescription or pharmacotherapy. Medical and psychiatric nursing services including: components of physical assessment, medication assessment, and medication administration, provided by registered nurses and licensed practical nurses, are provided under

supervision of the physician.

Emergency Services: services, performed in a direct and face-to-face involvement with the client, available on a 24-hour basis, in response to a substance abuse or medical condition, which threatens to cause the admission of the client to a hospital, detoxification or other crisis facility. A physician, clinician, associate clinician, or assistant clinician provides emergency services.

Counseling and Psychotherapy: counseling is supportive psychotherapy performed as needed in a direct and face-to-face involvement with the client, available on a 24-hour basis, to listen to, interpret and respond to the client's expression of her/his physical, emotional and/or cognitive functioning or problems. It is proved within the context of the goals of the program's clinical intervention as stated in the client's treatment plan. Its purpose is to help the client achieve and maintain drug/alcohol-free stability. Its broader purpose is to help clients improve their physical and emotional health and to cope with or gain control over the symptoms of their illnesses and effects of their disabilities. Counseling is provided by physicians, clinicians, associate clinicians, and assistant clinicians who are credentialed counselors or learning and practicing under direct supervision by a credentialed clinician.

In addition to supportive psychotherapy, there are several highly specific modalities of psychotherapy: each based on an empirically valid body of knowledge about human behavior. Provision of each requires specific credentials. Although the nature of the client's needs and the specific modality of therapy determine its duration, psychotherapy has circumscribed goals, a definite schedule and finite duration. Examples include psychodynamic therapy, psychoeducational therapy, family therapy, and cognitive therapy.

The assessments, treatment plans and progress notes in client's records must justify, specify and document the initiation, frequency, duration and progress of such specialized modalities of psychotherapy.

Psychotherapy may be provided by physicians and clinicians that are credentialed in specific modalities or learning and practicing under the supervision of one who is credentialed.

Psychiatric Rehabilitative Services: rehabilitative services provided on an individual and small group basis to assist the client to gain or relearn self-care and interpersonal and community living skills needed to live independently and sustain medical and psychosocial stability. Psychiatric rehabilitative services are provided primarily in home and community-based settings where skills must be practiced. It includes time spent transporting the client in provision of rehabilitative services. Psychiatric rehabilitative services are provided by a physician, clinician, associate clinician or assistant clinician.

V. SERVICE LIMITATION

The following limitations apply to coverage for community support services:

Appropriate Use

Coverage for community support service is limited to Medicaid beneficiaries who are certified by the program physician as severely disabled according to criteria for severity of disability caused by alcoholism or drug addiction. The provider must complete a comprehensive medical/psychosocial assessment and treatment plan within 45 days of entry to the program by the client. The program physician must certify that community support services are medically necessary. Within 60 days of a client's entry into a program, and within 15 days of the anniversary date of entry into a program, the Division shall review each client's treatment record to verify that the evaluation, treatment plan and certification of medical necessity are complete. The Division may require a full review of medical necessity in the event that a determination of medical necessity by the program physician does not appear to be supported by the assessment materials. Services provided after 60 days of entry to the program or beyond 15 days of the yearly anniversary date of entry to the program without a completed assessment, treatment plan and physician's certification of medical necessity are not reimbursable.

Non-Covered Services

The following services are NOT reimbursable:

- Vocational and educational services;
- Services which are solely recreational in nature;
- Units of service with individuals other than the eligible client;
- Services delivered by telephone;
- Services provided to the client in an institute for mental disease (as defined by Health Care Financing Administration (2) "Institution for mental diseases" means a hospital, nursing facility or other institution or more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of individuals with mental diseases, including medical care, nursing care and related services.)

Service Utilization

CTT programs must attempt to provide each client a minimum of one face-to-face clinical contact per week in a setting other than the office(s) of the program. A physician must evaluate clients who are treated with psychotropic medication, face-to-face at least once per month.

Location of Service Provision

Medicaid may be billed for services provided in program offices, other agencies, home and other community based settings. Medicaid may not be billed for services

provided in an institution for mental diseases.

Sub-Contracting of Services

Services billed to Medicaid must be provided by an employee, a physician, or by other clinicians, associate clinicians, or assistant clinicians under contract with the provider. Component services of CTT programs may not be sub-contracted to independent provider organizations.

Physician Supervision

Services billed to Medicaid must be:

- authorized by a physician's determination of medical necessity;
- supported by an individual treatment plan signed by the physician; and
- supervised by a physician in a manner prescribed by program standards of the Division.

VI. CONTINUOUS TREATMENT TEAM PROGRAM STANDARDS**Program Organization and Operation**

The CTT Level I program shall operate with on-site staff, 7-days per week, a minimum of 12 hours on weekdays, and 8 hours on weekends and holidays. A clinician or associate clinician shall be on-call and available to respond face-to-face immediately during non-operating hours. A second staff member (clinician or associate clinician) shall be on back-up on-call.

A CTT Level I program shall be organized to provide a maximum clinical staff to client ration of 1:12. At least 75% of the clinical staff shall be full-time.

A CTT Level II program shall operate with on-site staff 5 days per week, a minimum of 12 hours weekdays and 8 hours weekends and holidays. A clinician or associate clinician shall be on-call and available to respond face-to-face immediately during non operating hours.

A CTT Level II program may be organized to provide a maximum clinical staff to consumer ratio of 1:20. At least 75% of the clinical staff shall be full time.

No CTT Level II program shall be in a non-operating on-call status on consecutive days.

Staff of the CTT program shall meet jointly each day to review the contacts with and status of each client during the previous days and to plan contracts for the current day. A clinician shall lead the daily meeting.

Staff of the CTT program shall meet jointly, at least weekly, to conduct treatment planning and treatment plan reviews. A schedule of upcoming treatment plans and reviews shall be maintained. A clinician shall lead treatment planning and review meetings.

The CTT programs shall operate on a daily schedule of staff/client activities, based on up-to-date written weekly

schedules for each client, extracted from the treatment plan.

The program shall ensure that clients receive prescribed medication and monitor medication compliance, effects and side effects. Program staff shall maintain regular contact with clients placed in inpatient programs, if appropriate. Program staff shall coordinate with inpatient and/or residential program staff and participate in treatment planning meetings and in the discharge planning meetings. Contacts with clients shall be determined by clients' clinical needs, insuring that such contacts do not interfere with the treatment being received at the inpatient/residential program.

Each client shall have a treatment team consisting of the physician, case manager, and at least two other staff from the CTT, who are primarily involved in his/her treatment plan.

It shall be evident from review of clinical records and from observation of staff interactions with clients that the provider is organized and operates in a manner consistent with the following principles:

- Minimizing disability by providing clients with rehabilitative interventions in the course of their normal daily living;
- Providing outreach to ensure that clients have access to and receive needed services;
- Maximizing client involvement and choice in all aspects of his/her treatment, rehabilitation and support;
- Assisting clients in developing and maintaining supportive social networks.

The provider will address all of the following dimensions of each client's life as responsibilities of its own staff:

- A stable social network;
- Safe and decent housing;
- Psychiatric and substance abuse treatment;
- Involvement in a normative adult lifestyle;
- Employment; and
- Access to and coordination of economic entitlements and services provided through other agencies and providers.

Program Staff

There shall be an overall director of the CTT who shall be a clinician with at least three years of clinical/administrative experience in providing community support services to adults with disabilities resulting from alcoholism and/or drug addiction.

There shall be an overall clinical supervisor who shall supervise the provision of services to clients and the quality assurance program. The clinical supervisor shall be a clinician with a minimum of a masters degree, dual drug and alcohol counselor certification, and at least three years of post-graduate experience in providing community support

services to adults with alcoholism and drug addiction. He/she shall devote a minimum of four hours per week for every 20 clients to provide clinical supervision to program staff. The director and clinical supervisor roles may be incorporated in one position.

Level II CTT programs may reduce clinical supervision of staff to not less than 4 hours per week for every 40 consumers.

Associate and assistant clinicians shall have credentials for the treatment activities they engage in and shall be supervised by clinicians. At least 75% of the direct service staff, including the program and clinical coordinators, shall be Clinicians or Associate Clinicians.

A CTT Level I program shall have a full or part-time physician whom is available to provide direct service at continuous treatment team program sites. The physician shall spend a minimum of four hours a week for every 20 consumers providing direct services to clients participating in the assessment of client needs and planning of service provision and providing supervision/consultation to other program staff. The physician shall have backup arrangements with other physicians for coverage when he/she is unavailable and shall provide them with an up-to-date listing of the medications and recommendations for each client in the event of a crisis. If the program's physician does not provide case management of primary medical care, the program shall arrange for the services of an internist or primary care physician to provide and/or manage the medical care of clients. The physician is considered a clinician.

Level II CTT programs may reduce physician availability to not less than 4 hours per week for every 40 consumers.

The program shall have among its staff individuals who are trained skilled and experienced to conduct a wide variety of clinical activities such as:

- Psychoeducational therapy;
- Cognitive therapy;
- Behavioral therapy;
- Symptom education and self-management;
- Addiction therapy;
- Vocational assessment and therapy;
- Social skills training;
- Daily living skills training;
- Structured interviewing for completing rating scales, diagnostic interviews, mental status examinations, Social Security disability reports, etc.

All clinical staff shall be trained to provide supportive counseling and case management.

When volunteers or student interns are used, clinician staff shall supervise them. The CTT program shall have

written procedures for the selection, orientation, in-service training and supervision of volunteers and students.

Target Population

Enrollment in all CTT programs shall be limited to clients who are certified by the program physician as being in medical need of the services provided in accordance with the Division's approved assessment procedure and meet the criteria for enrollment as community support clients AND require intensive home and community-based support services because of degree of disability. The Division gives priority for enrollment to clients who are:

- Pregnant;
- Homeless;
- Inpatients at Delaware Psychiatric Center;
- Experiencing recent admissions to psychiatric hospitalization or detoxification facilities;
 - Living alone or with others in a severely dysfunctional or substandard condition; or
 - HIV positive.

The CTT program shall ensure that no client is denied any benefits or services or is discriminated against on the basis of age, sex, race, nationality, religion, sexual orientation, handicap, physical condition, or ability to pay.

Determination of Severity of Disability

The CTT program shall use the following criteria to make a determination of severity of disability:

- An established history of rapid deterioration following previous interventions for addictions stabilization;
- The rating on Axis IV of the DSM IV Multiaxial System;
 - The global assessment of functioning score on Axis V of the DSM IV Multiaxial System;
 - The degree of clinical risk evidenced by:
 1. Severity and chronicity of addiction;
 2. Psychosocial dysfunction;
 3. Impaired judgement;
 4. Suicidal behavior;
 5. Disruptive behavior.

Intake

During the intake process, the client shall be informed of:

- The program's services and aims;
- The manner in which the program operates to ensure that the client receives the services they need;
 - The program's expectations of the client regarding his/her responsibilities;
 - How the client can obtain assistance during an

emergency or whenever the program offices are closed;

- The program's provisions for maintaining confidentiality;
- Charges for which the client or a third party may be billed;
- The process for appeal and review of problems the client may experience in regard to the quality and responsiveness of services provided by program staff.

Assessment

A Comprehensive Medical/Psychosocial Evaluation approved by the Division as a CTT assessment procedure shall be begun at the time of the client's admission to the CTT program that shall be completed within 30 days. The evaluation shall be conducted by clinicians. The assessment instruments shall conform to formats approved by the Division. The assessment will be conducted with the active participation of the client and will be responsible to the client's goals.

A Comprehensive Medical/Psychosocial Evaluation will include a written summary of the assessment and shall be completed by the client's primary therapist and explained to the client. The summary of the assessment shall include the following:

- Extent and effects of drug and/or alcohol use;
- Medical, dental, and optometric needs;
- Compliance with and response to prescribed medical/psychiatric treatment;
- Current psychiatric symptomatology and mental status;
- Recent key life events;
- Vocational and educational functioning;
- Current social functioning; and
- Conditions of daily living.

Treatment Planning

An initial written treatment plan shall be developed on the date of admission to the CTT program. Within 45 days of admission, following the completion of intake assessments, a comprehensive written treatment plan shall be developed by the client's primary therapist and reviewed by the other members of the client's treatment team at a treatment planning and review meeting.

The treatment plan shall include both short-range and long-range goals, stated in measurable terms, and including criteria for discontinuance of goals. It shall include the specific treatment, rehabilitation and support interventions, and their frequency, planned to achieve treatment goals.

The client's participation in the development of treatment/service goals shall be documented. With the permission of the client, program staff shall engage the involvement of other service providers and members of the

client's social network in formulating treatment plans.

Treatment plan and treatment plan revisions shall be prepared on forms approved by the Division. The primary therapist, clinical supervisor and physician shall sign it.

The treatment plan shall be reviewed in full, for the first year, every 90 days, and every 180 days thereafter, through a clinical case conference. The date, results of the review and any changes in the treatment plan shall be recorded in the progress note section of the service record. The case manager, at least one other member of the client's primary treatment team, and a clinical supervisor shall meet to discuss his/her progress, assess continuing treatment needs and formulate revisions to the treatment plan. Treatment plan

Revisions will be reviewed and signed by the physician.

Client Rights

The provider shall establish a formal process for soliciting clients' complaints and for reviewing treatment decisions by staff with which clients' disagree.

The provider shall not establish any general conditions of program participation that limit a client's rights to self-determination. Each decision to limit the responsibility of a client regarding normal adult discretion shall be based on judgments agreed to by a clinical supervisor based on clinical merit.

The provider shall comply with DHSS Policy Memorandum 46 regarding reporting and responding to allegations of abuse and neglect, and to incidents resulting in injury or death.

The provider shall promote any self-help and mutual support efforts among clients.

Clients shall be kept informed (as evidenced through written guidelines and through documentation in their clinical records) of their rights and responsibilities contained in written policies and procedures including reference to:

- Behavioral expectations and limitation;
- Client grievances;
- Confidentiality;
- Fees
- Appeals of decisions by program staff.

Case Management

A member of the CTT program's clinician and associate clinician staff shall be designated responsible for maintaining a primary therapist/case manager relationship with each client and shall:

- Maintain the clinical file for the client to include:
 1. Assurance that written assessments are completed;
 2. Preparation of service plans;
 3. Documentation of services and response to treatment;

4. Order and completeness.

- Conduct and participate in treatment planning and case conferences with other staff of the CTT program, parent agency and other agencies;

- Maintain a therapeutic alliance with the client and serve as his/her primary therapist;

- Refer and link the client to all needed services provided outside of the CTT program;

- Follow up to ensure that all needed services provided outside of the CTT program are received and monitor the client's benefit from those services;

- Coordinate the provision of emergency services and hospital liaison services when a client is in crisis;

- Coordinate overall independent living assistance services and work with community agencies to develop needed resources including housing, employment options and income assistance;

- Support and Consult with the client's family;

- In addition to the above responsibilities of the clinician who serves as the client's case manager, all staff of the program shall share the following responsibilities for which they are credentialed for each client:

1. Document and keep other staff, clinical coordinators and the program coordinator informed of all changes in the client's mental or social status;

2. Provide any of the above functions on behalf of, or in place of, the primary therapist;

3. Provide emergency services when the client is in crisis

Services

In the CTT program, outreach to clients and the provision of services according to individual needs, shall be emphasized, with the majority of clinical contacts occurring outside of the offices of the program.

The CTT program shall provide the following services:

- Supportive counseling to help the client cope with, and gain, mastery over symptoms and disabilities in the context of daily living;

- Psychotherapy, including: psychoeducational therapy, cognitive therapy and psychodynamic therapy;

- 24-hour telephone access and face-to-face intervention;

- Direct assistance to ensure that the consumers are evaluated for eligibility to services, such as:

1. medical and dental services;

2. decent, safe and affordable housing;

3. financial support;

4. social services

5. transportation.

- Education of the client regarding his/her illness and the effects and side effects of psychotropic medications

prescribed to regulate it, when appropriate:

- Medication monitoring, as follows:

1. At least one per month face-to-face assessment by a physician (rationale for less frequent assessment must be clinically justified and documented in the client's treatment plan):

2. Staff shall monitor and document client compliance in following prescribed medication treatment and medication effects and side effects:

3. Administration of medication by any method and/or the supervision of clients in the self-administration of medication must be conducted and documented in conformance with the program's written policies and procedures for medication management.

- Provide for an annual review of the client's physical condition, and develop a means for monitoring the client's access and compliance with treatment for identified physical problems. Physical problems should be identified, addressed in the treatment plan when appropriate, and health maintenance and health improvement protocols developed:

- Social skills training, including:

1. Communication skills;

2. Use of leisure time;

3. Assertiveness and self-control.

- Training in activities of daily living, including: individual support, problem-solving, and supervision in home and community-based settings to assist the client to:

1. Carry out personal hygiene tasks;

2. Carry out household activities, including housecleaning, cooking, shopping and laundry;

3. Manage money within income limits;

4. Use community transportation services;

5. Make appropriate use of health and social services;

6. Locate, finance and maintain decent, safe housing;

7. Relate to landlord, neighbors and others effectively.

- Provision of support to assist clients who seek employment to get and keep a job through:

19. Supportive counseling to enable the client to cope with symptoms of addiction which affect work performance;

20. Assistance with meeting the expectations of the job;

21. Assistance in communicating with employers/supervisors.

- Provision of support to family and other members of the client's social network to assist them and the consumer as documented in the treatment plan to relate in a positive and supportive manner including:

22. Education about the client's addiction and their role in the therapeutic process;

23. Supportive psychotherapy and psychoeducational therapy;

24. Intervention to resolve conflict.

Required Frequency of Home and Community-Based Contact

During the first six months following admission, staff shall attempt to provide the client with a minimum of five face-to-face contacts per week in home and community-based settings. After the initial six months, a CTT may adjust the frequency and duration of contact according to need to a minimum of one face-to-face contact in a home or community-based setting per week. AT LEAST TWO-THIRDS OF CONTACTS SHALL OCCUR IN LOCATIONS OTHER THAN THE OFFICE OF THE PROGRAM.

Minimum Standards for Certifying Living Arrangements for CTT Clients

Clients living alone or with a spouse should have living room, kitchen, and bedroom areas, totaling a minimum of 250 square feet.

Housing shall contain modern heating, plumbing and electrical systems. Heating should not be by kitchen stoves or portable heating devices.

Housing shall contain smoke/heat detectors and conform to local fire safety codes.

Housing should contain two or more means of egress.

Within the bounds of being safe, decent and affordable, housing should be the client's choice.

The CTT program shall certify to the Division that housing meets the above standards.

Representatives from the Division shall visit a randomly selected sample of supported independent living arrangements.

VII. ORGANIZATIONAL STANDARDS

The CTT shall have an advisory committee that includes program clients and families of clients within its membership. The function of the advisory committee shall be to ensure client and family participation in the process of setting and evaluating the values, mission, goals, objective and service strategies of the program and to assist the program in representing its interests to the community in which it operates.

The advisory committee shall have by-laws that specify at the following:

- Its authority and duties;

- Officers and committees;

- Criteria, types, methods of membership;

- Frequency of meetings; and

- Attendance requirements.

Minutes of advisory committee meetings shall be kept

and shall include the following:

- Date;
- Attendance;
- Topics discussed;
- Decisions reached
- Actions planned or taken; and
- Reports from committees.

The facility(ies) within which the CTT operates shall meet the following criteria:

- They shall meet all applicable fire and life safety codes;
- They shall have the appearance of a high quality therapeutic environment;
- They shall be accessible to the clients served;
- They shall provide a smoke free environment for non-smokers

VIII. ADMINISTRATIVE STANDARDS

Client Records

There shall be a treatment record for each client that includes sufficient documentation of assessments, treatment plans and treatment to justify Medicaid participation and to permit a clinician not familiar with the client to evaluate the course of treatment.

There shall be a designated client record manager who shall be responsible for the maintenance and security of client records.

The record keeping format and system for purging shall provide for consistency, facilitate information retrieval and shall be approved by the Division.

Client treatment records shall be kept confidential and safeguarded in a manner identical to State and Federal requirements regarding the confidentiality of recipients of treatment for alcoholism and drug addiction. The client record shall contain the following:

- An up-to-date face sheet;
- Client consent to treatment and consent to any occasion of release of treatment of information;
- Results of all examinations, tests and other assessment information. Assessments shall be completed on forms approved by the Division;
- Reports from referral sources and clinical consults;
- Hospital discharge summaries;
- Assessments and summary of assessments according to formats prescribed by the Division;
- A treatment plan in a format approved by the Division;
- For each day during which CTT services are provided, there shall be documentation in the case note

section of the record indicating date and time of service provision, the location of the intervention(s), who rendered services, the number of units of service, a summary of the intervention(s) and their relationship to the service plan and the client" condition and response to the intervention(s). Documentation shall be on forms prescribed by the Division. Based on record management policy, daily contact forms for the previous month shall be moved from the active treatment record to the client's individual permanent file;

- Weekly progress notes are required for the first 6 months of a client's admission to the program in addition to a monthly summary progress note. After 6 months the weekly progress note is not required unless additional intervention services are provided that had not been identified in the treatment plan (i.e. crisis intervention services.);

- Quarterly documentation of clinical supervision indicating review of client progress and any changes in clinical interventions and/or changes in the treatment plan. Documentation of treatment reviews done semi annually should include: reassessment of current functioning, summary of progress and treatment plan revisions;

- Medication records (on forms prescribed or approved by the Division) which shall allow for ongoing monitoring of all medication administered and the detection of adverse drug reactions. All medication orders in the client case record shall specify the:

1. name of the medication;
2. dose;
3. route of administration;
4. frequency of administration;
5. names and signatures of the person administering; and
6. name of physician prescribing the medication;

- Discharge documentation in a format prescribed or approved by the Division to include the following:

7. A description of the reasons for discharge;
8. The client's status and condition at discharge;
9. A final evaluation summary of the client's progress toward the goals set forth in the service plan;
10. A plan developed with the client regarding the client's continuing or future service needs;

- Documentation that the client has been informed of client rights, including the right to contest treatment decisions and or practices or otherwise express grievances regarding program activities;

11. Clients shall be provided with information regarding the process by which grievances can be addressed;

12. A record of all grievances filed with the program by a client shall be included in that client's record, together with a statement of disposition or resolution.

Procedure Manual

The CTT program shall maintain a written procedure manual for its staff. A mechanism shall be in place to ensure that the procedure manual is updated continuously and that the staff of the program is notified promptly of changes. The manual shall include:

- A statement of the program's values, mission and objectives;
- Referral policies and procedures that facilitate client referral:
 - Detailed instructions for assessment, service planning and documentation procedures;
 - Policies and procedures for medication management, which shall include, but not be limited to, the prescribing, storage, handling, distribution, dispensing, disposing, and recording of medication and its use by clients. Such policies and procedures shall conform to all applicable rules, regulations and requirements of the Delaware Board of Nursing and, as applicable, the Delaware State Board of Pharmacy. The medication policy and procedure shall be reviewed and approved by the program physician and registered nurse(s);
 - Policies and procedures for handling on-call responsibilities and client emergencies;
 - Detailed instructions for application to and communication with entitlement authorities;
 - Policies and procedures for sharing of information about clients with family members or others;
 - Policies and procedures regarding committing and handling financial resources of the program;
 - Policies and procedures regarding the management of client's funds for whom the program has been designated payee;
 - Policies and procedures for the receipt, consideration and resolution of client complaints, and/or grievances regarding treatment decisions and practices or other program activities;
 - Other policies and procedures as may be promulgated or required by the Divisions and/or DSS.

Financial Management

The accounting system of the CTT program or parent organization shall be in accordance with generally accepted accounting practices.

The CTT program or parent organization shall submit an independent annual audit and management letter prepared by a certified public accountant to the Division within 90 days of the end of the fiscal year.

The program's budget shall be in a format prescribed and approved by the Division. Funding shifts within the budget shall be made in accordance with the financial policies of the Division.

Procurement of equipment and services for the program

shall be made in compliance with the Code of Federal Regulations.

For Medicaid clients, the fee paid by DSS/Delaware Medical Assistance program (DMAP), will constitute full payment for services rendered. The CTT program will bill the Division for services rendered to non-Medicaid clients according to the Medicaid approved rate. In addition, the program will seek third party reimbursement and establish a sliding fee scale for non-Medicaid clients. The program's charges, sliding fee scale, collection policies and procedures and write-off policies and procedures shall be subject to approval by the Division. Non-Medicaid billings and revenue collected shall be reported to the Division and be subject to the provisions of the DHSS Reimbursement Manual for community support services programs.

Fees for services reimbursement rates paid by the Division and DSS/DMAP are based on the program's approved budget and actual costs, and are subject to periodic monitoring and adjustment as provided for in the Reimbursement Manual for Community Support Services Programs.

The CTT program shall maintain insurance policies for property and liability in accordance with Division guidelines.

The CTT program shall operate in accordance with a Financial Management Procedure Manual that shall address the following:

- Processing of funds: i.e., procedures for receiving, recording and depositing incoming funds and for disbursement of funds;
- Purchasing: i.e., establishment and use of agency charge accounts, transactions requiring prior approval, and procedure for acquisition of goods and services requiring bids;
- Payroll: i.e., preparation process, pay periods, maintenance and approval of time sheets, payroll register, employee earnings, payment of payroll taxes and signatures required on payroll checks, and maintenance of payroll records;
- Petty cash: i.e., allowable uses, authorization, maximum balance, limits on transactions, documentation and reconciliation and replenishment of petty cash;
- Internal controls: and complete books of account, separation of functional responsibilities, financial reports; handling financial transactions.

Personnel Management

The CTT program or parent organization shall maintain an up-to-date Personnel Policies and Procedures Manual and make it readily available for reference by the program staff. State operated programs shall comply with Merit Rules and labor contracts. The Manual will include:

- Policies and procedures regarding equal

employment opportunity and affirmative action to include compliance with:

1. The American with Disabilities Act (PL 101-336) and Section 504 of the Vocational Rehabilitation Act of 1973, Sections 503 and 504, as amended (22 CFR, Part 217) prohibiting discrimination against the handicapped;

2. Title VII of the Civil Rights Act of 1964 prohibiting discrimination on the basis of race, color, creed, sex, national origin, or ethnic background;

3. Age Discrimination Act of 1975 prohibiting discrimination based on age;

4. Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 prohibiting discrimination against disabled Vietnam Era veterans;

- Policies and procedures for interviews and selection of candidates including verification of credentials and references;

- Policies and procedures for employee performance appraisal;

- A code of ethics;

- Conditions and procedures for termination of employment;

- Conditions and procedures for grievances and appeals;

- A staff development plan;

- Maintenance and access to personnel files which shall contain employees applications, credentials, job descriptions, and performance appraisals, job titles, training, orientation, salary, staff statement of confidentiality;

- Work hours, including: hours of program operation, shifts and overtime compensation;

- Agency policies regarding compensation including:

5. Salary ranges, salary increases, and payroll procedures;

6. Use of personal automobile for program activities;

7. Reimbursement for work related expenses;

8. Description of employee benefits.

Staff Development Plan

The staff development plan shall include both provisions for orientation of paid staff, student interns, and volunteers and for continuing education.

Orientation shall include the following:

- Review of these standards;

- Review of the program's procedure and personnel manuals;

- Review of DHSS Policy Memorandum #46 regarding investigation of allegations of abuse or neglect of clients;

- Review of the Federal Laws of Confidentiality implemented under 42 U.S.C. 290 dd-3 and 42 U.S.C. 290

ee-3 and 42 CFR part 2 – amended 6/9/87 governing the confidentiality of a client's identity and records.

Staff Development shall include the following:

- An annual plan for continuing education both through on-site training and participation in state, regional and national programs;

- Provisions for regularly scheduled clinical supervision which teach and enhance the clinical skills of staff including:

1. Weekly team meetings led by the clinical supervisor during which assessments, treatment plans and progress toward treatment goals are reviewed and staff receive direction regarding clinical management of treatment issues;

2. Individual, face-to-face sessions between the clinical supervisor and staff to review cases, assess performance and give feedback;

3. Individual, side-by-side sessions or taped sessions, during which the clinical supervisor attends clinical sessions conducted by staff to assess performance, teach clinical skills, and give feedback;

4. Regular staff conferences at which current principles and methods of treatment, rehabilitation and support services are presented.

Quality Assurance Program

The CTT program shall prepare an annual quality assurance plan that shall be subject to approval by the Division. A clinician of the program or parent organization shall be designated quality assurance coordinator. The provider shall establish the following quality assurance mechanisms that shall be carried out in accordance with the quality assurance plan:

- a concurrent utilization review process;

- a retrospective quality assurance review process;

- a process for clinical care evaluation studies; and

- a process for self-survey for compliance with the certification standards.

Waiver of Provisions

The Director of the Division, at his/her discretion, may issue a waiver of any of the requirements of these certification standards upon the good-cause-shown request of a program seeking certification/re-certification. Such request for a waiver must demonstrate that the waiver will not in any substantial or material manner have a deleterious effect on the essential quality of services to the client.

Waivers issued by the Director shall be in writing and shall specify the maximum duration of the waiver's effect. Any waiver issued by the Director may be rescinded at any time at the discretion of the Director and will be rescinded if deleterious effect on the essential quality of service to the

client is evidenced. Extensions and/or renewals of any waiver shall be made at the Director's discretion.

**Community Support Services/Mental Health
Provider Manual**

This manual contains the standards by which the Division of Alcoholism, Drug Abuse and Mental Health (DADAMH) certifies Community Support Services (CSS) programs, Continuous Treatment Team (CTT) programs, Psychosocial Rehabilitation Center (PRC) programs and Residential Rehabilitation Facility (RRF) programs for persons with psychiatric disabilities. Certification is required for provider enrollment with the Division of Social Services (DSS), Delaware Medical Assistance Program (DMAP) reimbursement through the rehabilitative services option of Title XIX of the Social Security Amendments.

Through an Inter-Divisional Agreement the DADAMH has been delegated authority for administration of certain provisions of the (DMAP) pertaining to optional rehabilitative services. These provisions include the following: 1) certification of programs for provider enrollment 2) rate setting and 3) quality assurance. Delegated quality assurance functions include program monitoring, utilization control, training and technical assistance.

This manual addresses CTT programs. A CTT model was developed through extensive consultation by the Wisconsin Office of Mental Health and by the Program of Assertive Community Treatment (PACT) of the Mendota Mental Health Institute in Madison, Wisconsin. PRC programs operated in conjunction with CTT programs and RRF programs for the mentally ill.

The DMAP covers rehabilitative services provided to eligible Medicaid recipients by certified providers. Rehabilitative services are medically related treatment, rehabilitative and support services for persons with disabilities caused by mental illness, alcoholism or drug addiction. The CTT programs, PRC programs, and RRF programs are categories of community support programs that the Division certifies for Medicaid provider enrollment. A Level I CTT program operates 7-days per week, with a maximum staff to consumer ratio of 1:12; a Level II CTT operates 5-days per week with a maximum staff to consumer ratio of 1:20. The CTT programs are capable of providing comprehensive treatment, rehabilitation and support services as a self-contained unit. Services are provided whenever, wherever and for as long as medically necessary to assist service recipients to cope with the symptoms of their illnesses, minimize the effects of their disabilities on their capacity for independent living and prevent or limit periods of inpatient treatment. A PRC is operated by and in conjunction with a certified CTT program and provides

facility based group therapies to improve the capacity for self-care and productive daily living of persons whose disabilities markedly impair their ability to live independently without support. An RRF program provides facility-based group and individual therapies to improve the capacity for self-care and productive daily living of persons whose disabilities preclude their ability to live independently.

I. CERTIFICATION FOR PROVIDER PARTICIPATION

Authority

Through Inter-Divisional Agreement, the DSS/DMAP has delegated the function of certifying organizations for enrollment as providers of community support services to the DADAMH (Division).

Certification Criteria

Eligibility for certification to provide community support services is determined according to the following criteria:

Organizations eligible to apply for provider certification and enrollment with DSS for Medicaid reimbursement of community support services include:

- : Private non-profit human service corporations;
- : Private for-profit human service corporations;
- : State, county or municipal government operated health and human services departments.

The Division bases its certification of programs and enrollment recommendation to DSS upon the organization's compliance with state level organizational, administrative and program standards, and with federal requirements for the administration of Medicaid services as contained in federal statutes, regulations and guidelines.

The Division may establish and apply minimum compliance guidelines to be used in making certification determinations.

The Division uses a certification survey to measure compliance with organizational, administrative and program standards. The determination with regard to a program's certification Division to DSS is based on:

- : Statements of the organization's authorized representatives;
- : Documents provided to the Division by the organization;
- : Documented compliance with organizational, program and administrative standards;
- : On-site observations by surveyors.

Procedure

Enrolled provider status under the DMAP shall be obtained from DSS in accordance with the following procedure:

- : Upon request to the Division, the organization shall

receive a certification survey package and a date for a certification survey site visit from the Division.

: Recertification of enrolled providers shall be determined annually. The Division will forward a certification package containing a certification application and set a date for a certification survey within 90 days of the expiration of the provider's existing certification.

: The organization shall return the completed certification application contained in the certification package within 30 days of receipt.

: Upon receipt of the completed certification application, the Division will conduct a preliminary review to ensure that all pre-survey information is complete. If additional information is required, the Division will send a written request specifying the additional information needed.

: When all application form information is complete, the Division will conduct an on-site inspection of the applicant organization.

: Upon completion of the site visit, the Division surveyor will submit an inspection report to the Director describing the findings of the review of the certification application and the site visit. The inspection report, along with the application will form the basis for the review process and certification determination.

: The Division shall complete its certification survey and make a certification determination within 60 days of forwarding the certification package to the organization/enrolled provider. The Director of the Division shall notify the organization of its certification determination.

: The Division shall forward to the provider and DSS a notice of certification for provision of community support services to Medicaid beneficiaries.

Certification of RRF programs shall be contingent on receipt by the provider of a group home license issued by The (Delaware) State Board of Health.

Upon receipt of initial certification, the provider may enroll as a provider of community support services programs under the DMAP (Medicaid) in accordance with policy and procedures established by DSS for such enrollment.

Enrollment of RRF programs shall be contingent on receipt by the provider of a group home license issued by The (Delaware) State Board of Health.

To facilitate the determination by the Division of the organization's eligibility for certification, the organization shall make all necessary documentation available for the Division's review, including policies and procedures, staff qualifications and work schedules, consumer records, consumer billing records, etc. The division surveyor may meet with the director, members of the board of directors, staff members and consumers in the process of conducting a site visit to evaluate the applicant organization's adherence to organizational, administrative and program standards.

Ongoing Monitoring

As an authorized representative of DSS, the Division has the right to access any information directly related to the provider's administration of the Medicaid program. The Division may conduct on-site visits to a provider and review consumer records periodically to monitor ongoing compliance with certification standards. The Division will notify a provider in writing of any deficiencies found during a monitoring visit. The provider shall submit a plan of correction of any deficiencies within 30 days of notification.

Suspension or Revocation of Certification

The Division may suspend provider certification at any time upon 15 days written notice to the provider of the intent to suspend when the provider fails to satisfy or continue to meet the requirements for certification.

: DADAMH shall advise the provider of the reason(s) for suspension.

: Upon receipt of the written notice of DADAMH's intent to suspend provider certification, the affected provider may request a hearing by the Division Director for the purpose of demonstrating that the reasons for suspension have been corrected.

: Failure of the provider to demonstrate the correction of the reasons for suspension within 60-days of receipt of the notice of intent to suspend shall result in the revocation of the provider's certification.

The Division Director may extend the period of suspension without revocation by not more than 30-days.

: Upon revocation of a provider's certification, DADAMH shall notify DSS of such revocation and the concomitant failure of the provider to meet the requirements to be recognized as an enrolled provider under the DMAP.

DADAMH may revoke a provider's certification and so advise DSS without prior written notice to the provider in the event that the provider has evidenced conduct which has caused or which can reasonably be expected to cause harm to program participants.

DADAMH shall provide written notification of revocation to the affected provider within 5 working days of the effective date of such revocation.

DADAMH's failure to re-issue a Certification on or before the anniversary date of a provider's existing Certification shall be construed as and have the effect of the issuance of a Provisional Certification valid for not more than 45 days from the anniversary date UNLESS the failure to re-issue is caused by action taken by DADAMH to revoke a certification.

: DADAMH may issue an annual Certification at any time during the Provisional Certification. Such re-issued Certification shall be retroactive to the anniversary date.

: DADAMH may revoke a Provisional Certification at any time during the grace period.

: Upon the expiration of the Provisional Certification without the reissuance of a Certification, the provider's

Certification shall be terminated and considered to have been revoked.

: No written notice to the provider shall be required to effect the issuance of a Provisional Certification when the failure to re-issue is NOT the result of an action taken by the Division.

II. CLINICAL STAFF AUTHORIZED TO PROVIDE SERVICES

The provider may bill for only those services rendered by members of its clinical staff who hold the credentials required by each covered billable activity.

The categories of clinical staff and their definitions (for CTT programs and PRC programs for persons with psychiatric disabilities) are as follows:

Physician - A person with a Medical Degree or Doctor of Osteopathy degree, is licensed to practice medicine in Delaware and has completed (or is enrolled in) an accredited residency training program in psychiatry, internal medicine or family practice.

Clinician - A person with a doctoral or masters degree in psychology, counseling, social work, nursing, rehabilitation or related field from an accredited college or university (or a registered nurse with a certificate in mental health nursing from the American Nurses Association).

Associate Clinician - A person with a bachelor's degree in a human service field or a registered nurse.

Assistant Clinician - A person with an associates degree in a human service field or a certified counselor lacking the academic credentials of an associate clinician.

The categories of clinical staff authorized to provide rehabilitation services to residents of residential rehabilitative facility programs are as specified in the Licensing Regulations - Group Home for the Mentally III issued by The (Delaware) State Board of Health.

III. RECIPIENT ELIGIBILITY

Eligible recipients are certified by the program physician as being in medical need of program services in accordance with an assessment procedure approved by the Division for use in determining that persons are severely disabled according to criteria for severity of disability associated with mental illness.

The Division must certify that the assessment procedure has been appropriately conducted prior to the acceptance of a recipient as an eligible recipient.

The Division may require a full review of medical necessity in the event that a determination of medical necessity by the program physician does not appear to DADAMH to be supported by the assessment materials.

Determination of consumer eligibility for Medicaid benefits is the sole responsibility of DSS.

IV. COVERED SERVICES

CTT services may be billed to the DMAP for eligible Medicaid recipients for the following activities:

Comprehensive Medical/Psychosocial Evaluation: A multi-functional assessment of the consumer conducted by a physician (psychiatrist, internist or family practitioner), and clinicians under the supervision of the physician, to establish the medical necessity of provision of rehabilitative services to formulate a treatment plan. The comprehensive medical/psychosocial evaluation will be conducted within 45 days of admission to the program and at least annually thereafter. It must be documented in the consumer's record on forms approved by the Division and must establish the basis for the physician's determination of the medical necessity of entry into or continued provision of CTT services. Appropriate components of the evaluation must be repeated whenever a consumer experiences a significant change in psychosocial function or life change and in preparation for treatment plan reviews.

Physician Services: Services provided within the scope of practice of medicine or osteopathy as defined by State law and by or under the personal supervision of an individual licensed under State law to practice medicine or osteopathy. Physician services refer to medical or psychiatric assessment, treatment, and prescription of pharmacotherapy. Medical and psychiatric nursing services including components of physical assessment, medication assessment and medication administration provided by registered nurses and licensed practical nurses are provided under supervision of the physician.

Emergency Services: Therapy performed in a direct and face-to-face involvement with the consumer available on a 24-hour basis to respond to a psychiatric or other medical condition which threatens to cause the admission of the consumer to a hospital, detoxification or other crisis facility. Emergency services are provided by a physician, clinician, associate clinician or assistant clinician.

Counseling and Psychotherapy: Counseling is supportive psychotherapy performed as needed in a direct and face-to-face involvement with the consumer available on a 24-hour basis to listen to, interpret and respond to the consumer's expression of her/his physical, emotional and/or cognitive functioning or problems. It is provided within the context of the goals of the program's clinical intervention as stated in the consumer's treatment plan. Its purpose is to help the consumer achieve and maintain psychiatric stability. Its broader purpose is to help consumers improve their physical and emotional health and to cope with or gain control over the symptoms of their illnesses and effects of their disabilities. Counseling is provided by physicians, clinicians, associate clinicians and assistant clinicians who are credentialed counselors or learning and practicing under direct supervision by a credentialed clinician.

In addition to supportive psychotherapy there are several highly specific modalities of psychotherapy, each

based on an empirically valid body of knowledge about human behavior. Provision of each requires specific credentials. Although the nature of the consumer's needs and the specific modality of therapy determines its duration, psychotherapy has circumscribed goals, a definite schedule and a finite duration. Examples include psychodynamic therapy, psychoeducational therapy, family therapy, and cognitive therapy. The assessments, treatment plans and progress notes in consumer's records must justify, specify and document the initiation, frequency, duration and progress of such specialized modalities of psychotherapy.

Psychotherapy may be provided by physicians and clinicians who are credentialed in specific modalities or learning and practicing under the supervision of one who is credentialed.

Psychiatric Rehabilitative Service: Rehabilitative therapy provided on an individual and small group basis to assist the consumer to gain or relearn the self-care, interpersonal and community living skills needed to live independently and sustain medical/psychiatric stability. Psychiatric rehabilitation is provided primarily in home and community based settings where skills must be practiced. A physician, clinician, associate clinician or assistant clinician provides psychiatric rehabilitative services.

Psychosocial Rehabilitation Center Services: Facility based, group rehabilitative therapy for consumers who can not be adequately served through only individualized home and community based psychiatric rehabilitative services. Therapy is provided in 5-hour blocks for up to five days per week at a psychosocial rehabilitation center facility. Therapy is aimed at improving or restoring a consumer's capacity for independent living through development of self-care, interpersonal and community living skills. A physician, clinician, associate clinician or assistant clinician provides PRC services.

PRC services are provided only by a provider of and in conjunction with a certified CTT program.

Residential Rehabilitation Facility Services: Facility-based, 24-hour rehabilitative therapy for clients who can not be adequately served through psychosocial rehabilitation center and/or individualized home and community based psychiatric rehabilitative services. Residential rehabilitation services are provided to assist the client to gain or relearn skills needed to live independently and sustain medical/psychosocial stability. Residential Rehabilitation Services are provided in a licensed mental health group home or a licensed alcoholism and drug abuse residential treatment program. Services are provided by a physician, clinician, associate clinician or assistant clinician.

Residential Rehabilitation Facility services are provided only by a provider licensed as a group home for the mentally ill by The (Delaware) State Board of Health.

V. SERVICE LIMITATIONS

The following limitations apply to coverage for CTT services:

Appropriate Use: Coverage for CTT services is limited to those Medicaid beneficiaries who are certified by the program physician as severely disabled according to criteria for severity of disability caused by mental illness. The provider must complete a comprehensive medical/psychosocial assessment and treatment plan within 45 days of entry to the program by a consumer. The program physician must certify that Continuous Treatment Team services are medically necessary. Within 60 days of a client's entry into a program and within 15 days of the anniversary date of entry into a program, the Division shall review each client's treatment record to verify that the evaluation, treatment plan and certification of medical necessity are complete. The Division may require a full review of medical necessity in the event that a determination of medical necessity by the program physician does not appear to be supported by the assessment materials. Services provided after 60 days of entry to the program or beyond 15 days of the yearly anniversary date of entry to the program without a completed assessment, treatment plan and physician's certification of medical necessity are not reimbursable.

Re-assessment and re-certification of medical need for psychosocial rehabilitation center services is required semi-annually.

Non-Covered Services: The following are not reimbursable:

- : Vocational and educational services;
- : Services which are solely recreational in nature;
- : Units of service with individuals other than the eligible consumer;
- : Services delivered by telephone;
- : Services provided to consumer in an institute for mental disease (as defined by Health Care Financing Administration (2) "Institution for mental diseases" means a hospital, nursing facility or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of individuals with mental diseases, including medical care, nursing care, and related services.).

Service Utilization: CTT programs must attempt to provide each consumer a minimum of one face-to-face clinical contact per week in a setting other than the office(s) of the program. A physician must evaluate consumers who are treated with psychotropic medication face-to-face at least once per month. Providers may not bill for other community support services during the hours when a consumer is receiving PRC services.

Services provided to each consumer must be medically necessary and in accordance with the prescribed treatment plan; services should not be provided primarily for the convenience of the provider or the consumer.

Location of Service Provision: The DMAP may be billed for services provided in program offices, other

agencies, home and other community based settings. The DMAP may not be billed for services provided in an institution for mental diseases or in a correctional institution.

PRC services may be provided only at the PRC facility site.

Sub-Contracting of Services: Services billed to the DMAP must be provided by an employee or by a physician or other clinician under contract with the provider. Component services of community support programs may not be subcontracted to independent provider organizations.

Physician Supervision: Services billed to the DMAP must be authorized by a physician's determination of medical necessity, must be supported by an individual treatment plan signed by the physician and must be supervised by a physician in a manner prescribed by program standards of the Division.

The following limitations apply to coverage for RRF services:

Appropriate Use: Coverage for RRF services is limited to those Medicaid beneficiaries who are certified by the program physician as severely disabled according to criteria for severity of disability caused by mental illness. The provider must complete a comprehensive medical/psychosocial assessment and treatment plan and complete periodic reassessment in accordance with the requirements of the Licensing Regulations - Group Home for the Mentally Ill issued by The (Delaware) State Board of Health. Services provided after 60 days of entry to the program or beyond 15 days of the yearly anniversary date of entry to the program without a completed assessment treatment plan and physician's certification of medical necessity are not reimbursable.

Non-Covered Services: The following are not reimbursable:

- Vocational and educational services;
- Services which are solely recreational in nature;
- Services provided to individuals other than the eligible consumer;
- Services provided to consumers in an institute for mental disease; services delivered by telephone.

Service Utilization: Consumers who are treated with psychotropic medication must be evaluated face-to-face by a physician at least once per month.

Location Of Service Provision: The DMAP may be billed for services provided only to residents of the Licensed Group Home for Mentally Ill Adults which is certified as a RRF. The DMAP may not be billed for services to persons who are on leave or furlough or otherwise absent from the facility and residing elsewhere for a period of time after which residency is expected, anticipated or planned to resume.

Appropriate off-site activities may be provided consistent with an individual resident's treatment plan.

Sub-Contracting of Services: Services billed to the DMAP must be provided by an employee or by a physician

or other clinician under contract with the provider. Component services of community support programs may not be subcontracted to independent provider organizations.

Physician Supervision: Services billed to the DMAP must be authorized by a physician's determination of medical necessity, must be supported by an individual treatment plan signed by the physician and must be supervised by a physician in a manner prescribed by The (Delaware) Board of Health in the Licensing Regulations - Group Home for the Mentally Ill.

VI. CONTINUOUS TREATMENT TEAM PROGRAM STANDARDS

Program Organization and Operation

A CTT Level I program shall operate with assigned staff 7-days per week, a minimum of 12 hours on weekdays and 8 hours on weekends and holidays. A clinician or associate clinician shall be on-call and available to respond face-to-face immediately during non-operating hours. A second staff member shall be on back-up on-call.

A CTT Level II program shall operate with on-site staff 5-days per week, a minimum of 12 hours weekdays and 8 hours weekends and holidays. A clinician or associate clinician shall be on-call and available to respond face-to-face immediately during non-operating hours. No CTT Level II program shall be in a non-operating on-call status on consecutive days.

A CTT Level I program shall be organized to provide a maximum clinical staff to consumer ratio of 1:12. At least 75% of the clinical staff shall be full-time.

A CTT Level II program may be organized to provide a maximum clinical staff to consumer ratio of 1:20. At least 75% of the clinical staff shall be full-time.

Staff of the CTT program shall meet jointly each day to review the contacts with and status of each consumer during the previous day and to plan contacts for the current day. A clinician shall lead the daily meeting.

The case manager, at least one other member of the consumer's primary treatment team, and a clinician from the CTT program shall meet jointly at least weekly to conduct treatment planning and treatment plan reviews. A schedule of upcoming treatment plans and reviews shall be maintained. A clinical supervisor shall lead treatment planning and review meetings.

The CTT programs shall operate on a daily schedule of staff/consumer activities based on up-to-date written weekly schedules for each consumer extracted from the treatment plan.

CTT program contacts with consumers shall be predominately individual and in small groups. Group therapies shall include activities of daily living, social skills, and symptom control. The program shall ensure that consumers receive prescribed medication and monitor

medication compliance, effects and side effects. Program staff shall maintain regular (if not daily) contact with consumers who are hospitalized for stabilization of psychiatric symptoms. Program staff shall collaborate closely with treatment teams providing care to hospitalized consumers.

Each consumer shall have a treatment team consisting of the physician, case manager, and at least two other staff from either the CTT or PRC program who are primarily involved in his/her treatment plan.

Level II CTT programs shall have treatment teams consisting of the physician, case manager and at least one other staff member primarily involved in his/her treatment plan.

It shall be evident from review of clinical records and from observation of staff interactions with consumers that the provider is organized and operates in a manner consistent with the following principles:

- Minimizing disability by providing consumers with rehabilitative interventions in the course of their normal daily living;
- Providing outreach to ensure that consumers have access to and receive needed services;
- Maximizing consumer involvement and choice in all aspects of his/her treatment, rehabilitation and support.
- Assisting consumers to develop and maintain supportive social networks.

The provider shall address all of the following dimensions of each consumer's life as responsibilities of its own staff:

- A stable social network;
- Safe and decent housing;
- Psychiatric and substance abuse treatment;
- Involvement in a normative adult lifestyle;
- Employment;
- Access to and coordination of economic entitlement and services provided through other agencies and providers.

Program Staff

There shall be an overall director of the CTT and any related PRC programs who shall be a clinician with at least three years of clinical/administrative experience in providing community support services to adults with psychiatric disabilities.

There shall be an overall clinical supervisor who shall supervise the provision of services to consumers and the quality assurance program. The clinical supervisor shall be a clinician with at least three years of post-graduate experience in providing community support services to adults with psychiatric disabilities. He/she shall devote a minimum of four hours per week for every 20 consumers to provide clinical supervision to program staff.

Level II CTT programs may reduce clinical supervision of staff to not less than 4 hours per week for every 40 consumers.

Associate and assistant clinicians shall have credentials for the treatment activities they engage in and shall be supervised by clinicians. At least 75% of the direct service staff, including the program and clinical coordinators, shall be clinicians or associate clinicians.

A CTT or combined CTT/PRC program shall have a full or part-time physician who is available to provide direct service at CTT sites. The physician shall spend a minimum of four hours a week for every 20 consumers providing direct services to consumers, participating in the assessment of consumer needs and planning of service provision and providing supervision consultation to other program staff. The physician shall have backup arrangements with other physicians for coverage when he/she is unavailable and shall provide them with an up-to-date listing of the medications and recommendations for each consumer in the event of a crisis. If the program's physician does not provide case management of primary medical care, the program shall arrange for the services of an internist or primary care physician to provide and/or manage the medical care of consumers.

Level II CTT programs or combined CTT Level II/PRC programs may reduce physician availability to not less than 4 hours per week for every 40 consumers.

At least 1.5 full time equivalent (FTE) staff of a CTT Level I program serving from 71 to 120 consumers shall be registered nurses.

Level I CTT programs serving fewer than 70 consumers must have a minimum of 1.0 FTE registered nurses.

A Level II CTT program must have a minimum of 1.0 FTE registered nurses.

The CTT program shall have among its staff individuals who are trained, skilled and experienced to conduct a wide variety of clinical activities, such as:

- Psychoeducational therapy;
- Cognitive therapy;
- Behavior therapy;
- Symptom education and self-management;
- Addictions therapy;
- Vocational assessment and therapy;
- Social skills training;
- Daily living skills training;
- Structured interviewing for completing rating scales, diagnostic interviews, mental status examinations, social security disability reports, etc.

All clinical staff shall be trained and supervised to provide supportive counseling and case management.

When volunteers or student interns are used, clinician staff shall supervise them. The CTT program shall have written procedures for the selection, orientation, in-service training and supervision of volunteers and students.

Target Population

Enrollment in all CTT programs shall be limited to consumers who are certified by the program physician as

being in medical need of the services provided in accordance with the Division's approved assessment procedure and meet the criteria for enrollment as community support consumers and who require intensive home and community-based support services because of degree of disability. The Division gives priority for enrollment to consumers who are: homeless, inpatients at Delaware State Hospital, experiencing recent admissions to psychiatric hospitalization or detoxification facilities, living alone or with others in a severely dysfunctional or substandard condition, or HIV positive. The CTT program shall ensure that no consumer is denied any benefits or services or is discriminated against on the basis of age, sex, race, nationality, religion, sexual orientation, handicap, physical condition or ability to pay.

Determination of Severity of Disability

The Division uses the following criteria to make a determination of severity of disability:

- An established history of rapid deterioration following previous interventions for psychiatric stabilization;
- The rating on Axis IV of the DSM IV Multiaxial System;
- The global assessment of functioning score on Axis V of the DSM IV Multiaxial System;
- The degree of clinical risk evidenced by:
 1. Severity and interference of refractory symptoms;
 2. Psychosocial dysfunction;
 3. Impaired judgment;
 4. Suicidal behavior;
 5. Disruptive behavior.

Intake

During the intake process, the consumer shall be informed of:

- The program's services and aims;
- The manner in which the program operates to ensure that consumers receive the services they need;
- The program's expectations of consumers regarding their responsibilities;
- How consumers can obtain assistance during an emergency or whenever the program offices are closed;
- The program's provisions for maintaining confidentiality;
- Charges for which consumers or a third party may be billed;
- The process for appeal and review of problems consumers' experience in regard to the quality and responsiveness of services provided by program staff.

Assessment

A Comprehensive Medical/Psychosocial Evaluation approved by the Division as a CTT assessment procedure shall be begun at the time of the consumer's admission to the CTT program which shall be completed within 45 days. The evaluation shall be conducted by clinicians. Assessment

instruments shall conform to formats approved by the Division. Assessments will be conducted with the active participation of the consumer and will be responsive to the consumer's goals.

The Comprehensive Medical/Psychosocial Evaluation will include a written summary of the assessment shall be completed by the consumer's primary therapist and explained to the consumer. The summary of the assessment shall include the following:

- Extent and effects of drug and/or alcohol use;
- Medical, dental, and optometric needs;
- Compliance with and response to prescribed medical/psychiatric treatment;
- Current psychiatric symptomatology and mental status;
- Recent key life events;
- Vocational and educational functioning;
- Current social functioning; and
- Conditions of daily living, including housing.

Treatment Planning

An initial written treatment plan shall be developed on the date of admission to the CTT program. Within 60 days of admission, following the completion of intake assessments, a comprehensive written treatment plan shall be developed by the consumer's primary therapist and reviewed by the other members of the consumer's treatment team at a treatment planning and review meeting.

The treatment plan shall include both short-range and long-range goals, stated in measurable terms and including criteria for discontinuance of goals. It shall include the specific treatment, rehabilitation and support interventions, and their frequency, planned to achieve treatment goals. The consumer's participation in the development of treatment/service goals shall be documented. With the permission of the consumer, program staff shall engage the involvement of other service providers and members of the consumer's social network in formulating treatment plans.

The treatment plan shall be reviewed in full at least every six months through a clinical case conference. The date, results of the review and any changes in the treatment plan shall be recorded. The case manager, at least one other member of the consumer's primary treatment team, and a clinical supervisor shall meet to discuss his/her progress, assess continuing treatment needs and formulate revisions to the treatment plan. Treatment plan revisions will be reviewed and signed by the physician.

Consumer Rights

The provider shall establish a formal process for soliciting consumers' complaints and for reviewing treatment decisions by staff with which consumers disagree.

The provider shall not establish any general conditions of program participation that limit a consumer's rights to self-determination. Each decision to limit the responsibility

of a consumer regarding normal adult discretion shall be based on judgments agreed to by a clinical supervisor based on clinical merit.

The provider shall comply with DHSS Policy Memorandum 46 regarding reporting and responding to allegations of abuse and neglect, and to incidents resulting in injury or death.

The provider shall promote any self-help and mutual support efforts among consumers.

Consumers shall be kept informed (as evidenced through written guidelines and through documentation in their clinical records) of their rights and responsibilities contained in written policies and procedures including reference to:

- Behavioral expectations and limitations;
- Consumer grievances;
- Confidentiality;
- Fees;
- Appeals of decisions by program staff.

Case Management

A member of the CTT program's clinician and associate clinician staff shall be designated responsible for maintaining a primary therapist/case manager relationship with each consumer and shall:

- Maintain the clinical file for the consumer to include:
 1. Assurance that written assessments are completed;
 2. Preparation of service plans;
 3. Documentation of services and response to treatment;
 4. Order and completeness.
- Conduct and participate in treatment planning and case conferences with other staff of the CTT program, parent agency and other agencies;
- Maintain a therapeutic alliance with the consumer and serve as his/her primary therapist;
- Refer and link the consumer to all needed services provided outside of the CTT.
- Follow up to ensure that all needed services provided outside of the CTT program are received and monitor the consumer's benefit from those services;
- Coordinate the provision of emergency services and hospital liaison services when a consumer is in crisis;
- Coordinate overall independent living assistance services and work with community agencies to develop needed resources including housing, employment options and income assistance;
- Support and consult with the consumer's family.

In addition to the above responsibilities of the clinician who serves as the consumer's case manager, all staff of the program shall share the following responsibilities for which they are credentialed for each consumer:

- Document and keep other staff, clinical coordinators and the program coordinator informed of all changes in the consumer's mental or social status;

- Provide any of the above functions on behalf or in place of the primary therapist;
- Provide emergency services when the consumer is in crisis.

Services

In the CTT program, outreach to consumers and provision of services according to individual need shall be emphasized, with the majority of clinical contacts occurring outside of the offices of the program.

The CTT program shall provide the following services:

- Supportive counseling to help the consumer cope with and gain mastery over symptoms and disabilities in the context of daily living;
- Psychotherapy including psychoeducational therapy, cognitive therapy and psychodynamic therapy;
- 24-hour telephone access and face-to-face intervention;
- Direct assistance to ensure that the consumers are evaluated for eligibility to services, such as:
 1. Medical and dental services;
 2. Decent, safe and affordable housing;
 3. Financial support;
 4. Social services;
 5. Needed transportation.
- Employment and vocational services.
- Education of the consumer regarding his/her illness and the effects and side effects of medications prescribed to regulate it, where appropriate.
- Medication monitoring as follows:
 1. At least one per month face-to-face assessment by a physician (rationale for less frequent assessment must be clinically justified and documented in the consumer's treatment plan);
 2. Staff shall monitor and document consumer compliance in following prescribed medication treatment and medication effects and side effects;
 3. Administration of medication by any method and/or the supervision of consumers in the self-administration of medication must be conducted and documented in conformance with the program's written policies and procedures for medication management.
- Provide for an annual review of the consumer's physical condition, and develop a means for monitoring the consumer's access and compliance with treatment for identified physical problems. Physical problems should be identified, addressed in the treatment plan when appropriate, and health maintenance and health improvement protocols developed.
- Social skills training, including:
 1. Communication skills;
 2. Use of leisure time;
 3. Assertiveness and self-control.
- Training in activities of daily living, including individual support, problem-solving, and supervision in home and community-based settings to assist the consumer to:
 1. Carry out household activities, including housecleaning, cooking, shopping and carry out personal

hygiene tasks:

2. Laundry;
3. Manage money within income limits;
4. Use community transportation services;
5. Make appropriate use of health and social

services:

6. Locate, finance and maintain decent, safe

housing:

7. Relate to landlord, neighbors and others effectively.

• Provision of support to assist consumers who seek employment to get and keep a job through:

1. Supportive counseling to enable the consumer to cope with symptoms of mental illness which affect work performance;

2. Assistance with meeting the expectations of the job;

3. Assistance in communicating with employers/supervisors.

• Provision of support to family and other members of the consumer's social network to assist them and the consumer as documented in the treatment plan to relate in a positive and supportive manner including:

1. Education about the consumer's illness and their role in the therapeutic process;

2. Supportive counseling and education regarding mental health issues and addictions;

3. Intervention to resolve conflict.

Required Frequency of Continuous Treatment Team and Community-Based Contact

During the first six months following admission, staff shall attempt (providing it does not interfere with the establishment of a therapeutic relationship) to provide the consumer with a minimum of five face-to-face contacts per week in home and community-based settings. After the initial six months, a CTT may adjust the frequency and duration of contact according to need to a minimum of one face-to-face contact in a home or community-based setting per week. At least two thirds of CTT contacts shall occur in locations other than the offices of the program.

Minimum Standards for Certifying Living Arrangements for Continuous Treatment Team Consumers

Consumers living alone or with spouse shall have a living room, a kitchen and bedroom areas totaling a minimum of 250 square feet.

Housing shall contain modern heating, plumbing and electrical systems. Heating shall not be by kitchen stoves or portable heating devices.

Housing shall contain smoke/heat detectors and conform to local fire safety codes.

Housing shall contain two or more means of egress.

Within the bounds of being safe, decent and affordable, housing shall be of the consumer's choice.

The CTT program shall certify to the Division that housing meets the above standards.

The DADAMH shall visit a randomly selected sample of supported independent living arrangements.

VII. PSYCHOSOCIAL REHABILITATION CENTER PROGRAM STANDARDS

PRC programs shall be operated only by providers of and in conjunction with a certified CTT program.

The PRC facility shall operate at least 5-days per week for provision of Medicaid covered rehabilitative services. Medicaid covered rehabilitative services shall be provided at least from 8:30 a.m. to 1:30 p.m. A substantial period of consumer participation in the PRC program shall be required for the purpose of crediting the consumer with a full day of PRC Services. Partial days shall not be additive for the purpose of billing for PRC Services.

The PRC facility shall be organized to provide a maximum clinical staff to on-site consumer ratio of 1:10.

Staff of both PRC and related CTT programs shall meet jointly each morning to review the contacts with and status of each consumer during the previous day and to plan contacts for the current day. A clinical supervisor shall lead the daily meeting.

Staff of both the PRC and the CTT program shall meet jointly at least weekly to conduct treatment planning and treatment plan reviews. A schedule of upcoming treatment plans and reviews shall be maintained. A clinical supervisor shall lead treatment planning and review meetings.

The PRC program shall have a program coordinator who supervises the operation of the center and the services provided by its staff. The program coordinator shall be a clinician.

The PRC program shall have among its staff individuals who are credentialed to conduct the following clinical skills: psychoeducational therapy; symptom education and self-management, vocational assessment and therapy; social skills training; and daily living skills training.

When provision of PRC services is recommended, it shall be based on indications of the evaluation by the CTT program or the licensed Group Home for the mentally ill of deficits in symptom control, social skills and activities of daily living skills that are of sufficient severity to compromise the consumer's capacity for independent living and work. For each deficit identified, the PRC will undertake a comprehensive identification of the consumer's strengths and needs in relation to his/her functional deficits and of the possible modification of the environments in which the consumer needs to function.

For consumers enrolled in the PRC program, the treatment plan shall contain specific rehabilitation goals and interventions related to their participation in the center program. The interventions, with their expected frequency and duration, shall be contained within the consumers'

treatment plans. The treatment plan shall be prepared on forms approved by the Division. It shall be signed by the primary therapist, clinical supervisor and physician.

The program shall nurture the consumer's control over the use of the PRC facility as a recreational and community resource. The facility shall be available to consumers as a drop-in center, a location for self-help and mutual support meetings, and a resource to mount community service projects. Program staff and consumers shall cooperatively plan such functions, with maximum opportunity for consumer involvement in decision making. There shall be a clear separation between the rehabilitative function of the center and its role as a hub for CTT program consumers' social networks.

In the PRC program, rehabilitative therapy will be based within the facility and focus on the acquisition or relearning of skills needed for the consumer to live more independently with the assistance of the CTT program.

The PRC shall provide the following services:

Instrumental Life Skills Therapy Services - individual and/or group therapy to provide a transitional, individually time-limited, systematic treatment/training program which assists consumers toward their optimal level of community and vocational development. Utilizing simulated work, the intent of the service is to assist consumers to understand the meaning, value, and demands of work and to learn or reestablish habits and behaviors prerequisite to holding a job.

- Independent Living Assessment - Work units will be designed to allow the consumer to choose a work function. The primary goals are to help a consumer develop basic work skills, develop co-worker relationships, learn to deal with stress related to task performance activities and to feel a sense of accomplishment and reward to reinforce one's ability in productive activities. The work units are also designed to provide basic acquisition of living skills in order to transfer this knowledge and experience to the independent community living environments.
- Work Adjustment Skills Training - treatment/training service utilizing individual and group work to provide work-related activities to assist individuals in developing functional capacities, as required, in order to assist individuals toward their optimum level of vocational development.
- Vocational Rehabilitation Services to provide a comprehensive process that systematically utilizes work, either real or simulated, as a focal point for assessment and vocational exploration, the purpose of which is to assist the person in vocational development and decision making.
- Job Placement Services - will provide assistance to consumers to identify, obtain and/or maintain employment commensurate with their vocational, social, psychological, and medical needs, and their abilities.

Psychoeducational Therapy Services either in a group

and/or individual format will provide consumers with knowledge of the biological, psychological and social elements of their illnesses; improve their ability to cope with and control their symptoms and teach skills associated with compliance with prescribed medical treatment.

- Control Symptoms - Supportive counseling or psychotherapy to assist the consumer to understand the nature and dynamics of his/her mental illness, to recognize symptoms, to follow prescribed medication therapy, and to exercise self-control over symptoms and environmental factors that affect symptoms.
- Assess/Monitor Well Being - Determination of the individual's strengths and needs both at intake and continually throughout the treatment process. Areas of assessment will include mental status, medication, general health, self-care, support network, family consultation, employment capabilities and training needs.
- Medication Education - individual and/or group contacts with the consumer to assess medication compliance by non-medical staff according to DADAMH standards. After medication counseling services, compliance assessment will include the documentation of compliance and medication effects and side effects and as appropriate reported to prescribing physician.
- Alcohol/Drug Abuse Education - services provided by the interdisciplinary team on individual and group basis to provide appropriate assessment, referral, and treatment services as reflected in the program's capacity to meet the individual needs of the consumer.

Social Skills Training - direct service to the consumer, individually or in small groups, in the context of a planned and clinically relevant teaching/therapeutic structure to improve their capacity to establish social skills in the community.

- Personal and Social Adjustment Services - individual and/or group therapy in which functional skills are developed and maintained and which provide broad opportunities for valued adult roles in the community. Treatment planning will be goal-oriented to maximize the consumer's independent functioning through the provision of therapy and training in such areas as self-care, physical and emotional maturation, socialization, communication, and cognitive, leisure, and pre-vocational skills.
- Interpersonal Skills Assessment and Development - direct service to the consumer, individually or in small groups, in the context of a planned and clinically relevant teaching/therapeutic structure to develop and maintain interpersonal relationships, to effectively represent one's needs and self-interests to others, to negotiate and resolve disagreements with others and to develop mutually supportive relationships with peers.
- Recreational Therapy Activities - social/recreational services designed to help consumers to strengthen interpersonal skills and have healthy leisure experiences which provide a sense of personal satisfaction.

Activities of Daily Living Training - direct service to the

consumer, individually or in small groups, in the context of a planned and clinically relevant teaching/therapeutic structure to build or improve capabilities for performing the instrumental tasks of independent living.

- Household Activities Training - training in activities of daily living including individual support, problem solving and supervision in home and community-based settings to assist clients in order to carry out personal hygiene tasks; carry out household activities including house cleaning, cooking, shopping and laundry; and manage money within income limits.
- Community Resources Training - use community resources such as transportation, social services, medical services; locate, finance and maintain decent, safe, and affordable housing/ living arrangements; and relate to landlords, neighbors and others effectively.
- Adult Education - direct service to the consumer, individually or in small groups, in the context of a planned and clinically relevant teaching/therapeutic structure to improve general knowledge and qualifications for employment (e.g. GED preparation) or self-help (e.g. financial management and health maintenance). Adult Educational Services may be provided in collaboration with the local Adult Continuing Education Service in order to promote and encourage continuation of adult education and completion of basic skill learning required to maintain community tenure.

Community Social Support Services - will be provided by working with the consumer's family, friends, employer, and others with significant ties to the consumer in order to advocate with the consumer in the development of community supports related to locating, applying for, and using resources such as benefit programs; employment programs; housing options/resources; assistance with financial management; mental health services; medical, dental and other health care services; educational, recreational and social activities.

- Consumer Advocacy - Supportive counseling to assist the consumer to resolve interpersonal conflict, e.g. meeting jointly with consumer and family member to resolve a conflict disrupting the stability of the living arrangement; assisting the consumer to analyze and come to terms with the reasons for termination from employment; accompanying the consumer to a meeting with the landlord to negotiate a settlement to a landlord tenant dispute.
- Service Linkage - direct assistance to or on behalf of the consumer in obtaining entitlement and health and social services.
- Resource Management - direct assistance to or on behalf of the consumer in obtaining necessities (e.g. clothing, appliances etc.) and managing funds (e.g. budgeting, bill paying, etc.).

Required Frequency of Psychosocial Rehabilitation Center Home and Community-Based Contact

Consumers of PRC services operated by or in conjunction with a CTT shall attend the program a minimum

of two days per week. Attendance will count toward a requirement of five face-to-face contacts per week during the first six months following admission. After the initial six months, like other CTT consumers, those enrolled in PRC services shall be provided a minimum of one face-to-face contact in a home or community-based setting per week. At least one contact per month shall be in the consumer's home. The program physician in the consumer's treatment record must clinically justify recurrent deviation from these minimum contact requirements.

VIII. RESIDENTIAL REHABILITATION FACILITY PROGRAM STANDARDS

Residential Rehabilitation Facility programs shall comply with the program standards set forth in the Licensing Regulations - Group Home for the Mentally Ill issued by The (Delaware) Board of Health.

Residential Rehabilitation Facility programs shall be conducted only by providers of, and in conjunction with, a Group Home for the Mentally Ill licensed by The (Delaware) State Board of Health.

IX. ORGANIZATIONAL STANDARDS

The Community Support Services program shall establish an advisory committee which includes program consumers and families of consumers within its membership. The function of the advisory committee shall be to ensure consumer and family participation in the process of setting and evaluating the values, mission, goals, objectives and service strategies of the program and to assist the program in representing its interest to the community in which it operates.

The advisory board shall have by-laws that specify at least the following:

- Its authority and duties;
- Officers and committees;
- Criteria, types, methods of membership;
- Frequency of meetings; and
- Attendance requirements.

Minutes of advisory board meetings shall be kept and shall include the following:

- Date;
- Attendance;
- Topics discussed;
- Decisions reached;
- Actions planned or taken; and
- Reports from committees.

The facility(ies) within which the CSSP operates shall meet the following criteria:

- They shall meet all applicable fire and life safety codes;
- They shall have the appearance of a high quality therapeutic environment;
- They shall be accessible to the consumer served;

- They shall provide a smoke free environment for non-smokers.

X ADMINISTRATIVE STANDARDS

Consumer Records

There shall be a treatment record for each consumer that includes sufficient documentation of assessments, treatment plans and treatment to justify Medicaid participation and to permit a clinician not familiar with the consumer to evaluate the course of treatment.

There shall be a designated consumer record manager who shall be responsible for the maintenance and security of consumer records.

The record keeping format and system for purging shall provide for consistency, facilitate information retrieval and shall be approved by the Division.

Consumer treatment records shall be kept confidential and safeguarded in a manner identical to the requirements of Section 5161 of Title 16 of the Delaware Code governing the rights of mental health inpatients. The consumer record shall contain the following:

- An up-to-date face sheet;
- Consumer consent to treatment and consent to any occasion of release of treatment information;
- Results of all examinations, tests and other assessment information. Assessments shall be completed on forms approved by the Division;
- Reports from referral sources and clinical consults;
- Hospital discharge summaries;
- Assessments and summary of assessments according to formats prescribed by the Division;
- A treatment plan in a format approved by the Division;
- For each day during which CSS services are provided, there shall be documentation in the case note section, of the date and time of service provision, the location of the intervention(s), who rendered services, the number of units of service, a summary of the intervention(s) and their relationship to the service plan and the consumer's condition and response to the intervention(s). Documentation shall be on forms prescribed by the Division. Based on record management policy for the program, daily contact forms for the previous month shall be moved from the active treatment record to the consumer's individual permanent file.
- Weekly progress notes are required for the first 6 months of a client's admission to the program in addition to a monthly summary progress note; After 6 months the weekly progress note is not required unless additional intervention services are provided that had not been identified in the treatment plan. (i.e. crisis intervention services)
- Quarterly documentation of clinical supervision indicating review of client progress, any changes in clinical interventions and/or changes in the treatment plan.
- Documentation of at least semi-annual reviews of treatment including reassessment of current functioning,

summary of progress and treatment plan revisions.

- Medication records (on forms prescribed or approved by the Division) which shall allow for ongoing monitoring of all medication administered and the detection of adverse drug reactions. All medication orders in the consumer case record shall specify the name of the medication, dose, route of administration, frequency of administration and names and signatures of the person administering and the physician prescribing the medication.
- Discharge documentation in a format prescribed or approved by the Division to include the following:
 1. A description of the reasons for discharge;
 2. The consumer's status and condition at discharge;
 3. A final evaluation summary of the consumer's progress toward the goals set forth in the service plan;
 4. A plan developed with the consumer regarding the consumer's continuing or future service needs.
- Documentation that the consumer has been informed of client rights, including the right to contest treatment decisions and or practices or otherwise express grievances regarding program activities.
 1. Consumers shall be provided with information regarding the process by which grievances can be addressed.
 2. A record of all grievances filed with the program by a consumer shall be included in that consumer's record, together with a statement of disposition or resolution.

Procedure Manual

The Community Support Services program shall maintain a written procedure manual for its staff. A mechanism shall be in place to ensure that the procedure manual is updated continuously and that the staff of the program are notified promptly of changes. The manual shall include:

- A statement of the program's values, mission and objectives;
- Referral policies and procedures that facilitate consumer referral;
- Detailed instructions for assessment, service planning and documentation procedures;
- Policies and procedures for medication management which shall include, but not be limited to, the prescribing, storage, handling, distribution, dispensing, disposing, and recording of medication and it's use by consumers. Such policies and procedures shall conform to all applicable rules, regulations and requirements of the (Delaware) Board of Nursing and, as applicable, the (Delaware) State Board of Pharmacy. The medication policy and procedure shall be reviewed and approved by the program physician and registered nurse(s).
- Policies and procedures for handling on-call responsibilities and consumer emergencies;
- Detailed instructions for application to and communication with entitlement authorities;
- Policies and procedures for sharing of information about consumers with family members or others;
- Policies and procedures regarding committing and

- handling financial resources of the program:
- Policies and procedures regarding the management of consumer's funds for whom the program has been designated payee;
 - Policies and procedures for the receipt, consideration and resolution of consumer complaints and/or grievances regarding treatment decisions and practices or other program activities.
 - Other policies and procedures as maybe promulgated or required by the Division and/or DSS.

Financial Management

The accounting system of the Community Support Services program or parent organization shall be in accordance with generally accepted accounting practices.

The Community Support Services program or parent organization shall submit an independent annual audit and management letter prepared by a certified public accountant to the Division within 90 days of the end of the budget period.

The program's budget shall be in a format prescribed by the Division and approved by the Division. Funding shifts within the budget shall be made in accordance with the financial policies of the Division.

Procurement of equipment and services for the program shall be made in compliance with the Code of Federal Regulations (CFR).

For Medicaid consumers, the fee paid by DSS/ DMAP will constitute full payment for services rendered. The Community Support Services program will bill the Division for services rendered to non-Medicaid consumers according to the Medicaid approved rate. In addition, the program will seek third party reimbursement and will establish a sliding fee scale for non-Medicaid consumers. The program's charges, sliding fee scale, collection policies and procedures and write-off policies and procedures shall be subject to approval by the Division. Non-Medicaid billings and revenue collected shall be reported to the Division and be subject to the provisions of DHSS Reimbursement Manual for community support services programs.

Fee for service reimbursement rates paid by the Division and DSS/DMAP are based on the program's approved budget and actual costs, and are subject to periodic monitoring and adjustment as provided for in the Reimbursement Manual for Community Support Services Programs.

The Community Support Services program shall maintain insurance policies for property and liability in accordance with Division guidelines.

The Community Support Services program shall operate in accordance with a Financial Management Procedure Manual that shall address the following:

- Processing of funds: i.e., procedures for receiving, recording and depositing incoming funds and for disbursement of funds;
- Purchasing: i.e., establishment and use of agency

charge accounts, transactions requiring prior approval, and procedure for acquisition of goods and services requiring bids;

• Payroll: i.e., preparation process, pay periods, maintenance and approval of time sheets, payroll register, employee earnings, payment of payroll taxes and signatures required on payroll checks, and maintenance of payroll records;

• Petty Cash: i.e., allowable uses, authorization, maximum balance, limits on transactions, documentation and reconciliation and replenishment of petty cash;

• Internal Controls: accurate and complete books of account, separation of functional responsibilities, financial reports; proper documentation; annual audit; and bonding for employees handling financial transactions.

Personnel Management

The Community Support Services program or parent organization shall maintain an up-to-date Personnel Policies and Procedures Manual and make it readily available for reference by the program staff. State operated programs shall comply with Merit Rules and Labor Contracts. The Manual will include:

- Policies and procedures regarding equal employment opportunity and affirmative action to include compliance with:

1. The Americans with Disabilities Act and the Vocational Rehabilitation Act of 1973, Sections 503 and 504 prohibiting discrimination against the handicapped;

2. Title VII of the Civil Rights Act of 1964 prohibiting discrimination on the basis of race, color, creed, sex or national origin;

3. Age discrimination Act of 1975 prohibiting discrimination based on age;

4. Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 prohibiting discrimination against disabled Vietnam Era veterans.

- Policies and procedures for interviews and selection of candidates including verification of credentials and references;

• Policies and procedures for employee performance appraisal;

• A code of ethics;

• Conditions and procedures for termination of employment;

• Conditions and procedures for grievances and appeals;

• A staff development plan;

• Maintenance and access to personnel files which shall contain employees' applications, credentials, job descriptions, and performance appraisals, job titles, training, orientation, salary, staff statement of confidentiality.

• Work hours including hours of program operation, shifts and overtime compensation.

• Agency policies regarding compensation including:

1. Salary ranges, salary increases, and payroll

procedures;

2. Use of personal automobile for program activities;
3. Reimbursement for work related expenses;
4. Description of employee benefits.

Staff Development Plan

The staff development plan shall include provisions for orientation of paid staff, student interns and volunteers and for continuing education.

Orientation shall include the following:

- Review of these standards;
- Review of the program's procedure and personnel manuals;
- Review of DHSS Policy Memorandum #46;
- Review of section 5161 of Title 16 of the Delaware Code regarding safeguarding confidentiality.

Staff Development shall include the following:

- An annual plan for continuing education both through on-site training and participation in state, regional and national programs;
- Provisions for regularly scheduled clinical supervision which teach and enhance the clinical skills of staff including:

1. Weekly team meetings led by the clinical supervisor during which assessments, treatment plans and progress toward treatment goals are reviewed and staff receive direction regarding clinical management of treatment issues.

2. Individual, face-to-face sessions between the clinical supervisor and staff to review cases, assess performance and give feedback.

3. Individual, side-by-side sessions during which the clinical supervisor attends clinical sessions conducted by staff to assess performance, teach clinical skills, and give feedback.

4. Regular staff conferences at which current principles and methods of treatment, rehabilitation and support services are presented.

Quality Assurance Program

The Community Support Services program shall prepare an annual quality assurance plan which shall be subject to approval by the Division. A clinician employed by the program or parent organization shall be designated quality assurance coordinator. The provider shall establish the following quality assurance mechanisms which shall be carried out in accordance with the quality assurance plan: a concurrent utilization review process; a retrospective quality assurance review process; a process for clinical care evaluation studies; and a process for self-survey for compliance with the certification standards.

XI. WAIVER OF PROVISIONS

The Director of DADAMH, at his/her discretion, may issue a waiver of any of the requirements of these

certification standards upon the good-cause-shown request of a program seeking certification/re-certification. Such request for a waiver must demonstrate that the waiver will not in any substantial or material manner have a deleterious effect on the essential quality of services to the consumer.

- Waivers issued by the Director shall be in writing and shall specify the maximum duration of the waiver's effect.

1. Any waiver issued by the Director may be rescinded at any time at the discretion of the Director and will be rescinded if deleterious effect on the essential quality of service to the consumer is evidenced.

2. Extensions and/or renewals of any waiver shall be made at the Director's discretion.

Outpatient Hospital Provider Manual

Billing co-pay Amounts

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 or WW106; - Outpatient Co-Pay, not Emergency Room) 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.

Practitioner Provider Manual

Insurance Co-Payments

DMAP 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.~~ as well as other HMOs. 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. There is frequently a co-pay amount incurred for all sick office visits, emergency room visits, specialist visits, etc.

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.)

~~Any person who is a member of an accessible managed care organization must use the services of the accessible managed care organization. Refer to the Accessible Managed Care Insurance Carriers section of the General Policy.~~

IX. SPECIFIC CRITERIA FOR ORAL SURGEONS

Dental services, including the extraction of teeth, are restricted to recipients under twenty-one [21] (through age 20) years of age. ~~and are generally provided by the Division of Public Health (DPH) Dental Clinics. Dental services which cannot may be provided by: DPH may only be rendered by a private dentist/oral surgeon following an evaluation and referral by DPH.~~

- The Division of Public Health (DPH) Dental Clinics; or
- A private dentist/oral surgeon who is enrolled with the DMAP.

Referrals to private dentists/oral surgeons may be ~~are~~ made by DPH when the scope of work required cannot be provided by the clinic. Dental services which cannot be provided by: DPH may only be rendered by a private dentist/oral surgeon following an evaluation and referral by DPH. Services that are authorized by DPH must be billed directly to DPH not the DMAP.

Dental services ~~may are~~ also ~~be~~ provided directly to eligible recipients by private dentists/oral surgeons through the EPSDT Dental program. ~~Without a referral from the DPH clinic. These dental services must be billed to the DMAP by the enrolled dentist/oral surgeon provider. Oral surgeons who wish to provide dental services are required to contact EDS, Provider Relations for a copy of the EPSDT Provider Specific Policy Manual. Eligible children do not need to be evaluated or referred by the DPH dental clinic to be treated by dental providers enrolled with the DMAP in the EPSDT Dental program.~~

Dental procedures for recipients age 21 and over are not covered in any setting.

Non-Emergency Medical Transportation Provider Manual

Insurance Co-Payments

DMAP recipients may also be covered by plans such as BC/BS's Total Health Plus, CIGNA's Healthplan of Delaware, ~~and Healthcare of Delaware~~, as well as other HMOs, 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. There is frequently a co-pay amount incurred for all sick office visits, emergency room visits, specialist visits, etc.

In instances where a Medicaid recipient is 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-pay amounts are not to be confused with "non-covered" or "non-allowed" charges.)

~~Any person who is a member of an accessible managed care organization must use the services of the accessible managed care organization. Refer to the Accessible Managed Care Insurance Carriers section of the General~~

Policy-

When billing the DMAP for co-pay amounts, refer to Appendix A for the Specific Level III HCPCS procedure code for transportation co-pay.

When billing the DMAP for co-pay the transportation provider must complete the HCFA 1500 as instructed in the Billing Section with the following exceptions:

- Enter the appropriate HCPCS co-pay procedure code in block 24D rather than the HCPCS procedure code for the actual service provided.
- Enter only the co-pay amount in block 24F. Do not enter your usual and customary charge nor add in any non-allowed charges.
- Leave block 29 blank. Do not enter the capitation amount, do not carry over the co-pay amount as a balance due, and do not enter a percentage of the capitation payment in an effort to apply it to the service provided.
- ~~A copy of the payment voucher MUST be attached to the HCFA 1500. Attach a copy of the payment voucher if it is available.~~

General Policy Manual

Medicaid/Medicare Recipients

Medicaid "Buys-in" Part A and/or Part B Medicare for certain eligible recipients. Some of these recipients are eligible for the whole range of Medicaid services. ~~and~~ Some, such as QMBs, ~~and~~ SLIMBs, QI-1s and QI-2s, are not. SLIMBs and QI-1s are eligible for payment of their Part B "buy-in", and QI-2s are eligible for payment of a small part of their Part B "buy-in". SLIMBs, QI-1s, and QI-2s are not eligible for payment of DMAP services. All are eligible for the full range of Medicare services. ~~For these dual eligibles, DMAP will pay an amount equal to, part, or all of the incurred Part B deductible or coinsurance remaining after Medicare has paid.~~ The specific payment methodology is as follows:

Part B Services

For services that the DMAP normally covers, the amount paid for the Part B co-insurance and deductible will be limited to either: 1) the maximum Medicaid rate for the service minus the actual Medicare payment or, 2) the deductible/coinsurance, whichever is less. Zero payment will be made when the Medicare payment is equal to or higher than the Medicaid rate. For QMB recipients, the service must be covered by Medicare to be considered for payment by the DMAP.

Part A Services

The amount paid for Part A services is the full co-insurance and deductible

Private Duty Nursing Manual

Private duty nursing services are provided to the majority of Medicaid clients through a Managed Care Organization (MCO). Private duty nursing services are included in the Diamond State Health Plan, Medicaid's MCO, basic benefit package. Private duty nursing services, up to 28 hours per week with no additional hours, are included in the basic benefit package provided by Delaware Healthy Children Program. The first twenty-eight (28) hours of private duty nursing is included in the MCO benefits package. All Medicaid clients who are enrolled with an MCO must receive private duty nursing 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), ~~and Medicaid clients whose medical need has been determined by the DMAP to exceed twenty-eight (28) hours.~~

**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
WASTE MANAGEMENT SECTION**

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

1. TITLE OF THE REGULATIONS:

Regulations Governing Solid Waste

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

Revisions are being proposed to many sections of the regulations. See attachment for a section-by-section synopsis of the substantive changes.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Title 7 Delaware Code, Chapter 60

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

A public hearing will be held on Thursday, January 7, 1999, from 7:00 p.m. to 10:00 p.m. in the auditorium of the Richardson and Robbins Building, 89 Kings Highway,

Dover DE.

7. PREPARED BY:

Janet T. Manchester (302) 739-3820 Nov. 12, 1998

Synopsis of proposed revisions to Regulations Governing
Solid Waste

General revisions

- Remove all time-limited requirements that are no longer applicable.
- Revise wording for purposes of providing clarification, facilitating understanding, correcting existing inaccuracies, and eliminating redundancies.

Section-by-section synopsis of substantive revisions

Section 1: Declaration of Intent

- No substantive changes.

Section 2: Scope and Applicability

- Delete "dry waste disposal facility" from the scope of the regulations. For disposal purposes, DNREC proposes to require dry waste to be disposed of in either sanitary or industrial landfills.

Section 3: Definitions

- Provide definitions for previously undefined terms.

Section 4: Permitting Requirements and Administrative Procedures

- Increase the maximum permit duration.
- Require that requests for permit renewal be submitted on an application form.
- Make a distinction between major and minor permit modifications.
- Provide guidance for meeting financial assurance requirements.
- Provide that DNREC may require a permit applicant to obtain third-party review of financial assurance documents.
- Provide for consistency in permit application forms.
- Simplify the procedure for moving through the phases of a solid waste facility (construction, operation, closure) by providing that only one permit is needed, to be modified as appropriate.

Section 5: Sanitary Landfills

- Provide for additional flexibility in siting and design, provided that the applicant can demonstrate there will be no increased risk to public health or the environment.

- Provide an option to reduce the 5-foot liner-to-water table separation requirement based on enhanced ground water protection.

- Require establishment of an Action Leakage Rate for double liner systems.

- Require that the leachate collection system be designed to prevent the leachate head on the liner from exceeding a depth of 12 inches.

- Provide for the possibility of leachate recirculation in cells constructed with a composite liner system.

- Require a more protective capping system.

- Provide that DNREC may require reporting on machine-readable media.

- Clarify the procedures for accomplishing closure and post-closure care.

Section 6: Industrial Landfills

- Revise siting requirements to make them more consistent with the sanitary landfill siting requirements.

- Provide for additional flexibility in siting and design, provided that the applicant can demonstrate there will be no increased risk to public health or the environment.

- Establish a composite liner as the minimum acceptable liner system for industrial landfills.

- Provide an option to reduce the 5-foot liner-to-water table separation requirement based on enhanced ground water protection.

- Require establishment of an Action Leakage Rate for double liner systems.

- Require that the leachate collection system be designed to prevent the leachate head on the liner from exceeding a depth of 12 inches.

- Provide for the possibility of leachate recirculation in cells constructed with a composite or double liner system.

- Require an assessment of corrective measures, selection of remedy, and implementation of corrective action following confirmation of a contaminant release or exceedance of a performance standard.

- Require a more protective capping system.

- Provide that DNREC may require reporting on machine-readable media.

- Clarify the procedures for accomplishing closure and post-closure care.

Section 7: Transporters

- Require subcontractors to carry proof of the subcontractor agreement in the vehicle.

Section 8: Dry Waste Disposal Facilities

- Delete this entire section, and reserve it for future

use.

Section 9: Resource Recovery Facilities

- Provide that not every addition or alteration to an existing facility requires certification by a P.E.

- Require third-party quality assurance plan for changes that potentially impact human health or the environment.

Section 10: Transfer Stations

- No changes.

Section 11: Special Wastes Management (Part 1 - Infectious Waste)

- Delete those definitions that duplicate definitions contained in Section 3.

- Establish that the term "REGULATED MEDICAL WASTE" is synonymous with the term "INFECTIOUS WASTE".

- Clarify Small Quantity Generator (SQG) requirements.

- Allow to store up to 50 pounds of infectious waste

- Delete requirement for Annual Reports from SQGs

- Delete permit requirements that duplicate requirements contained in Section 4.

Section 12: Severability

- No changes.

SECTION 1: DECLARATION OF INTENT

The Delaware Department of Natural Resources and Environmental Control finds and declares that improper solid waste handling and disposal practices may result in environmental damage, including substantial degradation of the surface and ground water and waste of valuable land and other resources, and may constitute a continuing hazard to the health and welfare of the people of the State. The Department further finds that the utilization of solid waste handling and disposal facilities which are properly located, designed, operated, and monitored will minimize environmental damage and protect public health and welfare.

It is the intent of the Department to require that solid waste handling and disposal be conducted in a manner and under conditions which will eliminate the dangerous and deleterious effects of improper solid waste handling and disposal upon the environment and upon human health, safety, and welfare.

The purposes of these regulations are:

1. To encourage, in all appropriate ways, recycling, reuse, and reclamation processes, and

2. To implement the provisions of 7 Del. Code, Chapter 60, the Delaware Environmental Protection Act, which directs the Department to put into effect a program for improved solid waste storage, collection, transportation, processing, transfer, and disposal by providing that such activities may henceforth be conducted only in an environmentally acceptable manner pursuant to a permit obtained from the Department.

SECTION 2. SCOPE AND APPLICABILITY

A. AUTHORITY

1. These regulations are enacted pursuant to 7 Del. Code, Chapter 60, entitled "Delaware Environmental Protection Act".

2. These regulations shall be known as "Regulations Governing Solid Waste" and shall repeal the "Delaware Solid Waste Disposal Regulation".

B. APPLICABILITY

1. These regulations apply to any person using land or allowing the use of land for the purposes of storage, collection, processing, transfer, or disposal of solid waste; and to any person transporting solid waste in or through the State of Delaware. The following shall be subject to the provisions of these regulations:

- a. Sanitary landfills
- b. Industrial landfills
- ~~e. Dry waste disposal facilities~~
- c. Resource recovery facilities
- d. Transfer stations
- e. Special wastes handling
- f. Transportation of solid waste
- g. Storage of solid waste

2. These regulations do not apply to those agricultural wastes that are subject to regulations promulgated by the Division of Water Resources.

~~3. For the purposes of these regulations, all liquid wastes as defined herein are not regulated as solid wastes. Liquid wastes are subject to regulations promulgated by the Division of Water Resources.~~

For the purposes of these regulations, all wastes defined herein and that are subject to regulations promulgated by the Division of Water Resources shall not be regulated as solid wastes.

4. These regulations do not apply to any waste which meets the criteria of hazardous waste as described in the Delaware Regulations Governing Hazardous Waste.

C. EXEMPTIONS

The following activities are exempted from these regulations:

1. Disposal on a farm of the agricultural wastes which are generated on the farm or result from the operation of the farm, provided that the disposal is conducted in a manner that does not threaten human health or the environment.

2. Composting, on a private property, the leaves, grass clippings, and other vegetation originating on the property. For all other composting operations, written approval must be obtained from the Department prior to commencing the composting operation. To obtain an approval, a person must submit the following to the Department:

a. A written plan of operation sufficient to assure the Department that the person understands the principles and proper methods of composting and has the intention and capability of applying proper methods and of conducting the operation in a manner that will not pose a threat to human health or the environment; and

b. A written statement of how the applicant proposes to use or dispose of the compost.

3. Disposal of clean fill.

4. Creation of brush piles on the property on which the material was generated.

5. The use of vegetative matter and untreated ground wood products to construct berms on the property on which the materials were generated. (Notification must be made to the Department prior to commencing this activity.)

6. Recycling of solid wastes into specific market applications. Written approval must be obtained from the Department prior to commencing this activity. ~~Approval will be based on demonstration that there is an available market for the intended recycled material.~~ To obtain approval, a person must submit the following to the Department:

a. A written plan of operation describing the types and quantities of materials that will be accepted at the facility, the processing methods and equipment that will be used, and the products that will be produced; and

b. Documentation demonstrating the existence of markets for the product.

D. TIMETABLE FOR COMPLIANCE

1. Existing facilities

a. ~~Sanitary and industrial landfills~~

All existing facilities must comply with the provisions of these regulations, must be in compliance with these regulations by October 9, 1993, with the following exceptions:

a. Closed facilities or closed portions of facilities will not be required to disturb or replace their cap or cover system for the purpose of coming into compliance with these regulations.

b. Facilities currently operating under a permit which does not require a liner and/or a leachate detection system will not be required to install a liner or leachate detection system in closed or currently active areas for the

~~purpose of coming into compliance with these regulations.~~

~~b. Dry waste disposal facilities-~~

~~An owner or operator of an existing facility shall, within six months of enactment of Section 8 of these regulations, follow the procedures described in Section 4.C.2. All existing facilities must be in compliance with these regulations within six months after the date on which the Department approves the compliance plan described in Section 4.C.2.~~

~~e. Transfer stations~~

~~An owner or operator of an existing facility shall, within six months of enactment of Section 10 of these regulations, follow the procedures described in Section 4.E.2. All existing facilities must be in compliance with these regulations within six months after the date on which the Department approves the compliance plan described in Section 4.E.2.~~

~~d. Resource recovery facilities~~

~~An owner or operator of an existing facility shall follow the procedures described in Section 4.D.2. All existing facilities must come into compliance with these regulations in accordance with the compliance plan and timetable approved by the Department pursuant to Section 4.D.2.b (12).~~

2. New facilities and expansions of existing facilities

All new facilities and all expansions of existing facilities shall comply with the provisions of these regulations.

E. Nothing in these regulations shall be construed as relieving an owner or operator of a facility from the obligation of complying with any other laws, regulations, orders, or requirements which may be applicable.

SECTION 3: DEFINITIONS

The following words, phrases, and terms as used in these regulations have the meanings given below:

"100-YEAR FLOOD" means a flood that has a one percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

"ACTION LEAKAGE RATE" means the quantity of liquid collected from a leak detection system of a double liner system over a specified period of time which, when exceeded, requires certain actions to be taken as described in the Action Leakage Rate response plan approved by the Department.

"ACTIVE LIFE" means the period of operation beginning with the initial receipt of solid waste and ending at the completion of closure activities.

"ACTIVE PORTION" means that portion of a facility that presently has an operating permit issued by the Department of Natural Resources and Environmental

Control.

"AGRICULTURAL WASTE" means carcasses of poultry or livestock, crop residue, or animal excrement which is returned to the land for use as a soil amendment.

"AQUIFER" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells, springs or surface water.

"ASTM" means the American Society for Testing and Materials.

"AUTHORIZED REPRESENTATIVE" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, landfill manager, superintendent, or person of equivalent responsibility.

"BOTTOM ASH" means the residue remaining in the combustion chamber of an incinerator after the combustion of fossil fuels.

"BUFFER ZONE" means those on-site areas adjacent to the facility property line which shall be left undeveloped during the active life as well as the inactive life of the facility.

"BULKY WASTE" means items whose large size or weight precludes or complicates their handling by normal collection, processing, or disposal methods.

"CAP" or "CAPPING SYSTEM" means the material used to cover the top and sides of a sanitary or industrial landfill when fill operations cease.

"CELL" means a discrete engineered area that is designed for the disposal of solid waste and that is a subpart of a landfill.

"CERTIFICATION" means a statement of professional opinion based upon knowledge and belief.

"CFR" means the Code of Federal Regulations.

"CLAY", as a soil separate, means the mineral soil particles less than 0.002 mm in diameter. As a soil textured class, "CLAY" means soil material that is 40% or more clay, less than 45% sand, and less than 40% silt. Clay used as a liner or cap should be classifiable as a CL or CH (Unified Soil Classification System) with a liquid limit between 30 and 60, should place above the A-line on the plasticity chart, and should have a minimum plastic index of 15. A clay liner should have a cation exchange capacity greater than 15 meq/100 grams and be in the neutral pH range.

"CLEAN FILL" means a nonwater-soluble, nondecomposable, environmentally inert solid such as rock, soil, gravel, concrete, broken glass, and/or clay or ceramic products.

"CLOSED PORTION" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all other applicable closure requirements.

"CLOSURE" means the cessation of operation of a facility or a portion thereof and the act of securing such a

facility so that it will pose no significant threat to human health or the environment.

"CLOSURE PLAN" means written reports and engineering plans detailing those actions that will be taken by the owner or operator of a facility to effect proper closure of that facility or a portion thereof.

"COMMERCIAL WASTE" means solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing, non-processing activities.

"CONFINED AQUIFER" means an aquifer containing ground water which is everywhere at a pressure greater than atmospheric pressure and from which water in a well will rise to a level above the top of the aquifer. A confined aquifer is overlain by material of distinctly lower permeability ("confining bed") than the aquifer.

"CONTAMINANT" means any substance that enters the environment at a concentration that has the potential to endanger human health or degrade the environment.

"CONTROLLING SLOPES" means slopes on those areas of a liner that have a direct influence on the maximum leachate head, or slopes that are perpendicular to the collection laterals.

"DAILY COVER" means a layer of compacted earth, or other suitable material as approved by the Department, used to enclose a volume of solid waste each working day.

"DEPARTMENT" means The Department of Natural Resources and Environmental Control.

"DIKE" means an embankment or ridge of either natural or man-made materials used to prevent or to control the movement of solids, liquids, or other materials.

"DISCHARGE" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a substance into or onto any land, water, or air.

"DISPOSAL" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or upon any land or water.

"DISPOSAL FACILITY" means any facility or portion of a facility at which solid waste is intended to be and/or is intentionally placed into or onto any land and at which solid waste will remain after closure has taken place.

"DOUBLE LINER SYSTEM" means a liner system consisting of two liners with a leachate detection and collection system in between.

"DRY WASTE" (formerly called "INERT SOLID WASTE") means wastes including, but not limited to, plastics, rubber, lumber, trees, stumps, vegetative matter, asphalt pavement, asphaltic products incidental to construction/demolition debris, or other materials which have reduced potential for environmental degradation and leachate production.

"ENVIRONMENTAL ASSESSMENT" means a detailed and comprehensive description of the condition of all environmental parameters as they exist at and around the site of a proposed action prior to implementation of the

proposed action. This description is used as a baseline for assessing the environmental impacts of a proposed action.

"ENVIRONMENTALLY UNSOUND" means characterized by any condition, resulting from the methods of operation or design of a facility, which impairs the quality of the environment when compared to the surrounding background environment or any appropriate promulgated federal, state, county or municipal standard.

"EXISTING FACILITY" means a facility which was in operation or for which construction had commenced on or before the date of enactment of these regulations, provided that the facility was being constructed or operated pursuant to all permits and/or approvals required by the Department at the time of enactment. A facility has commenced construction if either:

(i) an on-site physical construction program has begun and is moving toward completion within a reasonable time; or

(ii) the owner or operator has entered into contractual obligations -- which cannot be cancelled or modified without substantial loss -- for physical construction to be completed within a reasonable time.

"EXPANSION" means the process of increasing the areal dimensions, vertical elevations, or slopes beyond the original approved limits of the facility.

"FACILITY" means all contiguous land, and structures, other appurtenances, and improvements on the land, used in resource recovery and/or the treatment, handling, composting, storage, or disposal of solid waste. A facility may consist of several operational units (e.g., one or more landfills, cells, incinerators, compactors, or combinations thereof).

"FINAL COVER" means the material used to cover the top and sides of a dry waste disposal facility when fill operations cease.

"FLOOD PLAIN" means the lowland and relatively flat areas adjoining inland and coastal waters, that are inundated by the 100-YEAR FLOOD.

"FLY ASH" means a powdery residue resulting from the combustion of fossil fuels and captured by air pollution control equipment prior to exiting the smokestack.

"FREE LIQUIDS" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure, using any or all of the following tests: EPA Paint Filter Test; EPA Plate Test; EPA Gravity Test.

"GARBAGE" means any putrescible solid and semi-solid animal and/or vegetable wastes resulting from the production, handling, preparation, cooking, serving or consumption of food or food materials.

"GENERATION" means the act or process of producing solid waste.

"GENERATOR" means the producer or the source of the solid waste.

"GEOMEMBRANE" means a prefabricated continuous

sheet of flexible polymeric or geosynthetic material.

"GROUND WATER" means any water naturally found under the surface of the earth.

"HAZARDOUS WASTE" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating irreversible, illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Without limitation, included within this definition are those hazardous wastes described in Sections 261.31, 261.32, and 261.33 of the Delaware Regulations Governing Hazardous Waste.

"HOUSEHOLD WASTE" means any solid waste derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

"HYDRAULIC CONDUCTIVITY" means the capacity to transmit water. It is expressed as the volume of water that will move in a unit of time under a unit hydraulic gradient through a unit area.

"IMPERMEABLE" means having a hydraulic conductivity equal to or less than 1×10^{-7} cm/sec as determined by field and laboratory permeability tests made according to standard test methods which may be correlated with soil densification as determined by compaction test.

"INDUSTRIAL LANDFILL" means a land site at which industrial waste is deposited on or into the land as fill for the purpose of permanent disposal, except that it will not include any facility that has been approved for the disposal of hazardous waste under the Delaware Regulations Governing Hazardous Waste.

"INDUSTRIAL WASTE" means any water-borne liquid, gaseous, solid, or other waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development of any agricultural or natural resource.

"INERT SOLID WASTE": see "DRY WASTE".

"INFECTIOUS WASTE": see section 11, Part 1.B for definitions pertaining to infectious waste.

"INSTITUTIONAL WASTE" means solid waste that is generated by institutional enterprises such as social, charitable, educational, and government services and that is similar in nature to household waste.

"INTERMEDIATE COVER" means a layer of compacted earth, or other suitable material as approved by the Department, applied to a partially completed landfill.

"LANDFILL" means a natural topographic depression and/or man-made excavation and/or diked area, formed primarily of earthen materials, which has been lined with

man-made and/or natural materials or remains unlined and which is designed to hold an accumulation of solid wastes.

"LEACHATE" means liquid that has passed through, contacted, or emerged from solid waste and contains dissolved, suspended, or miscible materials, chemicals, and microbial waste products removed from the solid waste.

"LIFT" means a completed series of compacted layers within a cell.

"LIMITED TRANSPORTER" means a person who uses five (5) or fewer vehicles to transport solid waste (excluding infectious waste and asbestos), which vehicles have a manufacturers Gross Vehicle Weight Rating of 26,000 pounds or more.

"LINER" means a continuous layer of impermeable material beneath and on the sides of a landfill or landfill cell.

"LIQUID WASTE" means a waste that contains less than 20 percent solids or releases free liquids.

"LOCAL AGENCY" means any special district, authority, municipality, county, or any other political subdivision.

"MATERIALS RECOVERY FACILITY" means a facility at which materials, other than source separated materials, are recovered from solid waste for recycling or for use as an energy source.

"MUNICIPAL SOLID WASTE" means household waste and solid waste that is generated by commercial, institutional, and industrial sources and is similar in nature to household waste.

"MUNICIPAL SOLID WASTE ASH" means the ash resulting from the combustion of municipal solid waste in a thermal recovery facility.

"MUNICIPALITY" means a city or town of the State of Delaware.

"NEW SANITARY LANDFILL CELL" means any municipal solid waste landfill unit which has not received waste prior to the effective date of these regulations. "SANITARY LANDFILL CELL" has the same meaning as "MUNICIPAL SOLID WASTE LANDFILL UNIT" in the RCRA Subtitle D (40 CFR Part 258) Regulations.

"NEW SOLID WASTE FACILITY" means a facility which was not in operation or for which construction had not commenced on or before the date of enactment of these regulations.

"ON-SITE" means on the same or geographically contiguous property which may be divided by public or private right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access are also considered on-site property.

"OPEN BURNING" means the combustion of solid waste without:

- (1) Control of combustion air to maintain adequate temperature for efficient combustion,
- (2) Containment of the combustion reaction in an

enclosed device to provide sufficient residence time and mixing for complete combustion, and

(3) Control of the emission of the combustion products.

"OPERATOR" means the person responsible for the overall operation of a solid waste facility.

"OWNER" means the person who owns a facility or any part of a facility.

"PERMITTEE" means a person holding a permit issued by the Department pursuant to this regulation.

"PERSON" means any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation), association, state, municipality, commission, political subdivision of a state, any interstate body, company, society, or any organization of any form.

"PERSONNEL" or "FACILITY PERSONNEL" means all persons who work at, or oversee the operations of, a solid waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the Delaware Solid Waste Regulations or other regulations under the jurisdiction of the State of Delaware.

"POST-CLOSURE CARE" means maintenance and long-term monitoring of, and financial responsibility for, a closed facility.

"RECHARGE AREA" means that portion of a drainage basin in which the net saturated flow of ground water is directed away from the water table.

"RECYCLABLE MATERIAL" means a solid waste that exhibits the potential to be used repeatedly in place of a virgin material.

"RECYCLING" means the process by which recyclable materials, which would otherwise be disposed of as solid waste, are returned to the economic mainstream in the form of raw materials or products.

"REFUSE" means any putrescible or nonputrescible solid waste, except human excreta, but including garbage, rubbish, ashes, street cleanings, dead animals, offal and solid agricultural, commercial, industrial, hazardous and institutional wastes, and construction wastes.

"REGULATED MEDICAL WASTE": see Section 11, Part 1.B. for definitions pertaining to REGULATED MEDICAL / INFECTIOUS WASTE.

"RESOURCE RECOVERY" means the process by which materials, excluding those under control of the Nuclear Regulatory Commission, which still have useful physical or chemical properties after serving a specific purpose are reused or recycled for the same or another purpose, including use as an energy source.

"RESOURCE RECOVERY FACILITY" means a facility that is either a MATERIALS RECOVERY FACILITY or a THERMAL RECOVERY FACILITY.

"RUBBISH" means any nonputrescible solid waste, excluding ashes, such as cardboard, paper, plastic, metal or glass food containers, rags, waste metal, yard clippings,

small pieces of wood, excelsior, rubber, leather, crockery, and other waste materials.

"RUN-OFF" means any precipitation that drains over land from any part of a facility.

"RUN-ON" means any precipitation that drains over land onto any part of a facility.

"SALVAGING" means the controlled removal of solid waste from any facility for reuse of the waste material.

"SANITARY LANDFILL" means a land site at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal, except that it will not include any facility that has been approved for the disposal of hazardous waste under the Delaware Regulations Governing Hazardous Waste.

"SANITARY LANDFILL CELL BOUNDARY" means a vertical surface located at the hydraulically downgradient limit of the cell. This vertical surface extends down into the uppermost aquifer. "Sanitary Landfill Cell Boundary" has the same meaning as "Waste Management Unit Boundary" in the RCRA Subtitle D (40 CFR Part 258) Regulations. "Sanitary Landfill" has the same meaning as "MSWLF" in the RCRA Subtitle D (40 CFR Part 258) Regulations.

"SATURATED ZONE" means that part of the earth's crust in which all the voids are filled with water.

"SCAVENGING" means the uncontrolled and/or unauthorized removal of solid waste from any facility.

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

"SETBACK" means the area between the actual disposal area and the property line which can be used for construction of environmental control systems such as run-off diversion ditches, monitoring wells, or scales.

"SITE" means the area of land or water within the property boundaries of a facility where one or more solid waste treatment, resource recovery, recycling, storage or disposal areas are located.

"SLUDGE" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"SOLID WASTE" means any garbage, refuse, rubbish, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under 7 Del. Code, Chapter 60, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

"SOURCE SEPARATED" means divided into its separate recyclable components at the point of generation.

"SPECIAL SOLID WASTES" means those wastes that require extraordinary management. They include but are not limited to abandoned automobiles, white goods, used tires, waste oil, sludges, dead animals, agricultural and industrial wastes, infectious waste, municipal ash, septic tank pumpings, and sewage residues.

"STORAGE" means the holding of solid waste for a temporary period, at the end of which time the solid waste is treated, disposed of, or stored elsewhere.

"SUBBASE" means the supporting soil layers beneath a liner.

"SURFACE WATER" means water occurring generally on the surface of the earth.

"THERMAL RECOVERY FACILITY" means a facility designed to thermally break down solid waste and to recover energy from the solid waste.

"TOPSOIL" means the friable dark upper portion of a soil profile that contains mineral substances and organic material in varying degrees of decomposition and is capable of supporting vegetation.

"TRANSFER STATION" means any facility where quantities of solid waste delivered by vehicle are consolidated or aggregated for subsequent transfer by vehicle for processing, recycling, or disposal.

"TRANSPORTATION" means the movement of solid waste by air, rail, water, over the roadway, or on the ground.

"TRANSPORTER" means any person engaged in the transportation of solid waste.

"TREATMENT" means the process of altering the physical, chemical, or biological condition of the waste to prevent pollution of water, air, or soil or to render the waste safe for transport, disposal, or reuse.

"UNCONFINED AQUIFER" means an aquifer in which the upper surface of the zone of saturation is at atmospheric pressure.

"UPPERMOST AQUIFER" means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"VARIANCE" means a permitted deviation from an established rule or regulation, or plan, or standard or procedure, as provided in 7 Del. Code, Chapter 60.

"VECTOR" means a carrier organism that is capable of transmitting a pathogen from one organism to another.

"VEHICLE" means a motorized means of transporting something. "Vehicle" includes both the motorized unit and all containerized units of a conveyance attached thereto. For purposes of determining whether a transporter qualifies as a "LIMITED TRANSPORTER", motorized units will be counted.

"WATER TABLE" means that surface in a ground water

body at which the water pressure is atmospheric. It is defined by the levels at which water stands in wells that penetrate the water body just far enough to hold standing water.

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

"WORKING FACE" means that portion of a landfill where waste is discharged, spread and compacted prior to placement of daily cover.

SECTION 4: PERMIT REQUIREMENTS AND ADMINISTRATIVE PROCEDURES

A. GENERAL PROVISIONS

1. Permit required

a. No person shall engage in the construction, operation, material alteration, or closure of a solid waste facility, unless exempted from these regulations under Section 2.C, without first having obtained a permit from the Department.

b. No person that is subject to the requirements of Section 7.B or 7.C of these regulations shall transport solid waste in or through the State of Delaware without first having obtained an appropriate solid waste transporter's permit from the Department.

2. Public notice; hearing

Within 60 days after receipt of a completed application and all other required information, the Department will give public notice and the opportunity for a public hearing as provided in 7 Del. Code, Ch. 60. The cost of the advertisement shall be borne by the applicant. A 15 day comment period will follow the publication date of each public notice. If no meritorious adverse public comments are received during this period, and the Secretary does not deem a public hearing to be in the best interest of the State, the Department will enter into the permit approval/denial phase. If a meritorious request for a hearing is received during the comment period, or if the Secretary deems a hearing to be in the best interest of the State, a public hearing will be held as provided in 7 Del. Code, Chapter 60, Sections 6004 and 6006.

3. Approval/denial

The Department shall act upon an application for a permit within 60 days after the close of the public notice comment period or upon receipt of the hearing officer's report if a hearing was required. When a final determination is made on an application, the Department shall issue a permit or send a letter of denial to the applicant explaining the reasons for the denial.

4. Suspension, revocation of permit

A permit may be revoked or suspended for violation of any condition of the permit or any requirement of this regulation, after notice and opportunity for hearing in accordance with 7 Del. Code, Chapter 60.

5. Duration of permit

A permit will be issued for a specific duration which will be determined by the Department. ~~In no case will a permit be valid for more than five years.~~

a. Solid waste facility operating permits (landfills, resource recovery facilities, transfer stations, incinerators) shall not be issued for periods greater than 10 years.

b. Post-closure permits shall be valid and enforceable throughout the entire post-closure period.

6. Permit renewal

Any person wishing to renew an existing permit shall, not less than 90 days prior to the expiration date of that permit, submit a written request for permit renewal application form, provided by the Department. ~~This request may be in the form of a letter but shall not be combined with correspondence relating to any matter other than the permit renewal.~~

In the event that the permittee submits a timely request application for permit renewal, and the Department, through no fault of the permittee, is unable to make a final determination on the request application before the expiration date of the current permit, the Department may, at its discretion, grant an extension of the permit. If the Department issues an extension, all conditions of the permit, and all modifications previously requested by the Department, will remain in effect, for a period of time which will be determined by the Department.

7. Modification of permit

a. A permittee may request modifications to a permit. All such requests must be submitted in writing to the Department.

b. The Department may initiate modification of a permit if it finds that the existing permit conditions either are not adequate or are not necessary to protect human health and the environment.

c. Public notice and opportunity for hearing in accordance with paragraph A.2. of this Section shall be accomplished for all major modifications proposed for the permit. In the event a hearing is requested or deemed necessary by the Secretary, only the permit conditions subject to the modification shall be reopened for public comment.

d. Public notice shall not be required for minor modifications to the permit. Minor modifications are those which if granted would not result in any increased impact or risk to the environment or to the public health. Minor modifications include but are not limited to:

(1) Changes in operation or design which are not related to pollution control devices or procedures.

(2) Improvements to approved pollution

control devices or procedures.

(3) Administrative changes.

(4) A change in monitoring or reporting frequency.

(5) The correction of typographical errors.

8. Transfer of permit

A written request for the transfer of a permit must be submitted to the Department at least 15 days prior to the date of the proposed transfer. The actual transfer will be contingent upon the transferee's meeting all Department requirements; until such time, the original permittee will remain liable regardless of who owns the facility.

9. Enforcement

a. The Department reserves the right to inspect any site, or any vehicle intended for use in the transportation of solid waste, before issuing a solid waste permit for the site or the transporter.

b. The Department may, at any reasonable time, enter any permitted solid waste facility or inspect any vehicle being used in the transportation of solid waste in order to verify compliance with the permit and these regulations.

c. The Department may require such reports, interviews, tests or other information necessary for the evaluation of permit applications and the verification of compliance with the permit and these regulations.

d. Any person using land, or allowing the use of land, for the storage, processing, or disposal of solid waste who violates a requirement of this regulation shall be subject to the provisions of Sections 6005, 6013, 6018, and 6025(c) of 7 Del. Code, Chapter 60.

10. Replacement of Contaminated Water Supplies

If the Department determines, based on information obtained by or submitted to the Department or the Division of Public Health, that any drinking water supply well has become contaminated as a result of the construction or operation of a solid waste facility, the owner or operator of the facility will be required to construct and maintain, at his or her expense, a permanent alternative water supply of comparable quantity and quality to the source before it was contaminated. Such a determination will be subject to the review procedures contained in 7 Del. Code, Chapter 60.

11. Financial Assurance Criteria

a. Applicability and effective date

The requirements of this section apply to owners and operators of all solid waste facilities, except owners or operators who are State or Federal Government entities whose debts and liabilities are the debts and liabilities of the State or the United States.

~~(2) The requirements of this section are effective immediately upon adoption, except the requirements pertaining to sanitary landfills become effective April 9, 1995 (or on any alternate date that the Federal requirements pertaining to financial assurance for~~

~~MSWLFs become effective):~~

b. Financial Assurance for Closure, Post-Closure Care, and Corrective Action

(1) The owner or operator of a solid waste facility must provide assurance that the financial costs associated with closure, post-closure care, and corrective action can be met throughout the life of the facility until released from these requirements by the Department after demonstrating successful completion of compliance with the requirements for each of these activities.

(2) The mechanisms used to demonstrate financial assurance under this section must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners or operators must choose from the options specified in paragraphs (a) through (i) of this section, and comply with any conditions noted therein.

(a) Trust Fund

Condition 1: The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State of Delaware agency.

Condition 2: The trust agreement shall be worded as prescribed by the Department.

Condition 3: The owner or operator shall submit the receipt from the trustee for the initial payment into the trust fund as well as the originally signed duplicate of the trust agreement for Department approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 4: Pay-in periods and amounts for all solid waste facilities shall be in accordance with those specified in 40 CFR Part 258.74, subsections (a)(2),(a)(3), (a)(4) and (a)(6) or otherwise acceptable to the Department.

Condition 5: Schedule A, attached to the trust agreement, shall list the facility name and address and the current cost estimate. Schedule A must relate the trust agreement to the specific facility and obligation(s) being assured and shall be updated at least annually to account for inflation or other increases to the cost estimate. Costs reflected in Schedule A shall not be reduced without the written consent of the Department.

Condition 6: Schedule B, attached to the trust agreement, shall list the property or money that the fund consists of initially. Property must consist of cash or securities acceptable to the trustee. Other property (e.g. real estate) is not an acceptable payment into the trust fund.

Condition 7: Exhibit A, attached to the trust agreement, shall list the persons designated by the Grantor to sign orders, requests, and instructions to the trustee.

Condition 8: Annual valuation. Annually,

the trustee shall furnish to the Department and to the owner or operator, a statement confirming the value of the trust fund. Any securities in the trust fund shall be valued at market value as of no more than 60 days prior to the date the statement is submitted to the Department. If possible, the statement should be submitted during the month that Schedule A is adjusted annually.

Condition 9: The trustee shall make payments from the fund only as the Department directs to provide for the payment for the costs of corrective action, closure, and/or post-closure care.

Condition 10: After beginning closure, post-closure care, or corrective action, an owner or operator or other person authorized in accordance with Condition 7 may request reimbursements for partial expenditures by submitting itemized bills to the Secretary. The owner or operator may request reimbursements for partial closure, post-closure care, or corrective action only if sufficient funds are remaining in the trust fund to cover the maximum costs of completing the activities for which the trust agreement was established. Within 60 days after receiving bills for reimbursable closure, post-closure care, or corrective action activities, the Secretary will instruct the trustee to make reimbursements in those amounts as the Secretary specifies in writing. Reimbursements will be allowed only if the Secretary determines that the partial or final expenditures are in accordance with the approved closure, post closure care, or corrective action plan or are otherwise justified. If the Secretary has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he/she may withhold reimbursements of such amounts as he/she deems prudent. If the Secretary does not instruct the trustee to make such reimbursements, he/she will provide the owner or operator with a detailed written statement of reasons.

Condition 11: Amendments. The trust agreement may be amended by an instrument in writing executed by the grantor, the trustee, and the Department, or by the trustee and the Department if the grantor ceases to exist.

Condition 12: Irrevocability and termination. Subject to Condition 11, the trust agreement shall be irrevocable and shall continue until terminated at the written agreement of the grantor, the trustee, and the Department, or by the trustee and the Department if the grantor ceases to exist.

(b) Surety Bond for Payment or Performance

Condition 1: At a minimum, the surety company issuing the bond must be listed in Circular 570 of the U.S. Department of Treasury as qualified in the state where the bond was executed.

Condition 2: The surety's underwriting limit must be at least as great as the amount of the surety bond.

Condition 3: The surety bond shall be worded as prescribed by the Department.

Condition 4: The owner or operator shall submit the bond and standby trust fund for Department approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 5: Standby trust fund. The owner or operator must establish a standby trust fund, and the standby trust fund must meet the requirements of these regulations except that initial and annual payments are not required. Updates of Schedule A, and annual valuation reporting will not be required until payment is made into the trust fund. Payments made under the terms of the surety bond shall be deposited by the issuing institution directly into the standby trust fund.

Condition 6: The payment surety bond may not be used for corrective actions.

Condition 7: Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation to the Secretary of the Department, to the Solid Waste Management Branch, and to the owner and operator at least 120 days in advance of cancellation. If the Surety cancels the bond, the owner or operator must obtain alternate financial assurance. The Department may draw on the surety bond if the owner or operator has not provided alternative financial assurance within 90 days after receipt by the Solid Waste Management Branch of a notice of cancellation from the surety.

Condition 8: The owner or operator may cancel the surety bond if the Department provides its written consent to do so. The Department will provide such written consent when the owner substitutes alternate financial assurance as specified in these regulations or the bonded activity has been completed in accordance with these regulations.

Condition 9: The surety shall become liable on the bond when the owner or operator has failed to fulfill the closure, post-closure care or corrective action activities as required. Upon notification by the Department that the owner or operator has failed to perform closure or post-closure care guaranteed by a payment bond, the surety shall place funds in the amount guaranteed for the facility into the standby trust fund. Upon notification that the owner or operator has failed to perform closure, post-closure care, or corrective action as guaranteed by a performance bond, the surety shall either perform the activities guaranteed by the bond or place funds in the amount guaranteed for the facility into the standby trust fund.

(c) Letter of Credit

Condition 1: The issuing financial institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State of Delaware

agency.

Condition 2: The letter of credit shall be worded as prescribed by the Department.

Condition 3: Accompanying letter. The owner or operator shall also submit an accompanying letter referring to the letter of credit by number and listing the following information: complete name and address of facility, issuing institution and date, and amount and purpose of funds assured.

Condition 4: The owner or operator shall submit the letter of credit and accompanying letter for Department approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 5: The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies the Secretary of the Department, the Solid to extend the expiration date. Waste Management Branch, and the owner or operator of a decision not

Condition 6: Once the issuing financial institution notifies the Solid Waste Management Branch of its intent not to extend the Letter of Credit, the owner or operator must, within 90 days, provide alternate financial assurance. The Department may draw on the letter of credit if the owner or operator has not provided alternative financial assurance within 90 days.

Condition 7: Following a determination by the Secretary of the Department that the owner or operator has failed to perform closure, post-closure-care, or corrective action when required to do so, the Department may draw on the letter of credit.

(d) Insurance

Condition 1: The insurer must be licensed to transact the business of insurance in one or more states or be eligible to provide insurance as an excess or surplus lines insurer in one or more states.

Condition 2: Captive insurance companies and risk retention groups cannot be used to satisfy the requirements of this section.

Condition 3: Insurance is not an allowable mechanism for demonstrating financial responsibility for corrective action.

Condition 4: The policy must guarantee that the funds will be available whenever needed and that the insurer will be responsible for paying out funds to authorized persons.

Condition 5: The policy must allow assignment to a successor owner or operator. Assignment may be conditional upon consent of the insurer provided that such consent is not unreasonably refused.

Condition 6: The policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy.

Condition 7: If the owner or operator fails to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the Secretary of the Department, to the Solid Waste Management Branch, and to the owner or operator of the facility, at least 120 days in advance of the cancellation and date of expiration. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration, the Secretary of the Department deems the facility abandoned; or the permit is terminated or revoked or a new permit is denied; or closure is ordered by the Secretary of the Department, or a U.S. District Court or other court of competent jurisdiction; or the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) USC; or the premium due is paid.

Condition 8: Prior to requesting reimbursement from the insurer, owners or operators shall submit justification and documentation of the reimbursable expenses to the Department for its consent.

Condition 9: A copy of the policy shall be submitted to the Department for its approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

(e) ~~Corporate~~ or Local Government Financial Test and Guarantee

Condition 1: Financial tests and guarantees shall not be used for assuring funds for post-closure periods or corrective actions.

Condition 2: Guarantees shall be worded as specified by the Department.

Condition 3: A local government is not eligible to assure its obligations by this mechanism if it: is currently in default of any outstanding general obligation bonds; or has any general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement, and the Department deems the reason for the qualification as significant.

Condition 4: Bond Rating/Financial Ratio Alternatives. The local government must meet one of the following two financial tests: a) If the local government has outstanding, rated, general obligation bonds that are not

secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB as issued by Standard and Poor's on all such general obligation bonds; or b) Based upon the most recently audited annual financial statement, a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

Condition 5: The total costs being assured through a financial test must not exceed 43 percent of the local government's total annual revenue. If the local government assures other environmental obligations through financial tests; including those associated with UIC facilities under 40 CFR 144.62, underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265; it must add those costs to the closure costs it seeks to assure under this mechanism.

Condition 6: Public Notice. The local government shall place a reference to the closure costs assured through the financial test into its next comprehensive annual financial report (CAFR).

Condition 7: Accountants Opinion. A Certified Public Accountant's opinion of the local government's financial statements for the most recent fiscal year must also be included in the initial financial assurance package and annually no later than 90 days after the close of the local government's fiscal year. The opinion must be unqualified and demonstrate that the local government has prepared its financial statements in accordance with the requirements of the General Accounting Standards Board Statement 18.

Condition 8: Chief Financial Officer letter. The Chief Financial Officer must include a letter demonstrating that the local government has complied with Conditions 3, 4, 5, and 6. The CFO letter shall be submitted to the Department as part of the initial financial assurance package and annually no later than 90 days after the close of the local government's fiscal year.

Condition 9: If, at the end of any fiscal year, the local government fails to meet the financial test criteria required by conditions 3, 4, or 5, then the local government shall send, within 90 days, by certified mail, notice to the Secretary of the Department and to the Solid Waste Management Branch, that they intend to provide alternate financial assurance as required by these regulations. The local government shall, within 210 days following the close of the fiscal year, obtain alternative financial assurance that meets the requirements of these regulations.

Condition 10: The guarantee, approved by the Department, must be effective prior to the initial receipt

of waste or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 11: The guarantee shall remain in force unless the local government sends notice of cancellation by certified mail to the Secretary of the Department and to the Solid Waste Management Branch. Such notice shall be given at least 120 days in advance of the cancellation. Within 90 days of receipt of this notice of cancellation by the Solid Waste Management Branch, the local government shall provide alternative financial assurance acceptable to the Department.

(f) ~~Corporate or Local Government~~ Financial Test and Guarantee

Condition 1: Financial tests and guarantees shall not be used for assuring funds for post-closure periods or corrective actions.

Condition 2: Guarantees shall be worded as prescribed by the Department.

Condition 3: A resolution agreeing to the terms and conditions of the guarantee and signed by the guarantor's board of directors shall be attached to the guarantee.

Condition 4: The guarantor must be the direct or higher tier parent company of the owner or operator, or a firm whose parent corporation is also the parent corporation of the owner or operator.

Condition 5: Minimum size requirement. The guarantor must have a tangible net worth equal to the sum of the costs they seek to assure through a financial test, plus \$10 million. The costs that the guarantor seeks to assure are equal to the current cost estimates for closure, post-closure care, corrective action, and any other environmental obligation assured by a financial test and/or corporate guarantee by the guarantor (including other landfills or solid waste facilities; PCB storage facilities; underground storage tanks; hazardous waste treatment, storage, disposal facilities; or underground injection control program facilities).

Condition 6: Bond Rating/Financial Ratio Alternatives. Guarantors must meet one of the following three financial tests: a) A most recent bond rating no lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's. b) A leverage ratio of less than 1.5 based on the ratio of total liabilities to tangible net worth. c) A profitability ratio of greater than 0.10 based on the sum of the net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

Condition 7: Domestic Assets Requirement. Guarantors must have assets in the United States at least equal to the costs they seek to assure through a financial test (costs include those reported for Condition 5).

Condition 8: Chief Financial Officer letter. The Chief Financial Officer must include a letter demonstrating that the guarantor has complied with Conditions 4, 5, 6, and 7. The CFO letter shall be submitted

to the Department as part of the initial financial assurance package and annually no later than 90 days after the close of the guarantors fiscal year.

Condition 9: Accountants Opinion. A Certified Public Accountant's opinion of the guarantors financial statements for the most recent fiscal year must also be included in the initial financial assurance package and annually no later than 90 days after the close of the guarantor's fiscal year. The opinion must be unqualified (not modified by conditions or reservations) and demonstrate that the firm has prepared its financial statements in accordance with generally accepted accounting principals for corporations.

Condition 10: Special Report. In the event that the CFO does not use financial test figures directly form the annual statements provided to the Securities and Exchange Commission, then a special report from an independent accountant shall be required. In the report, the Certified Public Accountant must confirm that the data used in the CFO letter was appropriately derived from the audited, year-end financial statements.

Condition 11: Incapacity. The guarantor shall notify the Secretary of the Department and the Solid Waste Management Branch by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 Bankruptcy, USC, naming the guarantor, owner or operator of the facility as debtor, within 10 days after commencement of the proceeding.

Condition 12: If, at the end of any fiscal year, the guarantor fails to meet the financial test criteria required by conditions 5, 6, or 7, then the guarantor shall send, within 90 days, by certified mail, notice to the Secretary of the Department, to the Solid Waste Management Branch, and to the owner or operator, that guarantor intends to provide alternate financial assurance as required by these regulations. Within 120 days of such fiscal year, the guarantor shall establish such financial assurance unless the owner or operator has done so.

Condition 13: Within 30 days of being notified by the Department that a determination has been made that the guarantor no longer meets the requirements stated in Conditions 5, 6, or 7, the guarantor shall establish alternate financial assurance in accordance with these regulations.

Condition 14: The guarantee, approved by the Department, must be effective prior to the initial receipt of waste or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

(g) ~~State Department-~~Approved Mechanism.

(h) State Assumption of Responsibility.

(i) Use of Multiple Financial Mechanisms (any combination of the options listed above).

(3) The language of the financial assurance mechanisms listed in this section must satisfy the following

criteria:

(a) They must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed.

(b) They must ensure that funds will be available in a timely fashion when needed.

(c) They must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected, until the owner or operator is released from the financial assurance requirements.

(d) They must be legally valid, binding, and enforceable under State law.

(4) Upon request by the Department, the applicant or permittee shall provide a third party review of the financial assurance documents submitted. The third party review must certify to the Department that the financial assurance documents as submitted by the applicant or permittee meet the requirements of Section 4.A.11.b(2) of these regulations, and be sealed and signed by a Certified Public Accountant duly registered in Delaware.

(5) The application shall not be deemed complete until and unless the applicant has complied with Section 4.A.11.b(4) of these regulations as specified above.

c. Cost Estimate for Closure

(1) The owner or operator must submit to the Department a detailed written estimate, in current dollars, of the cost of closing the facility that is consistent with the closure plan developed in accordance with the closure requirements for that type of facility. The estimate must equal the maximum cost of closure at any time during the active life of the facility. The owner or operator shall also notify the Secretary in writing that the estimate has been placed in the records to be maintained at the facility.

(2) Until final closure of the facility, the owner or operator must annually adjust the closure cost estimate for inflation, facility expansions, and any other applicable requirements which impact the cost of closure.

(3) The owner or operator must increase the cost estimate and the amount of financial assurance provided for closure if changes to the closure plan or facility conditions increase the maximum cost of closure at any time during the remaining active life.

(4) The Department may approve reduction in the amount of financial assurance provided for closure if the latest cost estimate is significantly less than the maximum cost of the current closure plan. The owner or operator must submit to the Secretary in writing the justification for the reduction of the closure cost estimate and the amount of financial assurance. Any changes in the amount of financial assurance must also be placed in the records to be

maintained at the facility.

d. Cost Estimate for Post-Closure Care

(1) The owner or operator of a solid waste facility for which post-closure care is required must demonstrate financial assurance for the cost of thirty (30) years of post-closure care. The owner or operator must submit to the Department a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the solid waste facility in compliance with the post-closure plan. This estimate must be based on the most expensive costs of post-closure care during the post-closure care period. The owner or operator must also notify the Department in writing that the estimate has been placed in the records to be maintained at the facility.

(2) During the active life of the solid waste facility and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation and other applicable factors.

(3) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided if changes in the post-closure plan or solid waste facility conditions increase the maximum costs of post-closure care.

(4) The Secretary may approve the reduction of the post-closure cost estimate and the amount of financial assurance provided if the latest cost estimate is significantly less than the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator must submit to the Secretary in writing the justification for the reduction of the post-closure cost estimate. Any changes in the amount of financial assurance must also be placed in the records to be maintained at the facility.

e. Cost Estimate for Corrective Action

(1) An owner or operator of a solid waste facility required to undertake a corrective action program must submit to the Secretary in writing a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must also notify the Secretary that the cost estimate has been placed in the records to be maintained at the facility.

(2) The owner or operator must annually adjust the estimate for inflation and any other applicable factors until the corrective action program is completed.

(3) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided if changes in the corrective action program or facility conditions increase the maximum costs of corrective action.

(4) The Secretary may approve reduction of the amount of the corrective action cost estimate and the amount of financial assurance provided if the cost estimate exceeds

the maximum remaining costs of corrective action. The owner or operator must submit to the Secretary in writing the justification for the reduction of the corrective action cost estimate. The owner or operator must also notify the Secretary in writing that the amended amount of financial assurance has been placed in the records to be maintained at the facility.

B. APPLICATION PROCEDURES FOR SANITARY AND INDUSTRIAL LANDFILLS

1. New facilities

a. ~~Construction~~

1. Application

Any person desiring to ~~obtain a permit to~~ construct or operate a sanitary or industrial landfill or cell must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by the submission, by the applicant, of the following additional information:

a. ~~Application to Construct a Solid Waste Facility~~ A Solid Waste Management Facility Application, ~~form~~ provided by the Department.

b. Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's ~~irrevocable~~ permission to conduct the proposed activity on the property must also be submitted.

c. A plan of operation

This shall include the following:

(1) A narrative description of the type of facility and of the solid waste handling and disposal procedures to be used,

(2) A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility,

(3) A description of the proposed monitoring methods,

(4) A description of the proposed methods for controlling noise, litter, odors, insects, and rodents, and

(5) A contingency plan to be implemented in case of emergency (e.g., a fire, explosion, or spill that threatens public health and safety or the environment).

d. An engineering report

This report shall be prepared and signed by a Professional Engineer registered in Delaware and shall include the following:

(1) Descriptions and specifications of all proposed design features,

(2) A description of the proposed installation methods and procedures,

(3) A schedule of events for construction of the facility,

(4) Proposed design capacity in both tons and cubic yards per day, and projected life expectancy of the facility,

(5) A construction quality assurance plan.

~~This report shall be prepared and signed by a Professional Engineer registered in Delaware and shall include a description of the manner in which quality assurance will be carried out during the construction and installation of all design features.~~

e. A hydrogeological assessment

A hydrogeological investigation must be performed at the proposed site and approved by the Department before a construction permit will be issued. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:

(1) The occurrence and characteristics of the unconfined and first confined aquifers,

(2) Ground water flow directions,

(3) Ambient ground water quality,

(4) Potential pathways of contaminants to points of ground water discharge,

(5) Approximate ground water flow rates and travel times from the facility to points of discharge (including wells and/or surface water).

In addition, delineation of the anticipated maximum elevation of the seasonal high water table shall be provided.

This investigation and report shall be signed by a Professional Geologist registered in Delaware.

f. An environmental assessment

An environmental assessment shall be performed to provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include:

Air quality

Water quality

Stream flow

Fish and wildlife

Plants

Threatened or endangered species

Water uses

Land use

Aesthetics

Traffic

Public health and safety

Cultural, recreational, and natural areas

Historic sites

Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

g. Topographical and site location maps

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and

any necessary narrative descriptions, including but not limited to the following:

(1) The legal boundaries of the property as determined by a survey performed by a registered surveyor; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions affecting the proposed permit area.

(2) The boundaries of the facility over the estimated total life of the proposed operation, including the boundaries of land that will be affected in each sequence of disposal activity.

(3) The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

(4) The locations and names of all water supply wells or surface water intakes within 1/4 mile of the disposal site boundaries.

h. Proof that all applicable zoning approvals and all appropriate federal, state, and local environmental permits have been obtained.

i. Closure plan as described in Section 5.J.3 or 6.J.3, as appropriate.

j. Proof of financial responsibility for closure and post-closure care, as described in Section 4.A.11. ~~-, b and d.~~

k. Proof that the facility meets the siting criteria required by Section 5.A. or 6.A.

l. Any other related reports, data, maps, or information that the Department requires.

~~b. Operation~~

~~A facility constructed pursuant to a Construction Permit issued under these regulations may operate for a 90-day trial period after construction is complete, provided the Construction Permit is still valid during that period.~~

~~At the end of the trial operating period, the facility may continue to operate only if an Operating Permit has been obtained. To obtain an Operating Permit, the owner or operator must submit the following to the Department prior to entering into the 90-day trial period:~~

~~(1) Notification of intent to commence operation.~~

~~(2) Revisions or updates of reports or information submitted with the Application to Construct a Solid Waste Facility, if required by the Department.~~

2. Construction and Operation

a. The applicant shall not commence construction of the landfill or cell until the Department has issued the solid waste permit required by these regulations.

b. After construction has been completed and prior to the placement of solid waste, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the landfill or cell was completed in accordance with the engineering report to include the Construction Quality Assurance Plan, construction and material specifications, and design drawings. The final report shall be certified correct by the

construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The permittee shall not place solid waste into the newly constructed landfill or cell until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

3. Closure

a. Any person wishing to ~~obtain a closure permit~~ modify their current permit to allow closure of a facility or part thereof must submit the following to the Department at least 180 days prior to the projected date when wastes will no longer be accepted:

(1) Notification of intent to close,

(2) Closure plan as described in Section 5.J.3 or 6.J.3, as appropriate,

(3) Post-closure care plan describing how the requirements of Section 5.K or 6.K (as appropriate) will be met.

b. If the Department determines that the closure plan and supporting documents are sufficient to ensure closure, it will modify the permit to allow closure to be performed. The owner or operator of the landfill shall not commence closure of the landfill or cell without first obtaining the necessary permit modifications.

c. After closure has been completed, the permittee shall submit a final report for the Department's approval. The final report shall certify that the closure of the landfill or cell was completed in accordance with the closure plan to include the Construction Quality Assurance Plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The landfill or cell shall not be considered closed until the Department has provided its written notification that the closure has been accomplished in accordance with the solid waste permit and these regulations.

d. Facilities entering the Post-closure period will be issued a post-closure permit based upon the approved post-closure plan, monitoring requirements, gas and leachate control, maintenance, and corrective actions (if required).

~~2. Existing facilities~~

~~a. Any person desiring to continue construction or operation of a sanitary or industrial landfill, construction or operation of which was being conducted pursuant to a permit issued under the Delaware Solid Waste Disposal Regulation, must, within six months after the date of enactment of these regulations, submit to the Department a report explaining how the facility will be brought into compliance and a timetable for attaining compliance. The proposed schedule and methods for attaining compliance will be subject to Department approval. The facility must be in compliance with these regulations within six months after the date on~~

which the Department approves the compliance schedule.

b. Any person who, at the time of enactment of these regulations, is in the process of closing a solid waste facility pursuant to a permit issued under the Delaware Solid Waste Disposal Regulation, shall complete closure according to the conditions set forth in that permit.

C. THIS PARAGRAPH RESERVED

~~C. APPLICATION PROCEDURES FOR DRY WASTE DISPOSAL FACILITIES~~

~~1. New facilities~~

~~a. Construction~~

~~Any person desiring to obtain a permit to construct a dry waste disposal facility must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by submission, by the applicant, of the following additional information:~~

~~(1) Application to Construct a Solid Waste Facility, provided by the Department.~~

~~(2) Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's irrevocable permission to conduct the proposed activity on the property must also be submitted.~~

~~(3) A plan of operation.~~

~~This shall include the following:~~

~~(a) A description of the facility and of the solid waste handling and disposal procedures that will be used.~~

~~(b) A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the facility.~~

~~(c) A description of the proposed ground water and gas monitoring methods.~~

~~(d) A description of the proposed methods for controlling noise, litter, odors, insects, and rodents.~~

~~(e) A contingency plan to be implemented in case of emergency.~~

~~(4) A hydrogeological assessment.~~

~~A hydrogeological investigation must be performed at the proposed site and approved by the Department before a construction permit will be issued. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:~~

~~(a) the occurrence and characteristics of the water table aquifer.~~

~~(b) ground water flow directions.~~

~~(c) ambient ground water quality.~~

~~(d) potential pathways of contaminants to points of ground water discharge.~~

~~In addition, an evaluation shall be made of the elevation of the seasonal high water table.~~

~~This investigation and report shall be signed by a Professional Geologist registered in Delaware.~~

~~(5) Topographical and site location maps.~~

~~This shall include topographical maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, and other maps as necessary, to show:~~

~~(a) Elevations of the property, with reference to mean sea level, before commencement of waste disposal at the site (for all new facilities and where available for existing facilities);~~

~~(b) Topographic elevations of the property at the time of permit application [if different from (a) above].~~

~~(c) The legal boundaries of the property as determined by a survey performed by a registered surveyor; the parcel number of the property; the names of the present owners of the proposed site and of all adjacent lands; a description of the current use of the land; and a description of all title, deed, or usage restrictions affecting the property.~~

~~(d) The areas to be used in each sequence of disposal.~~

~~(e) The locations of all buildings and structures on the property.~~

~~(f) The location of the nearest perennial stream.~~

~~(g) The proposed elevations of the site after closure of the facility.~~

~~(6) Proof that all applicable zoning approvals have been obtained and application has been made for all appropriate federal, state, and local environmental permits.~~

~~(7) A conceptual closure plan. This shall address the items listed in Section 8.H.3 to the extent possible at the time of initial permit application and shall be revised and updated as necessary to reflect changes in plans that will affect the costs of closure and post closure care.~~

~~(8) Proof of financial responsibility for closure and post closure care, as described in Section 4.A.11, b and d.~~

~~(9) Any other related reports, data, maps or information that the Department requires.~~

~~b. Operation~~

~~A facility constructed pursuant to a Construction Permit issued under these regulations may operate for a 90-day trial period after construction is complete, provided the Construction Permit is still valid during that period.~~

~~At the end of the trial operating period, the facility may continue to operate only if an Operating Permit has been obtained. To obtain an Operating Permit, the owner or operator must submit the following to the Department prior to entering into the 90-day trial period:~~

~~(1) Written notification of an intent to commence trial operation, and the date on which the trial operating period will begin.~~

~~(2) Revisions or updates of reports or~~

~~information submitted with the Application to Construct a Solid Waste Facility, if required by the Department.~~

~~e. Closure~~

~~Any person wishing to obtain a closure permit must submit the following to the Department:~~

- ~~(1) Notification of intent to close.~~
- ~~(2) Closure plan as described in Section 8.H.3.~~
- ~~(3) Closure schedule.~~

~~2. Existing facilities~~

~~a. Any person disposing of dry waste pursuant to an approval letter which is in effect at the time of enactment of these regulations must, within six months after enactment of Section 8, do one of the following:~~

~~(1) Submit all of the items listed in Section 4.C.1.a, a report explaining how the facility will be brought into compliance with these regulations, and a timetable for attaining compliance. The compliance report and timetable will be subject to Department approval. The facility must be in compliance with these regulations within six months after the date on which the Department approves the compliance report and timetable.~~

~~(2) Submit written notification of intent to close the facility, immediately cease accepting waste, and submit a closure plan consisting of the following:~~

~~(a) A description of the methods, procedures, and processes that will be used to close the facility in accordance with the closure performance standard in Sections 8.H.1 and 8.H.4, and a schedule for completion of closure.~~

~~(b) A description of the final cover that will be applied, and a discussion of how the final cover will achieve the objectives of Section 8.H.1.~~

~~(c) A description of other activities necessary to satisfy the closure performance standard, including, but not limited to, the removal or disposal of all non-landfilled wastes located on site (e.g., wastes from landfill run-off collection ponds).~~

~~(d) A topographical map of the site showing the proposed post-closure elevations with reference to mean sea level.~~

~~(e) An estimate of the cost of closing the facility.~~

~~(f) A description of the maintenance that will be performed at the site after closure is completed.~~

~~(g) A description of the planned uses of the property.~~

~~The closure plan will be subject to Department approval. Closure must be carried out in accordance with the approved closure plan.~~

~~b. Any person who, at the time of enactment of Section 8 of these regulations, is in the process of closing a facility in accordance with a closure plan that has been approved by the Department, may complete closure in accordance with that plan.~~

D. APPLICATION PROCEDURES FOR RESOURCE RECOVERY FACILITIES

~~1. New facilities~~

~~a. Construction and operation~~

1. Application

Any person desiring to ~~obtain a permit to~~ construct and/or operate a resource recovery facility must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by the submission, by the applicant, of the following additional information:

a. A Solid Waste Management Facility Application, provided by the Department.

b. Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's ~~irrevocable~~ permission to conduct the proposed activity on the property must also be submitted.

c. A plan of operation

This shall include the following:

(1) A narrative description of the type of facility and of the solid waste handling and disposal procedures to be used.

(2) A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility. This shall include a description of the procedures for facility start up and for scheduled and unscheduled shut down operations.

(3) A description of the solid wastes that will be accepted at the facility, the manner in which recyclable components will be removed from the solid waste stream, the markets for these recyclable materials, and the proposed disposition of the non-recyclable components and residuals.

(4) A description of the proposed monitoring methods.

(5) A description of the measures that will be used to ensure that unauthorized and unwanted solid wastes are prevented from entering the facility.

(6) A description of the personnel training program, including training that will be provided to ensure compliance with Sections 9.D.2.e and 9.D.2.g of these regulations.

(7) A description of the proposed methods for controlling noise, litter, odors, insects, rodents, dust, fires, and explosions.

(8) A detailed contingency plan to be implemented in case of an emergency such as a spill, accident, or explosion.

d. An engineering report

This shall include the following:

(1) A drawing or drawings showing the complete layout of the proposed facility.

(2) Mass and energy balances, including calculations and pertinent facts relating to the development

of these balances.

(3) Descriptions and specifications of all proposed design features that the engineer has provided to the owner of the facility.

(4) A description of the proposed installation methods and procedures.

(5) A plan for third-party quality assurance for the construction and installation of components of the facility that will be used in the processing, handling, and/or monitoring of solid waste.

(6) A schedule of events for construction of the facility.

(7) Proposed design capacity per day, and life expectancy of the facility.

(8) A description of potential safety hazards and methods of control.

(9) An analysis of the concept of the facility's expansion at a later date, if and when deemed necessary by the Department.

(10) An identification of possible ground water and surface water discharges.

e. A recycling analysis

This analysis shall consist of the following:

(1) Identification of available and potential markets for recovered recyclables.

(2) An evaluation of the impact that alternative source separation/recyclables recovery programs could have on the facility. If a thermal recovery facility is the subject of the application, this shall include an engineering analysis of the BTU value of the solid waste before and after recyclables recovery for the proposed life of the project to determine if increases in recycling activities will necessitate changes in facility size and capacity.

f. A plan for sampling, analysis, and disposition of the ash generated by the facility (for thermal recovery facilities only). The plan shall include a strategy for ash testing during the test burn phase of construction. Testing shall be in accordance with Delaware's Regulations Governing Hazardous Waste or any testing protocol developed by the Department or by the EPA after the date of enactment of these regulations. The plan also shall include a proposal for treatment and/or disposal of the ash. The proposed methods for treatment and/or disposal shall conform to all applicable state and federal regulations.

g. A hydrogeological assessment, if deemed necessary by the Department

A hydrogeological investigation of the proposed site may be required before the Department will issue a permit. The report resulting from this investigation shall be signed by a Professional Geologist registered in Delaware.

h. An environmental assessment

The environmental assessment shall provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered

include, but are not necessarily limited to:

- Air quality
- Water quality
- Water uses
- Land use
- Soil quality
- Traffic
- Public health and safety
- Cultural, recreational, and natural areas
- Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

i. Topographical and site location maps

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

(1) The legal boundaries of the property as determined by a survey performed by a registered surveyor; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions and all easements affecting the proposed permit area.

(2) The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

(3) The locations and names of all water supply wells or surface water intakes within 1/4 mile of the site boundaries.

j. Proof that all applicable zoning approvals have been obtained and application has been made for all appropriate federal, state, and local environmental permits.

k. A conceptual closure plan. This shall address the items listed in Section 9.E.3 to the extent possible at the time of initial permit application and shall be revised and updated as necessary to reflect changes in plans that will affect the cost of closure.

1. Proof of financial responsibility for closure, as described in Section 4.A.11.b.

m. Proof that the facility meets the siting criteria required by Section 9.B.

n. Any other related reports, data, maps, or information that the Department requires.

2. Construction and operation

a. The applicant shall not commence construction of a new resource recovery facility or operate an existing resource recovery facility until the applicant has received a permit from the Department in accordance with these regulations.

b. After the construction of a new resource recovery facility has been completed, and prior to the receipt of solid waste or materials for processing, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the resource recovery facility was completed in accordance with the engineering report to include the quality assurance plan, construction and material specifications and design drawings. The final report shall be certified correct by the third-party quality assurance engineer, who must be a Professional Engineer registered in Delaware. The permittee shall not commence operations, store or receive solid waste or materials to be processed until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

3. Closure

Any person desiring to close a resource recovery facility shall, at least 180 days before the date on which the facility will stop accepting solid waste, submit the following to the Department:

- a. Written notification of intent to close.
- b. Updated closure plan.
- c. Closure schedule

d. An evaluation of the impact that closing the facility will have on the flow of solid waste in the region serviced by the facility, and a plan for minimizing any disruption in the flow.

If the Department approves the closure plan and closure schedule, it will modify the facility's permit to allow closure to take place.

2. Existing facilities

All existing resource recovery facilities must, within six months after enactment of Section 9 of these regulations, do one of the following:

a. Submit written notification of intent to close, a closure plan, and a closure schedule; and implement the closure procedures described in Section 9.E; or

b. Submit a Solid Waste Management Facility Application (provided by the Department) and all of the following:

(1) Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's irrevocable permission to conduct the resource recovery activity on the property must also be submitted.

(2) A plan of operation, as described in Section 4.D.1.a (3).

(3) An engineering report

This shall include the following:

(a) A drawing or drawings showing the complete layout of the facility.

(b) Mass and energy balances, including calculations and pertinent facts relating to the development

of these balances:

(c) Descriptions and specifications of all design features that the engineer has provided to the owner of the facility.

(d) Design capacity and life expectancy of the facility.

(e) A description of potential safety hazards and methods of control.

(f) An analysis of the concept of the facility's expansion at a later date, if and when deemed necessary by the Department.

(g) An identification of possible ground water and surface water discharges.

(4) A recycling analysis, as described in Section 4.D.1.a (5).

(5) A plan for sampling, analysis, and disposition of the ash generated by the facility (for thermal recovery facilities only). The plan shall include a strategy for ash testing during the test burn phase of construction. Testing shall be in accordance with Delaware's Regulations Governing Hazardous Waste or any testing protocol developed by the Department or by the EPA after the date of enactment of these regulations. The plan also shall include a proposal for treatment and/or disposal of the ash. The proposed methods for treatment and/or disposal shall conform to all applicable state and federal regulations.

(6) A hydrogeological assessment, if deemed necessary by the Department

A hydrogeological investigation of the site may be required before the Department will issue a permit. The report resulting from this investigation shall be signed by a Professional Geologist registered in Delaware.

(7) An environmental assessment, as described in Section 4.D.1.a (8).

(8) Topographical and site location maps, as described in Section 4.D.1.a (9).

(9) Proof that all applicable zoning approvals and all appropriate federal, state, and local environmental permits have been obtained.

(10) A conceptual closure plan. This shall address the items listed in Section 9.E.3 to the extent possible at the time of initial permit application and shall be revised and updated as necessary to reflect changes in plans that will affect the cost of closure.

(11) Proof of financial responsibility for closure, as described in Section 4.A.11.b.

(12) A report explaining any requirements of Section 9 with which the facility is not in compliance, a description of how the facility will be brought into compliance, and a timetable for attaining compliance. This report and timetable will be subject to Department approval.

(13) Any other related reports, data, maps, or information that the Department requires.

The facility must be brought into compliance

~~with these regulations in accordance with the timetable approved by the Department. Any extensions in time for attaining compliance must be approved in writing by the Department.~~

E. APPLICATION PROCEDURES FOR TRANSFER STATIONS

1. New Facilities

a. ~~Construction and operation~~

1. Application

Any person desiring to ~~obtain a permit to~~ construct and/or operate a transfer station must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by the submission, by the applicant, of the following additional information:

~~a. Transfer Station~~ A Solid Waste Management Facility Application, provided by the Department.

b. Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's ~~irrevocable~~ permission to conduct the proposed activity on the property must be submitted.

c. A plan of operation

This shall include the following:

(1) A narrative description of the type of facility and of the solid waste handling procedures to be used.

(2) A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility.

(3) A description of the proposed methods for controlling noise, litter, odors, insects, rodents, dust, leachate, and facility washdown water.

(4) A description of the methods that will be used to prevent unauthorized wastes from entering the facility.

(5) A contingency plan to be implemented in case of emergency (e.g., a fire, explosion, or spill that threatens public health and safety or the environment.)

d. An engineering report

This shall include the following:

(1) Descriptions, plans, and specifications of all proposed design features.

(2) A description of the proposed installation methods and procedures.

(3) A schedule of events for construction of the facility.

(4) Proposed design capacity in both tons and cubic yards per day.

This report shall be prepared and signed by a Professional Engineer registered in Delaware.

e. A hydrogeological assessment, if deemed necessary by the Department.

A hydrogeological investigation of the proposed

site may be required before the Department will issue a permit. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:

(1) The occurrence and characteristics of the water table aquifer.

(2) Ground water flow directions.

(3) Ambient ground water quality.

(4) Potential pathways of contaminants to points of ground water discharge.

This investigation and report shall be signed by a Professional Geologist registered in Delaware.

f. An environmental assessment.

The environmental assessment shall provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include:

Air quality

Water quality

Water uses

Land use

Soil quality

Traffic

Public health and safety

Cultural, recreational, and natural areas

Historic sites

Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

g. Topographical and site maps

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

(1) The legal boundaries of the property as determined by a survey performed by a surveyor registered in Delaware; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions and all easements affecting the proposed permit area.

(2) The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

(3) The locations and names of all water supply wells or surface water intakes within 1/4 mile of the handling site boundaries.

h. Proof that a state Coastal Zone Permit (if applicable) and all applicable zoning approvals have been obtained and that application has been made for all other

appropriate federal, state, and local environmental permits.

i. A conceptual closure plan. This shall address the items listed in Section 10.F.3 to the extent possible at the time of initial permit application and shall be revised and updated as necessary to reflect changes in plans that will affect the cost of closure.

j. Proof of financial responsibility for closure, as described in Section 4.A.11.b.

k. Proof that the facility meets the siting criteria required by Section 10.B.

l. Any other related reports, data, maps, or information that the Department reasonably requires.

2. Construction and operation

a. The applicant shall not commence construction of a new transfer station or operate an existing transfer station until the applicant has received a permit from the Department in accordance with these regulations.

b. After the construction of a new transfer station has been completed, and prior to the receipt of solid waste, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the transfer station was completed in accordance with the permit requirements. The final report shall be certified correct by a Professional Engineer registered in Delaware. The permittee shall not commence operations, store or receive solid waste until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

3. Closure

Any person desiring to close a transfer station shall, at least 60 days before the date on which the facility will stop accepting waste, submit the following to the Department:

- a. Written notification of intent to close.
- b. Updated closure plan.
- c. Closure schedule.

If the Department approves the closure plan and closure schedule, it will modify the facility's permit to allow closure to take place.

2. Existing facilities

~~All existing transfer stations must, within six months after enactment of Section 10 of these regulations, do one of the following:~~

~~a. Submit the items listed in Section 4.E.1.a above and a report explaining how the facility will be brought into compliance and a timetable for attaining compliance. The proposed methods and schedule for attaining compliance will be subject to Department approval.~~

~~The facility must be in compliance with these regulations within six months after the date on which the Department approves the report and schedule.~~

~~b. Submit written notification of intent to close, a closure plan, and a closure schedule; and implement the closure procedures described in Section 10.F.~~

F. APPLICATION PROCEDURES FOR FACILITY FOR INFECTIOUS WASTE MANAGEMENT

~~1. New facilities~~

~~a. Construction~~

1. Application

Any person desiring ~~to obtain a permit~~ to construct or operate an infectious waste management facility must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by submission, by the applicant, of the following additional information:

a. ~~Application to Construct a Solid Waste Facility A Solid Waste Management Facility Application~~, provided by the Department.

b. Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's ~~irrevocable~~ permission to conduct the proposed activity on the property must also be submitted.

c. A plan of operation

This plan shall include the following:

(1) The source(s) of the infectious waste (generator names and locations);

(2) A description of the origin and content of the waste, its containerization and the expected volume and frequency of waste disposal at the facility;

(3) A description of the facility where the waste will ~~be sterilized or incinerated~~ be rendered non-infectious, including the name and the exact location of the facility;

(4) A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility;

(5) A description of the processing methods to be used for each type of waste, including schematic drawings (e.g. blueprints, etc.);

(6) A description showing that the facility has developed a validation program which demonstrates the effectiveness of the treatment method by performing an Initial Efficacy Test and Periodic Verification Test(s).

(7) A description of the measures that will be used to ensure that unauthorized and unwanted wastes are prevented from entering the facility;

(8) A description of the containers to be used for the storage during the collection and during the movement within the facility, including the total length of time of storage;

(9) A description of the alternatives to be used if the processing equipment is inoperable, and the procedures to be used for the management of the waste if it cannot be promptly processed;

(10) A description of the handling and safety measures that will be employed for each type of waste, including personal protection and safety as well as

modifications to the operational safety plan that are required;

(11) A description of the proposed methods for controlling noise, litter, odors, vectors, dust, fires, and explosions;

(12) A contingency plan to be implemented in case of emergency.

In addition, if the proposed facility is an incinerator, the Plan of Operation shall include a plan for sampling, analysis, and disposition of the ash generated in the incinerator. The plan shall include a strategy for ash testing during the test burn phase of construction. Testing shall be in accordance with Delaware's Regulations Governing Hazardous Waste. The plan also shall include a strategy for treating and/or disposing of the ash if it is found to exhibit hazardous waste characteristics. A sanitary landfill in Delaware will not be considered an acceptable disposal facility for ash that exhibits hazardous waste characteristics.

d. An engineering report

This shall include the following:

(1) Descriptions and specifications of all proposed design features.

(2) A description of the proposed installation methods and construction procedures.

(3) A schedule of events for construction of the facility, if deemed necessary by the Department.

(4) Proposed design capacity in both tons and cubic yards per day, and life expectancy of the facility.

(5) Materials and energy balance of the facility.

e. A hydrogeological assessment, if deemed necessary by the Department.

A hydrogeological investigation may be required at the proposed site and approved by the Department before a construction permit will be issued. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:

(1) The occurrence and characteristics of the unconfined and first confined aquifers,

(2) Ground water flow directions,

(3) Ambient ground water quality,

(4) Potential pathways of contaminants to points of ground water discharge.

In addition, an evaluation shall be made of the elevation of the seasonal high water table.

This investigation and report shall be signed by a Professional Geologist registered in Delaware.

f. An environmental assessment

An environmental assessment shall be performed to provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include:

Air quality

Water quality

Stream flow

Fish and wildlife

Plants

Threatened or endangered species

Water uses

Land use

Aesthetics

Traffic

Public health and safety

Cultural, recreational, and natural areas

Historic sites

Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

g. Topographical and site location maps, if deemed necessary by the Department.

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

(1) The legal boundaries of the property as determined by a survey performed by a registered surveyor; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions affecting the proposed permit area.

(2) The boundaries of the facility over the estimated total life of the proposed operation, including the boundaries of land that will be affected in each sequence of disposal activity.

(3) The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

(4) The locations and names of all water supply wells or surface water intakes within 1/4 mile of the disposal site boundaries.

h. Proof that all applicable zoning approvals and all appropriate federal, state, and local environmental permits have been obtained.

i. Closure plan that conforms with Section 11.H., as appropriate.

j. Proof of financial responsibility for closure as described in Section 4.A.11,b and d.

k. Proof that the facility meets the siting criteria required by Section 11, Part 1,B.

l. Any other related reports, data, maps, or information that the Department requires.

2. Construction and operation

~~A facility constructed pursuant to a Construction Permit issued under these regulations may operate for a 90-day trial period after construction is complete, provided the Construction Permit is still valid during that period.~~

At the end of the trial operating period, the facility may continue to operate only if an Operating Permit has been obtained. To obtain an Operating Permit, the owner or operator must submit the following to the Department prior to entering into the 90-day trial period:

a. Notification of intent to commence operation.

b. Revisions or updates of reports or information submitted with the Application to Construct a Solid Waste Facility, if required by the Department.

a. The applicant shall not commence construction of a new infectious waste facility or operate an existing infectious waste facility until the applicant has received a permit from the Department in accordance with these regulations.

b. After the construction of a new infectious waste facility has been completed, and prior to the receipt of solid waste or materials for processing, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the facility was completed in accordance with the engineering report. The permittee shall not commence operations or store or receive solid waste or materials to be processed until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

3. Closure

Any person wishing to ~~obtain a closure permit~~ close an infectious waste facility must submit the following to the Department:

a. Notification of intent to close.

b. ~~Closure requirements to be performed as described~~ A detailed plan for closing the facility so as to achieve the objectives described in Section 11 Part 1.J. H.H. and as described in the individual permit.

If the Department approves the closure plan, it will modify the facility's permit to allow closure to take place.

2. Existing facilities

~~a. Any person desiring to continue construction, or continue operation, of an infectious waste facility must, within six months after the date of enactment of these regulations, submit to the Department either an Application to Construct an Infectious Waste Facility, or an Application to Operate an Infectious Waste Facility. Upon receipt of the application, the Department will determine whether any other information is required. While the Department is making a determination on the application, construction or operation may continue under the old permit unless the Department notifies the applicant in writing that construction must cease.~~

b. Any person desiring to begin operation of an infectious waste facility which was under construction prior to enactment of these regulations must immediately notify the Department by submission of a notification of intent to

~~operate an infectious waste facility.~~

~~The applicant must also submit to the Department a report explaining how the facility will be brought into compliance and a timetable for attaining compliance.~~

G. APPLICATION PROCEDURES FOR SOLID WASTE TRANSPORTERS

Any person required to obtain a permit to transport solid waste must submit a completed application to the Department. The application shall be on a form prescribed by the Department and shall be accompanied by the appropriate application fee.

Prior to Public Notice of proposed changes to these Regulations which would affect holders of transporter permits, the Department shall attempt, by reasonable means, to individually notify transporter permit holders of such proposed changes and of the date of the upcoming Public Hearing.

~~All persons that are subject to Section 7.B of these regulations and that were engaged in the transportation of solid waste in Delaware before the enactment of Section 7 must submit a completed application and the appropriate application fee within 60 days after the enactment of Section 7.~~

SECTION 5: SANITARY LANDFILLS

As enacted 12/08/88, plus changes made as a result of DSWA appeal.

(NOTE: This section applies only to landfills that accept household waste.)

A. SITING

1. Sanitary landfill facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. All sanitary landfill facilities shall be constructed to at least minimum design requirements as contained in Section 5.B. More stringent designs will be required where deemed necessary by the Department for the protection of ground water resources.

3. The owner or operator of any proposed sanitary landfill within a 5-mile radius of any airport runway must notify the airport and the Federal Aviation Administration (and provide proof of notification to the Department).

4. No new cell of a ~~new~~ sanitary landfill shall be located:

a. Within the 100-year flood plain as delineated by the Federal Emergency Management Agency. ~~For the purposes of this section:~~

~~(1) Floodplain means the lowland and relatively flat areas adjoining inland and coastal waters, that are inundated by the 100-year flood.~~

~~(2) 100-year flood means a flood that has a one percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.~~

~~b. Within 200 feet of any state or federal wetland. In an area that may cause or contribute to the degradation of any state or federally regulated wetlands unless the owner or operator can demonstrate to the satisfaction of the appropriate wetlands regulatory agency that:~~

~~(1) there is no impact to any regulated wetlands on the site, or~~

~~(2) any impact will be mitigated as required.~~

~~c. Within 200 feet of any perennial stream.~~

~~d. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the Department.~~

~~e. Within 10,000 feet of any airport runway currently used by turbojet aircraft or 5,000 feet of any airport runway currently used by piston-type aircraft, unless a waiver is granted by the Federal Aviation Administration.~~

~~f. So as to be in conflict with any locally adopted land use plan or zoning requirement.~~

~~g. Within the wellhead protection area of a public water supply well or well field or a formally designated aquifer resource protection area.~~

~~h. Within 200 feet of a fault that has had displacement during Holocene time (unless it can be demonstrated that a lesser setback distance would prevent damage to the structural integrity of the landfill unit and be protective of human health and the environment.)~~

~~i. Within a seismic impact zone (as defined by the United States Geological Survey) unless it can be demonstrated that all containment structures, including liners, leachate collection systems and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.~~

For the purposes of this section:

(1) Seismic impact zone means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

(2) Maximum horizontal acceleration in lithified earth material means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(3) Lithified earth material means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete and asphalt or

unconsolidated earth materials, soil or regolith lying at or near the earth surface.

ji. In unstable areas, unless engineering measures have been incorporated in the design to insure the integrity of the structural components of the waste facility (including liners, leachate collection systems, run-on /run-off control, capping and anything affecting the containment and/or possible release of contaminants.) Unstable areas include those of (1) poor foundation conditions (possible subsidence), (2) susceptibility to mass movement or (3) Karst terrane.

j. In areas where valuable aquifers would be threatened by contaminant releases, unless viable alternatives have been dismissed and stringent design measures have been incorporated to minimize the possibility and magnitude of releases.

~~k. Within 200 feet of the facility property boundary unless otherwise approved by the Department.~~

B. DESIGN

1. General

Sanitary landfills shall be planned and designed by a Professional Engineer registered in Delaware. Planning and design of these facilities shall be consistent with the declared purpose and intent and in accordance with the provisions of this regulation and based on empirically derived data and state of the art technology.

2. Minimum design requirements

a. All sanitary landfills shall be designed to minimize contaminant releases and to prevent significant adverse impacts on human health or the environment and to achieve the following performance standards:-

(1) ~~Ensure that the concentration values listed in Table 1 of this section will not be exceeded in contaminant concentrations do not prevent appropriate use of the ground water in the uppermost aquifer at the relevant point of compliance (examples are water supply, potability, stream flow maintenance, etc., as appropriate).~~

(a) The point of compliance shall be specified by the Department and shall be no more than 150 meters from the landfill cell boundary and shall be located on property owned by the owner of the landfill.

(b) In determining the relevant point of compliance, the Department shall consider at least the following factors:

(i) The hydrogeologic characteristics of the landfill and surrounding land;

(ii) The volume and physical and chemical characteristics of the leachate;

(iii) The quantity, quality, availability and direction of flow of ground water;

(iv) The proximity and withdrawal rate of ground water users;

(v) The availability of alternate drinking water

- supplies;
- (vi) The existing quality of ground water, including other sources of contamination and their cumulative impacts on ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;
 - (vii) Public health, safety and welfare effects;
- and
- (viii) Practical capability of the landfill owner or operator.

TABLE 1

Chemical	MCL (mg/l)
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloromethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl Chloride	0.002

(2) Ensure that surface water quality standards will not be violated (except within designated mixing zones) as a result of contaminant discharges from the landfill.

b. All sanitary landfills shall be designed to have:

(1) A liner and internal leachate collection system which meet the requirements of Sections 5.C. and 5.D. of these regulations respectively. ~~The liner must have a vertical hydraulic conductivity no greater than 10⁻⁷ cm/sec and consist of either a composite liner system or double-synthetic liner system, or natural materials of sufficient thickness to achieve the performance standard.~~

(2) A setback area, including a buffer zone with appropriate screening,

(3) A gas control system that meets the

requirements of Section 5.E.,

(4) A surface water management system that meets the requirements of Section 5.F.,

(5) A ground water monitoring system that meets the requirements of Section 5.G., and

(6) A capping system that meets the requirements of Section 5.H.

C. LINER

1. General provisions

a. An impermeable liner shall be provided at every sanitary landfill to restrict the migration of leachate from the landfill and to prevent contamination of the underlying ground water.

b. The Department reserves the right to set a more stringent liner requirement when it determines that a composite liner is not sufficient to protect human health and the environment.

c. The bottom of the liner (or the secondary liner, in a double liner system) shall be at least five (5) feet above the seasonal high water table as measured in the uppermost aquifer beneath the landfill. This 5-foot requirement may be reduced for a more rigorous liner system design which provides enhanced protection of ground water.

d. All liners shall be prepared, constructed, and installed in accordance with a quality assurance plan included in the engineering report [Section 4.B.1.a (4)] and approved by the Department. For synthetic liners, the plan shall incorporate the manufacturer's recommendations. ~~Written verification of liner integrity shall be submitted to the Department before commencement of waste disposal operations.~~

e. Qualifications of the construction quality assurance staff (CQA) and the geosynthetics installer, including master seamers, on-site supervisor, and construction quality control (CQC) personnel, shall meet the requirements of the approved Quality Assurance plan and be submitted to the Department for review prior to their performing these duties on site.

f. All conformance and destructive samples taken as part of the construction quality assurance plan shall be tested at an independent laboratory which is accredited by the Geosynthetics Institute's Laboratory Accreditation Program (by applicable test method) or other accreditation program acceptable to the Department.

2. Liner characteristics

a. Composite liner

A composite liner must have, as a minimum:

(1) ~~Have~~ A primary (upper) liner which meets the following:

(a) ~~Be~~ Is at least 45 mils thick.

(b) ~~Be~~ Is constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to physical contact with the leachate to which it is exposed, climatic conditions, the

stresses of installation, and the stresses of daily operation.

(c) ~~Be Is~~ made of synthetic material that meets minimum requirements of ~~the most recent edition of the National Sanitation Foundation's publication, "Standard Number 54-1993, Flexible Membrane Liners" for membrane materials covered by this standard, or of other materials of equal or better performance as approved by the Department.~~

(d) ~~Be Is~~ chemically resistant to the waste and leachate managed at the facility. The EPA Test Method 9090 shall be performed using a solid waste leachate (a synthetic leachate mix approved by the Department may be substituted if existing leachate is not available). The specified physical parameters shall be tested before and after liner exposure. Any significant change in test properties shall be considered to be indicative of incompatibility.

(e) ~~Be Is~~ compounded from first quality virgin materials. No reground or reprocessed materials containing encapsulated scrim shall be used in the manufacturing of the liner.

(f) ~~Be Is~~ free of pinholes, blisters, holes, and contaminants, which include, but are not limited to, wood, paper, metal and non-dispersed ingredients.

~~(2) Have a secondary (lower) liner composed of compacted clay at least two feet thick with a hydraulic conductivity no greater than 10^{-7} cm/sec.~~

~~(2) A secondary (lower) liner composed of:~~

~~a. Compacted clay at least two feet thick with a hydraulic conductivity no greater than 1×10^{-7} cm/sec, or~~

~~b. An equivalent material or combination of materials acceptable to the Department.~~

~~b. Natural liner~~

~~(1) Use of natural material for liners is restricted to those areas where:~~

~~(a) Underlying ground water is not used and is not reasonably expected to be used for water supplies, and~~

~~(b) The landfill subbase is subject to compaction and settlement such that a synthetic membrane would not be feasible.~~

~~(2) A natural liner must meet the following requirements as a minimum:~~

~~(a) It shall consist of compacted clay or equivalent material having a hydraulic conductivity no greater than 1×10^{-7} cm/sec.~~

~~(b) The material shall be at least five (5) feet thick, and thicker if necessary to prevent any leachate from migrating through the liner at any time during the active life and through the post-closure care period of the facility.~~

~~(c) The material proposed for use shall be tested by ASTM or equivalent methods for the following:~~

- ~~Grain size~~
- ~~Classification~~
- ~~Compaction~~
- ~~Specific gravity~~

Hydraulic conductivity

Porosity

pH

Cation exchange capacity

Pinhole test (if required)

Mineralogy (if required)

All data shall be submitted to the Department prior to construction.

(d) Testing of the saturated hydraulic conductivity and the effect of leachate on soil hydraulic conductivity shall be performed in accordance with test methods given in the most recent edition of EPA publication SW-846, ASTM test procedures, or other tests approved by the Department.

(e) If on-site soils are to be used as a natural liner, the uppermost five (5) feet of soil shall be excavated and recompacted to ensure homogeneity of the liner, provided, however, that with respect to dredge spoil soils, the excavation and recompaction requirement shall not apply if the applicant can demonstrate that the dredge spoil soils have acceptable characteristics as indicated above.

c. Double liner system

(1) A double liner system shall meet the following requirements:

(a) It shall consist of two single liners separated by a drainage layer containing a leak detection system.

(b) The primary (upper) liner shall be a synthetic liner which is at least 30 mils thick and which meets the requirements of Section 5.C.2.a(1)(b)-(f).

(c) The secondary (lower) liner may be either synthetic or natural. If synthetic, it must be at least 30 mils thick and must meet the requirements of Section 5.C.2.a(1)(b)-(f). If natural, it must meet the requirements of Section 5.C.2.b.

(d) The drainage layer separating the two liners shall consist of at least 12 inches of soil having a hydraulic conductivity greater than ~~1×10^{-3}~~ 1×10^{-2} cm/sec based on laboratory and field testing.

Alternate material may be used for the drainage layer with prior written approval of the Department.

(e) The leak detection system shall be capable of detecting and intercepting liquid within the drainage layer and conveying the liquid to a collection sump or monitoring point where the quantity of flow can be measured and the liquid can be sampled. The operator or designer shall calculate the Action Leakage Rate. The proposed Action Leakage Rate and a response plan if the Action Leakage Rate is exceeded shall be submitted to the Department as part of the application package. The system shall be designed to operate without clogging through the post-closure care period of the facility.

(f) The ~~lower~~ upper synthetic liner membrane shall

be underlain by either a geosynthetic clay or 2 feet of natural material with a permeability no greater than 10^{-7} cm/sec.

Alternate liner designs may be used with prior written approval of the Department.

(2) A double liner system will be required ~~in the following cases:~~

~~(a) Where landfills are underlain by aquifers which are reasonably expected sources of water supply and/or capable of significant contaminant transport to adjacent surface waters; and~~

~~(b) If leachate recirculation will be performed.~~

3. Liner construction

a. Construction/installation of ~~single synthetic composite~~ liner

(1) At least 15 working days prior to installation of the liner, the owner or operator shall notify the Department of the installation date.

(2) The liner shall be installed upon a subbase which meets the following requirements:

(a) It shall be capable of supporting the loads and withstanding the stresses that will be imposed on it through the active life and post-closure care period of the facility and of resisting the pressure gradient above and below the liner caused by settlement, compression, or uplift.

(b) It shall have a smooth surface that is free of all rocks, stones, roots, sharp objects, or debris of any kind.

(c) It shall be certified in writing by the liner installer as an acceptable subbase for the liner. Written certification of acceptability shall be submitted to the Department prior to installation of the liner. However, submittal of written acceptance may proceed incrementally according to installation schedule.

(3) The minimum post-loading slopes of the liner shall be two (2) percent on controlling slopes and one-half (0.5) percent on remaining slopes.

(4) The landfill shall be designed to minimize penetrations through the liner. If a penetration is essential, a liquid-tight seal must be accomplished between the penetrating structure and the synthetic membrane. Compaction of areas adjacent to the penetrating structure shall be to the same density as the surrounding soil to minimize differential settlement. Sharp edges on the penetrating structure must not come in contact with the synthetic material.

(5) Bridging or stressed conditions in the liner shall be avoided with proper slack allowances for shrinkage of the liner during installation and before the placement of a protective soil layer.

(6) Synthetic liners shall have factory and field seams that equal or exceed the strength requirements defined by ~~the most recent edition~~ of the National Sanitation Foundation's "Standard Number 54-1993" for that liner

material. All seams must be visually inspected and tested along their entire length for seam continuity using suitable nondestructive techniques. Seams shall also be tested for strength, at a frequency specified in the quality assurance plan. In addition, field seams shall meet the following requirements:

(a) Field seaming shall provide a dry sealing surface.

(b) Seaming shall not be done when wind conditions prevail.

(c) Seams shall be made and bonded in accordance with the supplier's recommended procedures.

(7) Proper equipment shall be used in placing drainage material over the synthetic liner to avoid stress.

(8) The synthetic membrane shall be protected from the waste by at least two (2) feet of drainage material incorporating the leachate collection system.

(9) The synthetic membrane must be underlain by a secondary liner as described in Section 5.C.2.a(2).

b. Construction of natural liner

(1) All lenses, cracks, channels, root holes, or other structural non-uniformities that can increase the saturated hydraulic conductivity above 1×10^{-7} cm/sec shall be removed.

(2) Natural liners shall be constructed in lifts not exceeding six (6) inches after compaction to maximize the effectiveness of the compaction throughout the lift thickness. Each lift shall be properly interfaced by scarification between lifts to ensure the bonding.

(3) Clods shall be broken up and the material shall be homogenized before compaction of each lift using mixing devices such as pug mills or rotary tillers.

(4) The maximum slope of the sidewalls shall not be so great as to preclude effective compaction.

c. Construction/installation of double liner

(1) The secondary liner shall be constructed in accordance with Section 5.C.3.b (if it is a natural liner) or Section 5.C.3.a.(1)-(7) (if it is synthetic).

(2) The primary liner shall be constructed in accordance with Section 5.C.3.a.(1) and (3)-(8).

D. LEACHATE COLLECTION, TREATMENT, DISPOSAL, AND MONITORING

1. General provisions

a. All sanitary landfills shall be designed and constructed to include a leachate collection system, a leachate treatment and disposal system, and a leachate monitoring system.

b. The leachate systems shall be constructed, installed, and maintained in accordance with a Department-approved quality assurance plan.

c. The owner or operator shall keep and maintain documentation for the quality assurance procedures through

the post-closure care period of the facility.

2. Leachate collection

a. Minimum design specifications

(1) The leachate collection system shall be designed to operate without clogging through the post-closure care period of the facility.

(2) All elements of the system (pipes, sumps, pumps, etc.) shall be sized according to water balance calculations and shall be capable of handling peak flows.

(3) Collection pipes shall be sized and spaced to efficiently remove leachate from the bottom of the waste and the side walls of the cell. The capacity of the mains shall be at least equal to the sum of the capacities of the laterals.

(4) The pipes shall be designed to withstand the weight, stresses, and disturbances from the overlying wastes, waste cover materials, equipment operation, and vehicular traffic.

(5) The collection pipes shall be designed to drain by gravity to a sump system. Sumps must function automatically and shall contain a conveyance system for the removal of leachate.

(6) Manholes or cleanout risers shall be located along the perimeter of the leachate collection system. The number and spacing of the manholes shall be sufficient to insure proper maintenance of the system by water jet flushing or an equivalent method.

(7) Innovative leachate collection systems incorporating alternative designs may be used, after approval by the Department, if they are shown to be equivalent to or more effective than the specified design.

(8) The leachate collection system must be designed to prevent the leachate head on the liner from exceeding a depth of 12 inches.

b. Construction standards

(1) The leachate collection system shall be installed immediately above an impermeable liner and at the bottom of a drainage layer. The drainage layer shall be at least 12 inches thick with a hydraulic conductivity not less than $4 \times 10^{-3} \text{ } 1 \times 10^{-2} \text{ cm/sec}$ and a minimum controlling slope of two (2) percent.

Alternate materials may be used for the drainage layer with prior written approval of the Department.

(2) The following tests shall be performed on the soil proposed for use in the drainage layer, and all data shall be submitted to the Department prior to construction of the drainage layer. These tests shall be performed in accordance with current ASTM, AASHTO, or equivalent methods:

- Classification
- Porosity
- Relative density or compaction
- Specific gravity
- Hydraulic conductivity

(3) The leachate collection system and manholes or cleanout risers shall be constructed of materials that can withstand the chemical attack that results from leachates.

c. Operational procedures

(1) The leachate collection system shall operate automatically, whenever leachate is present in the sump, to remove accumulated leachate.

(2) Inspections shall be conducted weekly to verify proper functioning of the leachate collection system and to detect the presence of leachate in the removal sump.

The owner or operator shall keep records on the system to provide sufficient information that the leachate collection system is functional and operating properly. The amount of leachate collected from each cell shall be recorded on a weekly basis.

(3) Collection lines shall be cleaned according to a Department-approved scheduled maintenance program and more frequently if required.

3. Leachate treatment and disposal

The permittee must maintain all necessary permits and approvals for leachate storage and discharge activities.

a. The leachate treatment and disposal system shall be designed in accordance with one of the following options:

- (1) Complete treatment on-site with or without direct discharge to surface water,
 - (2) Pretreatment on-site with discharge to an off-site treatment works for final treatment,
 - (3) Storage on-site with discharge to an off-site treatment works for complete treatment,
 - (4) Direct discharge to an off-site treatment works,
- or

(5) Pretreatment on site with discharge on site.

b. Leachate storage prior to treatment shall be within tanks constructed and installed in accordance with the following standards:

- (1) The tank shall be placed above ground.
- (2) The storage tank shall be designed in accordance with American Petroleum Institute (API), Underwriters Laboratory (UL), or an equivalent standard appropriate to the material being used, and shall be constructed of or lined with material which has a demonstrated chemical resistance to the leachate.

(3) The storage tank area shall have a liner capable of preventing any leachate which may escape from the tank from coming into contact with the underlying soil.

(4) The storage tank area shall be surrounded by a berm, and the bermed area shall have a capacity at least ten percent greater than the capacity of the tank.

(5) All storage tanks shall be equipped with a venting system.

(6) All storage tanks shall be equipped with a high liquid level alarm or warning device. The alarm system shall

be wire to the location where assistance will be available to respond to the emergency.

c. On-site complete treatment or pretreatment facilities shall be designed and constructed in accordance with the following:

(1) The on-site treatment unit shall be designed based on the results of a treatability study, the results of the operations of a pilot plant, or written information documenting the performance of an equivalent leachate treatment system.

(2) On-site treatment units shall be designed and constructed by staging of the units to allow for on-line modification of the treatment system to account for variability of the leachate quality and quantity.

d. For all leachate discharges planned for publicly owned treatment works (POTW), the owner or operator of the landfill shall notify the receiving POTW of intent to discharge leachate into the collection system and shall provide the POTW with analysis of the leachate as required by the POTW.

e. All leachate treatment and disposal systems shall be designed and constructed to control odors.

f. Residuals from the on-site treatment and disposal systems shall be sampled and analyzed for hazardous waste characteristics in accordance with the Delaware Regulations Governing Hazardous Waste.

g. Recirculation of leachate may be allowed, subject to approval by the Department, to accelerate decomposition of the waste. At new facilities and expansions of existing facilities, recirculation will be allowed only in areas constructed with a composite liner system or a double liner and leak detection system. The method of recirculation at all facilities must be approved by the Department in advance and annually so long as the recirculation continues ~~by the Department~~. Records of leachate collected and recirculated must be kept and reported and any resultant problems reported to the Department and remedied as soon as practicable and included in the annual report.

4. Leachate monitoring

a. The leachate monitoring system shall be capable of measuring the quantity of the flow and sampling the leachate from each landfill cell. The volume of leachate collected from each cell shall be determined at least monthly and reported quarterly.

b. Leachate monitoring shall be performed according to a Department-approved plan which includes quality control and quality assurance procedures.

c. In addition to the requirement in Section 5.D.4.b above, samples of leachate shall be collected and analyzed from each waste cell; as follows:

(1) monthly, during the active life of a cell, and at an interval specified by the Department after closure of the cell, for the following parameters:

pH

- Alkalinity (Alk)
- Chemical Oxygen Demand (COD)
- Biochemical Oxygen Demand (BOD)
- Total Organic Carbon (TOC)
- Specific Conductance (SpC)
- Total Dissolved Solids (TDS)
- Total Iron (Fe)
- Total Manganese (Mn)
- Chloride (Cl)
- Nitrate (NO₃-N), Nitrate (NO₂-N), and
- Ammonia (NH₃-N) ~~and Total Kjeldahl Nitrogen (TKN)~~
- Sulfate (SO₄), and

(2) ~~at least semi-annually for parameters listed in Appendix H~~

(2) at an interval specified by the Department for additional parameters specified by the Department.

d. Leachate monitoring results shall be submitted to the Department as part of the annual monitoring report or more frequently as directed by the Department.

e. For a double liner system, if the Action Leakage Rate of the leak detection system is exceeded, the owner or operator of the landfill shall notify the Department within five (5) working days. The owner or operator shall also sample and analyze the liquid in the leak detection system for the same parameters listed in Section 5.D.4.c.(1) and any additional parameters as required by the Department. if liquid is discovered within the leak detection system, the owner or operator of the landfill shall notify the Department within five (5) working days of the discovery and test and record for the same parameters listed in Section 5.G.4.e. above.

E. GAS CONTROL

1. General provisions

a. Gas control system shall be installed at all sanitary landfills.

b. The gas control system shall be designed and constructed to:

(1) Evacuate gas from within the waste to prevent the accumulation of gas on-site or off-site.

(2) Prevent and control damage to vegetation.

(3) Prevent odors from the facility being detectable at the facility property line in sufficient quantities to cause or create a condition of air pollution. ~~Control malodorous gaseous emissions to the extent that there is no perceivable landfill odor at the property boundary.~~

c. The concentration of landfill gas in facility structures (except gas recovery system components) and at the facility boundary shall not exceed 25% of the Lower Explosive Limit (LEL).

2. Design and construction standards

a. The owner or operator of a sanitary landfill shall consider both active and passive gas control systems and

shall provide an evaluation of the proposed system for Department approval.

b. The owner or operator shall perform an analysis to establish the required spacing of gas control vents to provide an effective system.

c. The gas control system shall be designed to evacuate gas from all levels within the waste.

d. The system shall not interfere with or cause failure of the liner or leachate systems.

3. Monitoring

a. A sufficient number of gas monitoring wells shall be installed to evaluate gas production rates in the landfill.

b. The owner or operator shall sample the gas monitoring wells at least quarterly and provide analytical results [as required by conditions specified in the facility permit] as part of the annual report.

c. At sanitary landfills utilizing natural liners, gas monitoring probes must be installed in the soil outside the lined area to evaluate any lateral migration of landfill gas.

d. Emissions from active and passive gas control systems may require a permit from the Air Resources Section of the Division of Air and Waste Management.

4. Response Actions

a. If methane gas levels exceeding the limits specified in ~~Section 5.E.1.c paragraph E.1.c. of this section~~ are detected, the owner or operator must:

(1) Immediately take all necessary steps to ensure protection of human health and notify the Department.

(2) Within seven days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health.

(3) Within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the Department that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

b. For purposes of this section, lower explosive limit means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees C and atmospheric pressure.

F. SURFACE WATER MANAGEMENT

1. General provision

An owner or operator of a sanitary landfill shall design, construct, and maintain a surface water management system to:

- a. Prevent erosion of the waste and cover,
- b. Prevent the collection of standing water, and
- c. Minimize surface water run-off onto and into the waste.

2. Design requirements

An owner or operator of a sanitary landfill shall include:

a. A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 24-hour, 25-year storm.

b. A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm. The system shall be designed to include:

(1) Detention basins to provide temporary storage of the expected run-off from the design storm with sufficient reserve capacity to contain accumulated precipitation and sediment prior to discharge.

(2) Diversion structures designed to prevent run-off generated within the active areas from moving off site of the lined areas.

3. Channeling of run-off

a. Run-off from the active areas within the active cell(s) must be channeled to the leachate treatment and disposal system.

b. Run-off from the unused portion of the active cell(s) that has not been in contact with waste shall be channeled to the detention basins or other approved sedimentation control devices.

c. Until vegetative cover has been established, run-off from closed cells will be directed to the detention basins or other approved sedimentation control devices.

4. Discharge

Discharge from the detention basins shall be in compliance with all applicable federal and state regulations.

G. GROUND WATER MONITORING AND CORRECTIVE ACTION

1. General provision

Owners or operators of all sanitary landfill facilities shall install maintain and operate a ground water monitoring program to evaluate facility impact upon ground water quality.

2. Design and construction of monitoring system

a. The ground water monitoring system shall be designed by, constructed under the direction of, and attested to by, a Professional Geologist registered in Delaware.

b. The system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to define the ground water flow system and shall be developed in accordance with Departmental requirements to yield ground water samples that are representative of the aquifer water quality, both unaffected by (background) and potentially impacted by down gradient contaminant leakage from the facility. The downgradient monitor wells (which are points of compliance for ground water performance standards) must be no further than 150 meters from the edge of the

sanitary landfill cell, and on the waste facility property.

c. The number, spacing, location, depth, and screened interval of the monitoring wells shall be approved by the Department prior to installation.

d. All monitoring wells shall be constructed in accordance with the Regulations Governing the Construction of Water Wells and any subsequently approved guidelines. Variation from the existing guidelines must be approved by the Department in writing prior to construction.

e. Monitoring of surface water, into which ground water flowing from beneath the landfill discharges, may also be required as part of the ground water monitoring program. Parameter analysis may include all those required for the ground water sampling plus any additional parameters or tests the Department deems necessary.

3. Ground water sampling and analyses

a. The owner or operator shall submit a ground water sampling plan to the Department at the time of permit application. The sampling plan must include procedures and techniques for:

(1) Sample collection, preservation, and transport

(a) Samples will be collected at low flow rates (<1 l/min) to minimize turbidity of the samples.

(b) Samples will be field filtered only when turbidity exceeds 10 NTU. Repeated sampling of any well where turbidity exceeds 10 NTU is not permitted without Department approval. Approval will only be granted in cases where turbidity cannot be controlled by careful well construction, development and sampling. Samples will be field filtered only where turbidity cannot be controlled by careful well construction, development and sampling and Department approval is obtained.

(2) Analytical procedures and quality assurance, and

(3) Chain of custody control

b. Sample parameters

(1) Water levels will be measured prior to sample collection

(2) Ground water samples will be analyzed for the following list of parameters:

- pH
- Alkalinity (Alk)
- Chemical Oxygen Demand (COD)
- Total Organic Carbon (TOC)
- Specific Conductance (SpC)
- Total Dissolved Solids (TDS)
- ~~Total~~ Iron (Fe)
- ~~Total~~ Manganese (Mn)
- Chloride (Cl)
- Nitrate (NO₃-N), ~~Nitrate (NO₂-N)~~, and Ammonia (NH₃-N) and ~~Total Kjeldahl Nitrogen (TKN)~~
- Sulfate (SO₄)
- Dissolved Oxygen (DO)
- Oxidation-Reduction Potential (ORP) or Eh

The parameters listed in ~~Appendix I, Table I~~ when requested by the Department.

Any additional parameters specified by the Department.

The Department may delete the requirement for any constituents (~~included in Appendix I~~) where appropriate. Such deletions will be based on:

- (a) The results of leachate monitoring (constituent is not a significant constituent of the leachate),
- (b) Local geochemical considerations (immobility in subsurface), and
- (c) Other relevant factors.

Table 1

Antimony	trans-1,4-Dichloro-2-butene
Arsenic	1,1-Dichloroethane; Ethylidene chloride
Barium	1,2-Dichloroethane; Ethylene dichloride
Beryllium	1,1-Dichloroethylene; 1,1-Dichloroethene
Cadmium	cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene
Chromium	trans-1,2-Dichloroethylene
Cobalt	1,2-Dichloropropane
Copper	cis-1,3-Dichloropropene
Lead	trans-1,3-Dichloropropene
Nickel	Ethylbenzene
Selenium	2-Hexanone; Methyl butyl ketone
Silver	Methyl bromide; Bromomethane
Thallium	Methyl chloride; Chloromethane
Vanadium	Methylene bromide; Dibromomethane
Zinc	Methylene chloride; Dichloromethane
Acetone	Methyl ethyl ketone; MEK
Acrylonitrile	Methyl iodide; Iodomethane
Benzene	4-Methyl-2-pentanone; Methyl isobutyl ketone
Bromochloromethane	Styrene
Bromodichloromethane	1,1,1,2-Tetrachloroethane
Bromoform;	1,1,2,2-Tetrachloroethane
Tribromomethane	
Carbon disulfide	Tetrachloroethylene; Tetrachloroethene
Carbon tetrachloride	Toluene
Chlorobenzene	1,1,1-Trichloroethane; Methylchloroform
Chloroethane; Ethyl chloride	1,1,2-Trichloroethane
Chloroform;	Trichloroethylene
Trichloromethane	
Dibromochloromethane; Chlorodibromomethane	Trichlorofluoromethane; CFC-11
1,2-Dibromo-3-chloropropane; DBCP	1,2,3-Trichloropropane
1,2-Dibromoethane; Ethylene dibromide; EDB	Vinyl acetate
o-Dichlorobenzene; 1,2-Dichlorobenzene	Vinyl chloride
p-Dichlorobenzene; 1,4-Dichlorobenzene	Xylenes

(3) Test methods used to determine the parameters of Section 5.G.3.b.(2) shall be those described in the most current legal edition of EPA Publication Number SW-846, "Test Methods for Evaluating Solid Waste - Physical/Chemical Methods." If SW-846 does not contain test methods for a required parameter, that parameter shall be tested according to methods described in the most recent edition of the EPA publication "Methods of Chemical Analysis for Water and Wastes" or of Standard Methods for

the Examination of Water and Wastewater.

c. Monitoring frequency will be at least semi-annual. An alternate frequency may be specified by the Department based on consideration of the following conditions:

- (1) Lithology of the aquifer and unsaturated zone,
- (2) Hydraulic conductivity of the aquifer and unsaturated zone,
- (3) Ground water flow rates,
- (4) Distance and travel time between the waste unit(s) and the downgradient monitor wells and possible points of exposure to any landfill-derived contaminants in wells or receiving surface waters, and
- (5) Resource value of the aquifer.

d. The Department may observe the ground water sampling conducted by the permittee or his/her designee and may request split samples for analysis.

4. Data evaluation

a. The owner or operator must establish the background quality for each sampling parameter or constituent. The background quality is that which would be expected with no impact by contaminant releases from the waste cells.

b. The owner or operator must specify in the operating record the methods to be used for statistical evaluation of the monitoring data. These may include:

(1) A tolerance or prediction interval procedure in which a range for each constituent is established from the distribution of the background data and the level of each constituent in each compliance (downgradient) monitor well is compared to the upper tolerance or prediction limit,

(2) A control chart approach that plots concentrations of each constituent versus the background range, or

(3) Any other statistical method chosen to meet the following requirements and approved by the Department:

(a) Appropriate in distribution and number of available data to meet the requirements of the statistical test chosen;

(b) Capable of limiting individual constituent comparisons to Type I error levels less than 0.01 or multiple constituent comparisons to Type I error levels less than 0.05, for each testing period. (This requirement does not apply to tolerance intervals, prediction intervals, or control charts.)

c. If necessary, the statistical analysis method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

d. The owner or operator must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the monitoring program by comparisons using the chosen method of evaluation. This evaluation must be performed within a reasonable period of sampling and analysis - normally within 30 days of obtaining sampling results.

e. If any statistically significant increase occurs, the permittee must:

(1) notify the Department and place the result in the operating record within 14 days, and

(2) assess the probable accuracy and possible risk associated with the finding in the annual report.

f. Performance standards will be established at each site which are intended to provide adequate protection for human health and the environment. The performance standards may be proposed by the permittee, but must be approved by the Department, and shall be incorporated in the facility permit. In general, performance standards will be the maximum contaminant levels (MCLs) for public drinking water. However, the Department may specify performance levels which are more stringent to protect adjacent surface water (and prevent violation of surface water quality standards) or less stringent (where ground water at the site will not threaten existing or reasonably expected sources of drinking water or cause violation of surface water quality standards) as appropriate.

g. The points of compliance at which performance standards must be met must be no more than 150 meters from the edge of the furthest downgradient waste cell and must be on the waste management facility property.

h. If any release of contaminants from the landfill to the groundwater is detected, either by exceedance of background concentrations or violation of a performance standard in the downgradient wells (points of compliance), the owner or operator must:

(1) Notify the Department and place the result in the operating record within 14 days,

(2) Re-sample to confirm the result and/or demonstrate that the result was an error or that the increase was due to a source other than the permitted waste facility within 90 days,

(3) Notify the Department of the result of confirmation within 14 days of availability of the result, and

(4) If a release is confirmed, perform an assessment of corrective measure as described in Section 5.G.6.

5. Reporting

a. The owner or operator will compile and evaluate all ground water data within a reasonable period of time following sampling and analysis. A tabulation of water elevations and quality will be submitted to the Department within 60 days of each sampling event. Reports of any statistically significant increases in downgradient wells or violation of performance standards in wells or streams must be reported to the Department within 14 days as noted above.

b. An annual monitoring report must be submitted by the permittee to the Department which includes the following:

(1) Maps showing the locations of sampling points, water elevations, and ground water flow directions and approximate rates for each sampling period;

(2) Tabulation of all ground water levels and

elevations, leachate volumes collected and treated and leachate and water quality data;

(3) Presentation of statistical results and graphs depicting water quality parameter concentrations with time;

(4) Identification of any statistically significant increases in compliance wells and/or exceedances of performance standards;

(5) Confirmation results and conclusions related to the accuracy of these results and/or reasonable explanation for the results;

(6) Recommendations for any changes in the monitoring program including changes in the number, location of sampling points, sampling frequency, parameters or procedures;

(7) An evaluation of the significance of the results including whether they indicate a contaminant release has occurred and any recommendations for corrective measures, if appropriate.

c. In addition to paper copies of reports, the Department may require all or part of any required report to be submitted on machine readable media in a format mutually acceptable to the Department and the permittee. With the approval of the Department, reports submitted on machine readable media may be substituted for paper reports.

6. Assessment of Corrective Measures

a. An assessment (re-assessment) of corrective measures by the owner or operator is required (within 90 days) of confirmation of a contaminant release or an exceedance of a performance standard. The owner or operator must perform this assessment which must include:

(1) Identification of the nature and extent of the release (which may require construction and sampling of additional wells, analysis for additional constituents including those required for leachate, listed in Appendix H, geophysical surveys and/or other measures);

(2) Re-assessment of contaminant fate and potential contaminant receptors (wells and/or receiving streams);

(3) Evaluation of feasible corrective measures to:

(a) Prevent exposure to potentially harmful levels of contaminants (exceeding performance standards);

(b) Reduce, minimize or prevent further contaminant releases;

(c) Reduce, minimize or prevent the offsite migration of contaminants.

(4) The implementability (and time to implement) and costs of the feasible alternatives;

(5) Recommendations for remedial action.

b. The owner or operator must present the results of the corrective measures assessment, including a proposed remedy, (with a schedule for initiation and completion) for public comment at a public meeting.

7. Selection of Remedy

a. Based on the results of the corrective measures assessment and public meeting, the owner/operator will

select a remedial action.

b. Remedies must:

(1) Be protective of human health and the environment;

(2) Control source(s) of contaminant releases so as to reduce or eliminate (to the maximum extent practicable), further releases of contaminants that pose a threat to human health or the environment;

(3) Comply with the site performance standards at the points of compliance (to the extent feasible); and

(4) Comply with standards for the management of wastes.

c. The Department may determine that remediation of a contaminant release is not necessary if the permittee can demonstrate to the satisfaction of the Department (or the Department certifies that it is satisfied) that the ground water is not currently or reasonably expected to be a source of drinking water, will not migrate so as to threaten a source of drinking water or will not cause violation of surface water quality standards, (i.e. does not represent a significant threat to human health or the environment).

8. Implementation of Corrective Action

a. Based on the schedule established under Section 5.G.6.b. for initiation ~~and remediation~~ of remedial activities, the owner or operator must:

(1) Implement the corrective action remedy;

(2) Take any interim measures necessary to ensure protection of human health and the environment (such as replacement of contaminated or imminently threatened water supplies); and

(3) Perform ground water and/or surface water monitoring to demonstrate the effectiveness of the remedy including whether or not compliance is achieved with the performance standards.

b. If the owner or operator determines, based on information obtained after implementation of the remedy has begun or other information that compliance with remediation objectives (including achievement of performance standards) cannot be practically achieved with the remedy selected, the owner or operator must notify the Department and request authorization to proceed with another feasible method consistent with the overall objective of the remedy.

c. If the permittee determines that compliance with remedial action objectives (Section 5.G.7) cannot be practically achieved, the permittee must notify the Department and implement alternate methods to control exposure of humans or the environment to residual contamination and implement alternative control measures.

d. Remedies selected shall be considered complete when:

(1) All actions required to implement the remedy have been achieved; and

(2) The ground water protection standards or alternate requirements agreed upon have been achieved for a

period of three years or alternate period approved by the Department.

e. Upon completion of the remedy, the owner or operator must notify the Department that a certification of the remedy has been completed in compliance with the requirement and placed in the operating records. This certification must be signed by a Professional Geologist registered in Delaware.

f. Upon completion of the remedy, the owner or operator will continue ground water monitoring as required by provisions of Section 5.G.3. and approved by the Department.

H. CAPPING SYSTEM

1. Requirement for a capping system

a. Upon closure of the landfill or landfill cell the permittee shall install a capping system that will control the emission of gas, promote the establishment of vegetative cover, and minimize infiltration and percolation of water into, and prevent erosion of, the waste throughout the post-closure care period.

b. The capping system shall be in place 180 days following final waste disposal activity unless the Department approves a longer period of time.

c. The capping system shall extend beyond the edge of the lined area.

d. The proposed design of the capping system must be approved by the Department prior to installation.

2. Composition of the capping system

The capping system shall consist of at least the following components:

a. A final grading layer on the waste, consisting of at least ~~six~~ twelve inches of soil, to attain the final slope and provide a stable base for subsequent system components. Daily and intermediate cover may be used for this purpose.

b. A low permeability layer to minimize infiltration, that has a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present. This infiltration control layer must consist of at least the following:

(1) A ~~20~~ 30 mil synthetic geomembrane underlain by a geotextile, or

(2) 24 inches of fine-textured soil with a hydraulic conductivity no greater than 1×10^{-7} cm/sec.

If the landfill has a synthetic liner system, it must have a synthetic infiltration control layer. Alternative materials that achieve an equivalent performance may be used for the infiltration control layer with prior written approval of the Department.

c. A final cover to provide plant roofing and prevent erosion consisting of:

(1) Eighteen (18) inches of soil to provide rooting

depth and moisture for plant growth; and

(2) Six (6) inches of topsoil or other material approved by the Department to support the proposed vegetation; or

(3) A suitable layer of alternative material or combination thereof to assure adequate rooting and moisture retention to support the proposed vegetation.

The permittee shall propose a suitable vegetation dependent upon the quality and characteristics of the topsoil and compatible with the intended final use of the facility. Maintenance schedules and application rates for fertilizer and mulch shall also be submitted for approval.

3. Final slopes

a. The grades of the final slope shall be constructed in accordance with the following minimum standards:

(1) The final grade of the top slope, after allowing for settlement and subsidence, shall be designed to promote run-off;

(2) The final grades of the side slopes shall be, at a maximum, three horizontal to one vertical (3:1).

b. The top and side slopes shall be maintained to prevent erosion of the capping system and to insure complete vegetation cover.

I. LANDFILL OPERATION AND MAINTENANCE STANDARDS

1. General

a. Sanitary landfills shall be operated so as to create an aesthetically desirable environment and to prevent degradation of land, air, surface water, or ground water.

b. Sanitary landfills shall be maintained and operated to conform with the approved Plan of Operation.

2. Details of operation and maintenance

a. Spreading and compacting

The working face shall be confined to the smallest practical area, as is consistent with the proper operation of trucks and equipment.

The waste shall be spread in layers and compacted by repeated passes of the compacting equipment to obtain the degree of compaction specified in the Solid Waste permit.

b. Lift depth

The lift depth shall not exceed the limit specified in the Solid Waste permit.

c. Cover

(1) Daily cover

A layer of suitable cover material shall be placed over all solid waste by the end of each working day. This layer shall be of such depth that when compacted it produces a cover

layer at least six inches in depth.

(2) Intermediate cover

Any area that receives daily cover and is not expected to receive either additional solid waste or a capping system within six months shall receive intermediate cover consisting of at least six inches of suitable compacted cover material (in addition to the daily cover). Intermediate cover may be required more frequently if deemed necessary by the Department.

(3) Cover material

The soil used as daily and intermediate cover material shall be of such character that it can be compacted to minimize percolation of water through the cover, does not crack excessively when dry, and is free of putrescible materials and large objects.

(4) Alternate cover materials

The Department may approve the use of other materials as daily and intermediate cover if they can be shown to be at least as effective as the required depths of compacted soil at preventing migration of the waste and controlling flies, rodents, and fires.

d. Control of nuisances and hazards

(1) Odor

The operation of the landfill shall not result in odors associated with solid waste being detected off site.

(2) Litter

The scattering of refuse and wind-blown litter shall be controlled by the use of portable fences, natural barriers, or other suitable methods. No refuse or litter shall be allowed to migrate off site.

(3) Vectors, dust, fires

The operation of the landfill shall be conducted in a manner which eliminates to the extent possible insect and rodent breeding, dust problems, and fires.

e. Bulky waste

Adequate provision shall be made for the handling and compaction of bulky wastes when such wastes are not excluded from the site. Tires in quantities greater than ten per truckload shall be sliced or shredded before being landfilled.

f. Special solid wastes

The permittee may make provision for the limited disposal of specified special solid wastes. Disposal of these wastes shall be conducted pursuant to a plan submitted to and approved by the Department.

g. Access

Access roads to the point of waste discharge shall be designed, constructed, and maintained so that traffic will flow smoothly and will not be interrupted by inclement weather.

Access to the site shall be limited to those times when an attendant is on duty and to those persons authorized to use the site for the disposal of solid waste. This section shall not be construed to limit right of entry by the Secretary or his duly authorized designee pursuant to 7 Del. Code, Section 6024.

Access to the site by unauthorized persons shall be prevented by the use of barriers, fences and gates, or other suitable means.

h. Salvaging

Salvage operations shall be so organized that they will not interfere with the proper disposal of any solid waste. No salvage operation shall be allowed which creates unsightliness, nuisances, health hazards, or potential safety hazards.

i. Personnel

Sufficient numbers and types of personnel shall be available at the site to insure capability for operation in accordance with these regulations.

j. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the landfill in accordance with the provisions of these regulations and the plan of operation. Substitute equipment shall be obtained when maintenance or breakdown renders normal operating equipment inoperative for more than 24 hours. All refuse moving equipment shall be cleaned routinely and maintained according to the manufacturer's recommendations.

k. Employee health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

The owner or operator of the landfill shall provide suitable shelter, sanitary facilities, and safe drinking water for personnel at the site.

A reliable telephone or radio communication system shall be provided for site personnel.

First aid equipment shall be available at the site.

l. Procedures for excluding the receipt of hazardous

waste

(a) Owners or operators of all sanitary landfill cells must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes and polychlorinated biphenyls (PCB) wastes. This program must include, at a minimum:

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or PCB wastes;

(2) Records of any inspections;

(3) Training of facility personnel to recognize regulated hazardous waste and PCB wastes; and

(4) Notification of the Department ~~under Subtitle C of RCRA~~ if a regulated hazardous waste or PCB waste is discovered at the facility.

(b) For purposes of this section, regulated hazardous waste means a solid waste that is a hazardous waste, as defined in 40 CFR 261.3 that is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) or was not generated by a conditionally exempt small quantity generator.

3. Recordkeeping

The following information must be recorded, as it becomes available, and retained by the owner or operator of any new or existing sanitary landfill until the end of the post-closure care period of the landfill:

a. Records demonstrating that liners, leachate control systems, gas control systems, capping systems, and all monitoring systems are constructed or installed in accordance with the design criteria required in Section 5, Subsections C, D, E, F, G, and H.

b. Monitoring, testing, or analytical data where required by Section 5, Subsections D, E, F, G, and H.

c. Volume and/or weight of wastes received quarterly.

d. Types of waste received quarterly (industrial waste, asbestos-containing waste, and other wastes which require Department approval prior to being landfilled).

e. Location of any monofilled waste.

f. Any additional records specified by the Department.

4. Reporting

The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall describe and summarize all solid waste disposal, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

a. The volume or tonnage of solid waste landfilled at the facility;

b. The estimated remaining capacity of the facility, in

both tonnage and years;

c. The volumes (or tonnages) and types of specified special solid wastes landfilled at the facility;

d. Leachate quantity and quality data as required in Section 5., ~~Subsection D.4~~, and specified in the Solid Waste permit;

e. Gas monitoring data as required in Section 5., ~~Subsection E.3~~, and specified in the Solid Waste permit;

f. An updated estimate of the cost of closure and post-closure care of the facility, as required in Section 5., ~~Subsection J.3.d~~;

g. Any intentional or accidental deviations from the approved Plan of Operation, and any unusual situations encountered during the year;

h. All construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations.

The permittee must also submit any additional reports specified in the Solid Waste permit.

5. Prohibitions

a. The owner or operator of a sanitary landfill shall not knowingly accept for disposal any hazardous waste. See Section 5.I.2.1.

b. Open burning of any solid waste is prohibited within the active portion of the sanitary landfill.

c. Sanitary landfills are prohibited from accepting bulk or non-containerized liquid waste unless the waste is a household waste other than septic waste.

d. Scavenging is prohibited on any landfill site.

J. CLOSURE

1. General

The owner or operator of a sanitary landfill must close the completed landfill or landfill cell in a manner that:

a. Minimizes the need for further maintenance, and

b. Minimizes the post-closure escape of solid waste constituents, leachate, and landfill gases to the surface water, ground water, or atmosphere.

2. Required submittals; notification

a. An owner or operator of a new sanitary landfill must submit a conceptual closure plan for the facility at the time of initial ~~(i.e., construction)~~ permit application.

b. At least 180 days prior to the projected date when wastes will no longer be accepted at the landfill or cell, the landfill owner or operator shall submit to the Department written notification of intent to close the facility or cell, a closure plan, and a closure schedule.

~~e. An owner or operator of a sanitary landfill must receive a closure permit before commencing closure of a completed landfill or cell. At the time of notification of intent to close, the owner or operator must also submit a closure schedule and a closure plan or revised closure plan.~~

~~d.~~ If the Department determines that the closure plan and closure schedule are sufficient to ensure closure in accordance with the performance standards described in Section 5., ~~Subsection J.1, a and b~~, it will ~~issue a closure permit~~ modify the solid waste permit to allow closure to take place.

d. The owner or operator shall not commence closure activities before receiving the necessary modifications to the solid waste permit.

e. A copy of the closure plan must be maintained at the facility or at some other location designated by the owner or operator through the post-closure care period of the facility.

3. Closure plan contents

Closure plans for sanitary landfills must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close a landfill and each individual cell thereof in accordance with the closure performance standard in Section 5., ~~Subsection J.1, a and b~~.

b. A description of the capping system required under Section 5.H. This shall include a description of the system design, the type of material to be used, and a discussion of how the capping system will achieve the objectives of Section 5., ~~Subsection J.1, a and b~~, above.

c. A description of other activities necessary to satisfy the closure performance standard including, but not limited to, the removal or disposal of all non-landfilled wastes located on site (e.g., wastes from landfill run-off collection ponds).

d. An estimate of the cost of closing the facility or cell and of the cost of post-closure monitoring and maintenance throughout the post-closure care period. These estimates shall be updated yearly and submitted to the Department as part of the annual report described in Section 5.; ~~Subsection I.4~~.

e. A plan for post-closure care of the facility sufficient to ensure that the standards described in ~~Subsection Section 5.J.1~~ will be met. This will include:

(1) A description of the monitoring and maintenance activities required and the frequency at which these activities will be performed.

(2) The name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

(3) A description of the planned uses of the property during the post-closure period.

f. A plan for control and/or recovery of landfill gases.

g. A closure construction quality assurance plan.

4. Minimum closure requirements

a. The permittee shall notify the Department at least 30 working days prior to commencing closure activities. The Department shall inspect the site, and the permittee shall perform any corrective work which the Department deems

necessary.

b. Finished portions of the landfill shall receive a capping system which meets the requirements of Section 5.H.

c. Finished portions of the landfill shall be planted with appropriate vegetation to promote stabilization of the cover.

d. The closure shall be carried out in accordance with the approved closure plan and according to the approved closure schedule. Any significant deviations from the plan or the schedule must be approved by the Department prior to being initiated.

e. Upon closure of an entire landfill, all non-landfilled wastes located on site shall be removed or disposed of in a manner approved by the Department.

f. After closure of the facility, the site shall be returned to an acceptable appearance consistent with the surrounding area and the intended use of the land.

g. When closure is completed, the owner or operator shall submit a final report for the Department's approval. The final report shall certify that the closure of the landfill or cell was completed in accordance with the closure plan to include the construction quality assurance plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The landfill or cell will not be considered closed until the Department has provided its written notification that the closure construction and the final report meet the requirements of the solid waste permit and these regulations. must submit to the Department certification by a professional engineer registered in Delaware that the landfill or cell has been closed in accordance with the specifications in the approved closure plan. The Department will inspect the cell or facility and will either:

(1) Issue a letter of approval to certify that the site has been closed in accordance with the ~~closure solid waste permit~~, the closure plan, and all applicable regulations; or

(2) Determine that the site is not in compliance with the ~~closure solid waste permit~~, the closure plan, or applicable regulations; identify the areas of deficiency; and require the owner or operator to take the necessary actions to bring the site into compliance.

h. Facilities entering the post-closure period will be issued a post-closure permit based upon the approved post-closure plan, monitoring requirements, gas and leachate control, maintenance, and corrective actions (if required).

K. POST-CLOSURE CARE

1. General

a. The owner or operator of a sanitary landfill must continue post-closure care for 30 years after the completion of closure.

b. At any time during the post-closure care period the

Department may remove one or more of the post-closure care requirements described in Section 5.K.2 ~~Subsection K.2~~ below if it determines that the requirement(s) is/are no longer necessary for the protection of human health and the environment.

c. At any time after the first five years of the post-closure care period, the Department may reduce the length of the post-closure care period or terminate post-closure care if it determines that such care is no longer necessary.

d. Prior to the time that the post-closure care period is due to expire, the Department may extend the post-closure care period if it determines that the extended period is necessary to protect human health and the environment.

e. If at any time during the post-closure care period there is evidence of a contaminant release from the landfill that presents a significant threat to human health or the environment, action to mitigate the threat will be required of the owner or operator of the facility.

2. Minimum post-closure care requirements

Post-closure care shall be in accordance with the post-closure permit and must consist of at least the following:

a. Maintaining the integrity and effectiveness of the capping system, including making repairs as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the cap.

b. Reseeding the cover if insufficient vegetation exists to stabilize the surface.

c. Maintaining and operating the leachate collection and treatment systems until the Department determines that the leachate no longer poses a threat to human health or the environment. The permittee shall submit leachate quantity and quality data to the Department for those parameters and at such frequencies as specified by the Department.

d. Maintaining and operating the ground water monitoring system in accordance with Section 5.G. The permittee shall submit ground water quality data as specified by the Department.

e. Maintaining and monitoring the gas control and/or recovery system in accordance with Section 5.E and the closure plan. The permittee shall submit gas data as specified by the Department.

f. Maintaining and monitoring the surface water management system in accordance with Section 5.F.

3. Prohibitions

a. Standing water shall not be allowed on the closed landfill.

b. Open burning shall not be allowed on the closed landfill.

c. Unless approved in advance by the Department, no activity shall be conducted on a closed landfill.

d. Access to the closed landfill shall be limited to those

persons who are engaging in activities which are compatible with the intended post-closure use of the site.

4. Post-closure land use

The owner or operator shall implement the post-closure land use plan approved by the Department.

5. Notice in deed to property

a. The owner of the property on which a sanitary landfill is located must record a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

1. The land has been used as a solid waste disposal site, and

2. The use of the land is restricted under this regulation.

b. Included with the notation shall be a map or description clearly specifying the area that was used for disposal.

SECTION 6: INDUSTRIAL LANDFILLS

(NOTE: This section applies to those landfills that dispose of only industrial and/or dry waste.)

A. SITING

1. Industrial landfill facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. All industrial landfill facilities shall be constructed to at least minimum design requirements as contained in Section 6., ~~Subsection B.~~ More stringent designs will be required where deemed necessary by the Department for the protection of ground water resources.

3. No new cell of an industrial landfill shall be located in an area such that solid waste would at any time be deposited:

a. Within the 100 year flood plain.

~~b. Within 200 feet of any state or federal wetland.~~ In an area that may cause or contribute to the degradation of any state or federally regulated wetlands unless the owner or operator can demonstrate to the satisfaction of the appropriate wetlands regulatory agency that:

(1) there is no impact to any regulated wetlands on the site, or

(2) any impact will be mitigated as required.

~~c. Within 200 feet of any perennial stream.~~

~~d.~~ Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the Department.

~~e.~~ So as to be in conflict with any locally adopted land use plan or zoning requirement.

~~f.~~ Within the wellhead protection area of a public water supply well or well field.

f. In areas where valuable aquifers would be threatened

by contaminant releases, unless viable alternatives have been dismissed and stringent design measures have been incorporated to minimize the possibility and magnitude of releases.

g. Within 200 feet of the facility boundary unless otherwise approved by the Department.

h. In an area that is environmentally unique or valuable.

B. DESIGN

1. General

Industrial landfills shall be planned and designed by professional engineers registered in Delaware. Planning and design of these facilities shall be consistent with this regulation and based on empirically derived data and state of the art technology.

2. Minimum design requirements

All industrial landfills shall be designed to include at least the following:

a. A setback area, including a buffer zone with appropriate screening, if deemed necessary by the Department.

b. A liner that meets the requirements of Section 6.C.

c. ~~A leachate collection and disposal~~ Leachate collection, treatment and disposal, and monitoring systems that meets the requirements of Section 6.D.

d. A gas control system, if deemed necessary by the Department. This system shall meet the requirements of Section 6.E.

e. A surface water management system that meets the requirements of Section 6.F.

f. A ground water monitoring system that meets the requirements of Section 6.G.

g. A capping system that meets the requirements of Section 6.H.

C. LINER

1. General provisions

a. An impermeable liner shall be provided at all industrial landfills to restrict the migration of leachate from the landfill and to prevent contamination of the underlying ground water.

b. The Department reserves the right to set a more stringent liner requirement when it determines that a composite single ~~single~~ liner is not sufficient to protect human health and the environment.

c. The bottom of the liner (of the secondary liner, in a double liner system) shall be at least five (5) feet above the seasonal high water table, as measured in the uppermost aquifer beneath the landfill. This 5-foot requirement may be reduced by the Department if a more stringent liner system is used.

d. All liners shall be prepared, constructed, and installed

in accordance with a quality assurance plan included in the engineering report [(Section 4.B.1.a (4)] and approved by the Department. For synthetic liners, the plan shall incorporate the manufacturer's recommendations. ~~Written verification of liner integrity shall be submitted to the Department before commencement of waste disposal operations.~~

e. Qualifications of the construction quality assurance staff (COA) and the geosynthetics installer, including master seamers, on-site supervisor, and construction quality control (CQC) personnel, shall be submitted to the Department for review prior to their performing these duties on site.

f. All conformance and destructive samples taken as part of the construction quality assurance plan shall be tested at an independent laboratory which is accredited by the Geosynthetics Institute's Laboratory Accreditation Program (by applicable test method) or other accreditation program acceptable to the Department.

2. Liner characteristics

a. Composite ~~Single synthetic~~ liner

A composite single synthetic ~~single synthetic~~ liner must have, as a minimum:

(1) A primary (upper) liner which meets the following:

(a) ~~Be Is~~ Be Is at least 45 mils thick.

(b) ~~Be Is~~ Be Is constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to physical contact with the leachate to which it is exposed, climatic conditions, the stresses of installation, and the stresses of daily operation.

(c) ~~Be Is~~ Be Is made of synthetic material that meets minimum requirements of ~~the most recent edition of~~ the National Sanitation Foundation's publication, "Standard Number 54-1993, Flexible Membrane Liners" for membrane materials covered by this standard, or of other materials of equal or better performance as approved by the Department.

(d) ~~Be Is~~ Be Is chemically resistant to the waste and leachate managed at the facility. The EPA Test Method 9090 shall be performed using a solid waste leachate (a synthetic leachate mix approved by the Department may be substituted if existing leachate is not available). The specified physical parameters shall be tested before and after liner exposure. Any significant change in test properties shall be considered to be indicative of incompatibility.

(e) ~~Be Is~~ Be Is compounded from first quality virgin materials. No reground or reprocessed materials containing encapsulated scrim shall be used in the manufacturing of the liner.

(f) ~~Be Is~~ Be Is free of pinholes, blisters, holes, and contaminants, which include, but are not limited to, wood, paper, metal and non-dispersed ingredients.

(2) A secondary (lower) liner composed of:

(a) Compacted clay at least two feet thick with a

hydraulic conductivity no greater than 1×10^{-7} cm/sec, or

(b) An equivalent material acceptable to the Department.

b. Natural liner

(1) Use of natural material for liners is restricted to those areas where:

(a) Underlying ground water is not used and is not reasonably expected to be used for water supplies, and

(b) The landfill subbase is subject to compaction and settlement such that a synthetic membrane would not be feasible.

(2) A natural liner must meet the following requirements as a minimum:

(a) It shall consist of compacted clay or equivalent material having a hydraulic conductivity no greater than 1×10^{-7} cm/sec.

(b) The material shall be at least five (5) feet thick, and thicker if necessary to prevent any leachate from migrating through the liner at any time during the active life and through the post-closure care period of the facility.

(c) The material proposed for use shall be tested by ASTM or equivalent methods for the following:

Grain size

Classification

Compaction

Specific gravity

Hydraulic conductivity

Porosity

pH

Cation exchange capacity

Pinhole test (if required)

Mineralogy (if required)

All data shall be submitted to the Department prior to construction.

(d) Testing of the saturated hydraulic conductivity and the effect of leachate on soil hydraulic conductivity shall be performed in accordance with test methods given in the most recent edition of EPA publication SW-846, ASTM test procedures, or other tests approved by the Department.

(e) If on-site soils are to be used as a natural liner, the uppermost five (5) feet of soil shall be excavated and recompacted to ensure homogeneity of the liner, provided, however, that with respect to dredge spoil soils, the excavation and recompaction requirement shall not apply if the applicant can demonstrate that the dredge spoil soils have acceptable characteristics as indicated above.

c. Double liner system

A double liner system shall meet the following requirements:

(1) It shall consist of two single liners separated by a drainage layer containing a leak detection

system.

(2) The primary (top) liner shall be a synthetic liner which is at least 30 mils thick and which meets the requirements of Section 6.C.2.a.(1)(b) - (f),(2) - (6).

(3) The secondary (bottom) liner may be either synthetic or natural. If synthetic, it must be at least 30 mils thick and must meet the requirements of Section 6.C.2.a (1)(b) - (f),(2)-(6). If natural, it must meet the requirements of Section 6.C.2.b.

(4) The drainage layer separating the two liners shall consist of at least 12 inches of soil having a hydraulic conductivity greater than 1×10^{-2} ~~1×10^{-3}~~ cm/sec based on laboratory and field testing.

Alternate material may be used for the drainage layer with prior written approval of the Department.

(5) The leak detection system shall be capable of detecting and intercepting liquid within the drainage layer and conveying the liquid to a collection sump or monitoring point where the quantity of flow can be measured and the liquid can be sampled. The operator or designer shall calculate the Action Leakage Rate. The proposed Action Leakage Rate and a response plan if the Action Leakage Rate is exceeded shall be submitted to the Department for approval before construction of the liner is permitted. The system shall be designed to operate without clogging through the post-closure care period of the facility.

(6) The upper synthetic liner membrane shall be underlain by either a geosynthetic clay or 2-feet of natural material with a permeability no greater than 10^{-7} cm/sec.

Alternate liner designs may be used with prior written approval of the Department.

3. Liner construction

a. Construction/installation of ~~single synthetic composite~~ single synthetic composite liner

(1) At least 15 working days prior to installation of the liner, the owner or operator shall notify the Department of the installation date.

(2) The liner shall be installed upon a subbase which meets the following requirements:

(a) It shall be capable of supporting the loads and withstanding the stresses that will be imposed on it through the active life and post-closure care period of the facility and of resisting the pressure gradient above and below the liner caused by settlement, compression, or uplift.

(b) It shall have a smooth surface that is free of all rocks, stones, roots, sharp objects, or debris of any kind.

(c) It shall be certified in writing by the liner installer as an acceptable subbase for the liner. Written certification of acceptability shall be submitted to the Department prior to installation of the liner. However, submittal of written acceptance may proceed incrementally

according to installation schedule.

(3) The minimum post-loading slopes of the liner shall be two (2) percent on controlling slopes and one-half (0.5) percent on remaining slopes.

(4) The landfill shall be designed to minimize penetrations through the liner. If a penetration is essential, a liquid-tight seal must be accomplished between the penetrating structure and the synthetic membrane. Compaction of areas adjacent to the penetrating structure shall be to the same density as the surrounding soil to minimize differential settlement. Sharp edges on the penetrating structure must not come in contact with the synthetic material.

(5) Bridging or stressed conditions in the liner shall be avoided with proper slack allowances for shrinkage of the liner during installation and before the placement of a protective soil layer.

(6) Synthetic liners shall have factory and field seams that equal or exceed the strength requirements defined by ~~the most recent edition of~~ the National Sanitation Foundation's "Standard Number 54-1993" for that liner material. All seams must be visually inspected and tested along their entire length for seam continuity using suitable nondestructive techniques. Seams shall also be tested for strength, at a frequency specified in the quality assurance plan. In addition, field seams shall meet the following requirements:

(a) Field seaming shall provide a dry sealing surface.

(b) Seaming shall not be done when wind conditions prevail.

(c) Seams shall be made and bonded in accordance with the supplier's recommended procedures.

(7) Proper equipment shall be used in placing drainage material over the synthetic liner to avoid stress.

(8) The synthetic membrane shall be protected from the waste by at least two (2) feet of drainage material incorporating the leachate collection system.

(9) The synthetic membrane must be underlain by a secondary liner as described in Section 6.C.2.a(2).

b. Construction of natural liner

(1) All lenses, cracks, channels, root holes, or other structural nonuniformities that can increase the saturated hydraulic conductivity above 1×10^{-7} cm/sec shall be removed.

(2) Natural liners shall be constructed in lifts not exceeding six (6) inches after compaction to maximize the effectiveness of the compaction throughout the lift thickness. Each lift shall be properly interfaced by scarification between lifts to ensure the bonding.

(3) Clods shall be broken up and the material shall be homogenized before compaction of each lift using mixing devices such as pug mills or rotary tillers.

(4) The maximum slope of the sidewalls shall not be so great as to preclude effective compaction.

c. Construction/installation of double liner

(1) The secondary liner shall be constructed in accordance with Section 6.C.3.b (if it is a natural liner) or Section 6.C.3.a.(1)-(7) (if it is synthetic).

(2) The primary liner shall be constructed in accordance with Section 6.C.3.a.(1) and (3)-(8).

D. LEACHATE COLLECTION, TREATMENT, DISPOSAL, AND MONITORING

1. General provisions

a. All industrial landfills shall be designed and constructed to include a leachate collection system, a leachate treatment and disposal system, and a leachate monitoring system.

b. The leachate systems shall be constructed, installed, and maintained in accordance with the Department-approved quality assurance plan.

c. The owner or operator shall keep and maintain documentation for the quality assurance procedures through the post-closure care period of the facility.

2. Leachate collection

a. Minimum design specifications

(1) The leachate collection system shall be designed to operate without clogging through the post-closure care period of the facility.

(2) All elements of the system (pipes, sumps, pumps, etc.) shall be sized according to water balance calculations and shall be capable of handling peak flows.

(3) Collection pipes shall be sized and spaced to efficiently remove leachate from the bottom of the waste and the side walls of the cell. The capacity of the mains shall be at least equal to the sum of the capacities of the laterals.

(4) The pipes shall be designed to withstand the weight, stresses, and disturbances from the overlying wastes, waste cover materials, equipment operation, and vehicular traffic.

(5) The collection pipes shall be designed to drain by gravity to a sump system. Sumps must function automatically and shall contain a conveyance system for the removal of leachate.

(6) Manholes or cleanout risers shall be located along the perimeter of the leachate collection system. The number and spacing of the manholes shall be sufficient to insure proper maintenance of the system by water jet flushing or an equivalent method.

(7) Innovative leachate collection systems incorporating alternative designs may be used, after approval by the Department, if they are shown to be equivalent to or more effective than the specified design.

(8) The leachate collection system must be designed to prevent the leachate head on the liner from exceeding a depth of 12 inches.

b. Construction standards

(1) The leachate collection system shall be installed immediately above an impermeable liner and at the bottom of a drainage layer. The drainage layer shall be at least 12 inches thick with a hydraulic conductivity not less than 1×10^{-2} ~~4×10^{-3}~~ cm/sec and a minimum post-loading controlling slope of two (2) percent.

Alternate materials may be used for the drainage layer, with prior written approval of the Department.

(2) The following tests shall be performed on the soil proposed for use in the drainage layer, and all data shall be submitted to the Department prior to construction of the drainage layer. These tests shall be performed in accordance with current ASTM, AASHTO, or equivalent methods.

Classification

Porosity

Relative density or compaction

Specific gravity

Hydraulic conductivity

(3) The leachate collection system and manholes or cleanout risers shall be constructed of materials that can withstand the chemical attack that results from leachates.

c. Operational procedures

(1) The leachate collection system shall operate automatically whenever leachate is present in the sump to remove accumulated leachate.

(2) Inspections shall be conducted weekly to verify proper functioning of the leachate collection system and to detect the presence of leachate in the removal sump. The owner or operator shall keep records on the system to provide sufficient information that the leachate collection system is functional and operating properly. The amount of leachate collected from each cell shall be recorded on a weekly basis.

(3) Collection lines shall be cleaned according to a Department-approved scheduled maintenance program and more frequently if required.

3. Leachate treatment and disposal

a. The leachate treatment and disposal system shall be designed in accordance with one of the following options:

(1) Complete treatment on-site with or without direct discharge to surface water

(2) Pretreatment on-site with discharge to an off-site treatment works for final treatment

(3) Storage on-site with discharge to an off-site treatment works for complete treatment

(4) Direct discharge to an off-site treatment works

(5) Pretreatment on site with discharge on site.

The permittee must maintain all necessary permits and approvals for leachate storage and discharge activities.

b. Leachate storage prior to treatment shall be within tanks constructed and installed in accordance with the following standards:

(1) The tank shall be placed above ground.

(2) The storage tank shall be designed in accordance with American Petroleum Institute (API), Underwriters Laboratory (UL), or an equivalent standard appropriate to the material being used, and shall be constructed of or lined with material which has a demonstrated chemical resistance to the leachate.

(3) The storage tank area shall have a liner capable of preventing any leachate which may escape from the tank from coming into contact with the underlying soil.

(4) The storage tank area shall be surrounded by a berm, and the bermed area shall have a capacity at least ten percent greater than the capacity of the tank.

(5) All storage tanks shall be equipped with a venting system.

(6) All storage tanks shall be equipped with a high liquid level alarm or warning device. The alarm system shall be wired to the location where assistance will be available to respond to the emergency.

c. On-site complete treatment or pretreatment facilities shall be designed and constructed in accordance with the following:

(1) On-site treatment units shall be designed based on the results of a treatability study, the results of the operations of a pilot plant, or written information documenting the performance of an equivalent leachate treatment system.

(2) On-site treatment units shall be designed and constructed by staging of the units to allow for on-line modification of the treatment system to account for variability of the leachate quality and quantity.

d. For all leachate discharges planned for publicly owned treatment works (POTW), the owner or operator of the landfill shall notify the receiving POTW of intent to discharge leachate into the collection system and shall provide the POTW with analysis of the leachate as required by the POTW.

e. All leachate treatment and disposal systems shall be designed and constructed to control odors.

f. Residuals from the on-site treatment and disposal systems shall be sampled and analyzed for hazardous waste characteristics in accordance with Delaware's Regulations Governing Hazardous Waste.

g. Recirculation of leachate will not be allowed at industrial landfills may be allowed, subject to approval by the Department, to accelerate decomposition of the waste. Recirculation will be allowed only in areas constructed with a composite liner system or a double liner system. The method of recirculation must be approved by the Department in advance and annually so long as the recirculation continues. Records of leachate collected and recirculated

must be kept and reported and any resultant problems reported to the Department and remedied as soon as practicable and included in the annual report.

4. Leachate monitoring

a. The leachate monitoring system shall be capable of measuring the quantity of the flow and sampling the leachate from each landfill cell. The volume of leachate collected from each cell shall be determined at least monthly and reported quarterly. The leachate monitoring system shall be capable of measuring the flow and sampling the leachate.

b. Leachate monitoring of the influent and effluent of the treatment and disposal system shall be performed according to a Department-approved plan which includes quality control and quality assurance procedures.

c. Samples of leachate effluent and influent shall be analyzed as specified by the Department. The parameters to be analyzed will depend on the characteristics of the waste.

d. Leachate monitoring results shall be submitted to the Department as required.

e. For a double liner system, if the Action Leakage Rate of the leak detection system is exceeded, the owner or operator of the landfill shall notify the Department within five (5) working days. The owner or operator shall also sample and analyze the liquid in the leak detection system for parameters required by the Department, if liquid is discovered within the leak detection system, the owner or operator of the landfill shall notify the Department within five (5) working days of the discovery.

E. GAS CONTROL

1. General provisions

a. Gas control systems shall be installed at industrial landfills where the materials landfilled would be expected to produce gas through biological activity or reaction.

b. The gas control system shall be designed and constructed to:

(1) Evacuate gas from within the waste to prevent the accumulation of gas on-site or off-site,

(2) Prevent and control damage to vegetation,

(3) Prevent odors from the facility being detectable at the facility property line in sufficient quantities to cause or create a condition of air pollution. Control malodorous gaseous emissions to the extent that there is no perceivable landfill odor at the property boundary

c. The concentration of landfill gas in facility structures (except gas recovery system components) and at the facility boundary shall not exceed 25% of the lower explosive limit.

2. Design and construction standards

a. The owner or operator of an industrial landfill shall consider both active and passive gas control systems and shall provide an evaluation of the proposed system for Department approval.

b. The owner or operator shall perform an analysis to establish the required spacing of gas control vents to provide

an effective system.

c. The gas control system shall be designed to evacuate gas from all levels within the waste.

d. The system shall not interfere with or cause failure of the liner or leachate systems.

3. Monitoring

a. A sufficient number of gas monitoring wells shall be installed to evaluate gas production rates in the landfill.

b. The owner or operator shall sample the gas monitoring wells and provide analytical results as required by conditions specified in the facility permit.

c. At landfills utilizing natural liners, gas monitoring probes must be installed in the soil outside the lined area to evaluate any lateral migration of landfill gas.

d. Emissions from active and passive gas control systems may require a permit from the Air Resources Section of the Division of Air and Waste Management.

F. SURFACE WATER MANAGEMENT

1. General provision

An owner or operator of an industrial landfill shall design, construct, and maintain a surface water management system to:

a. Prevent erosion of the waste and cover,

b. Prevent the collection of standing water, and

c. Minimize surface water run-off onto and into the waste.

2. Design requirements

a. The surface water management system shall be designed to control, at a minimum, the run-off from the discharge of a 2-hour, 10-year storm.

b. The system shall be designed to include:

Detention basins to provide temporary storage of the expected run-off from the design storm with sufficient reserve capacity to contain accumulated precipitation and sediment prior to discharge.

(2) Diversion structures designed to prevent run-off generated within the active cells from moving off site of the lined areas.

3. Channeling of run-off

a. Run-off from the active cell(s) must be channeled to the leachate treatment and disposal system.

b. Run-off from closed cells will be directed to the detention basins or other approved sedimentation control systems.

4. Discharge

Discharge from the detention basins shall be in compliance with all applicable federal and state regulations.

G. GROUND WATER MONITORING AND CORRECTIVE ACTION

1. General provision

Owners or operators of all industrial landfill facilities shall maintain and operate a ground water monitoring program to evaluate facility impact upon ground water quality.

2. Design and construction of monitoring system

a. The ground water monitoring system shall be designed by a Professional Geologist registered in Delaware.

b. The system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to define the ground water flow system and shall be developed in accordance with Departmental requirements to yield ground water samples that are representative of the aquifer water quality.

c. The number, spacing, location, depth, and screened interval of the monitoring wells shall be approved by the Department prior to installation.

d. All monitoring wells shall be constructed in accordance with the Regulations Governing the Construction of Water Wells and any subsequently approved guidelines. Variation from the existing guidelines must be approved by the Department in writing prior to construction.

3. Ground water sampling

a. The permittee shall submit a ground water sampling plan to the Department at the time of permit application. The sampling plan must include procedures and techniques for:

(1) Sample collection, preservation, and transport:

(a) Samples will be collected at low flow rates (<1 l/min) to minimize turbidity of the samples.

(b) Samples will be field filtered only when turbidity exceeds 10 NTU. Repeated sampling of any well where turbidity exceeds 10 NTU is not permitted without Department approval. Approval will only be granted in cases where turbidity cannot be controlled by careful well construction, development and sampling.

(2) Analytical procedures and quality assurance, and

(3) Chain of custody control.

b. Sample constituents

(1) The parameters to be analyzed shall depend upon the characteristics of the waste and shall be specified by the Department.

(2) Test methods used to determine the parameters of Section 6.G.3.b(1) shall be those described in the most current legal edition of EPA Publication Number SW-846, "Test Methods for Evaluating Solid Waste - Physical/Chemical Methods." If SW-846 does not contain test methods for a required parameter, that parameter shall be tested according to methods described in the most recent edition of the EPA publication "Methods of Chemical Analysis for Water and Wastes" or of Standard Methods for the Examination of Water and Wastewater.

c. The Department may observe, and may request

advance notice of, the ground water sampling conducted by the permittee or his/her designee and may request split samples for analysis.

d. If the Department determines that the ground water monitoring data indicate that ground water contamination has occurred, a remedial action program may be required.

4. Reporting

a. All ground water, leachate, and gas monitoring shall be conducted on a schedule to be determined by the Department and the results submitted within 60 45 days of sampling.

b. An annual hydrogeologic report will be prepared which shall include:

(1) Tabulation and graphical presentation of all leachate flow and quality and ground water quality data from current and preceding years,

(2) Graphical presentation of leachate flow and quality and ground water quality data from current and preceding years as required in the operating permit,

(3) Maps showing ground water flow patterns at each time of ground water sampling,

(4) A discussion of the ground water monitoring results, and

(5) Recommendations for future monitoring.

5. Assessment of Corrective Measures

a. An assessment (re-assessment) of corrective measures by the owner or operator is required (within 90 days) of confirmation of a contaminant release or an exceedance of a performance standard. The owner or operator must perform this assessment which must include:

(1) Identification of the nature and extent of the release (which may require construction and sampling of additional wells, analysis for additional constituents including those required for leachate, geophysical surveys and/or other measures);

(2) Re-assessment of contaminant fate and potential contaminant receptors (wells and/or receiving streams);

(3) Evaluation of feasible corrective measures to:

(a) Prevent exposure to potentially harmful levels of contaminants (exceeding performance standards);

(b) Reduce, minimize or prevent further contaminant releases; and

(c) Reduce, minimize or prevent the offsite migration of contaminants.

(4) The implementability (and time to implement) and costs of the feasible alternatives; and

(5) Recommendations for remedial action.

b. The owner or operator must present the results of the corrective measures assessment, including a proposed remedy, (with a schedule for initiation and completion) for public comment at a public meeting.

6. Selection of Remedy

a. Based on the results of the corrective measures assessment and public meeting, the owner/operator will

select a remedial action.

b. Remedies must:

(1) Be protective of human health and the environment;

(2) Control source(s) of contaminant releases so as to reduce or eliminate (to the maximum extent practicable) further releases of contaminants that pose a threat to human health or the environment;

(3) Comply with the site performance standards at the points of compliance (to the extent feasible); and

(4) Comply with standards for the management of wastes.

c. The Department may determine that remediation of a contaminant release is not necessary if the permittee can demonstrate to the satisfaction of the Department (or the Department certifies that it is satisfied) that the ground water is not currently or reasonably expected to be a source of drinking water, will not migrate so as to threaten a source of drinking water or will not cause violation of surface water quality standards (i.e. does not represent a significant threat to human health or the environment).

7. Implementation of Corrective Action

a. Based on the schedule established under Section 6.G.5.b. for initiation and remediation of remedial activities, the owner or operator must:

(1) Implement the corrective action remedy;

(2) Take any interim measures necessary to ensure protection of human health and the environment (such as replacement of contaminated or imminently threatened water supplies); and

(3) Perform ground water and/or surface water monitoring to demonstrate the effectiveness of the remedy including whether or not compliance is achieved with the performance standards.

b. If the owner or operator determines, based on information obtained after implementation of the remedy has begun or other information that compliance with remediation objectives (including achievement of performance standards) cannot be practically achieved with the remedy selected, the owner or operator must notify the Department and request authorization to proceed with another feasible method consistent with the overall objective of the remedy.

c. If the permittee determines that compliance with remedial action objectives (Section 6.G.7) cannot be practically achieved, the permittee must notify the Department and implement alternate methods to control exposure of humans or the environment to residual contamination and implement alternative control measures.

d. Remedies selected shall be considered complete when:

(1) All actions required to implement the remedy have been achieved; and

(2) The ground water protection standards or alternate requirements agreed upon have been achieved for a

period of three years or alternate period approved by the Department.

e. Upon completion of the remedy, the owner or operator must notify the Department that a certification of the remedy has been completed in compliance with the requirement and placed in the operating records. This certification must be signed by a Professional Geologist registered in Delaware.

f. Upon completion of the remedy, the owner or operator will continue ground water monitoring as required by provisions of Section 6.G.3. and approved by the Department.

H. CAPPING SYSTEM

1. Requirement for a capping system

a. Upon closure of the landfill or landfill cell the permittee shall install a capping system that will control the emission of gas (if applicable), promote the establishment of vegetative cover, and minimize infiltration and percolation of water into, and prevent erosion of, the waste throughout the post-closure care period.

b. The capping system shall be in place 180 days following final waste disposal activity.

c. The capping system shall extend beyond the edge of the lined area.

2. Composition of the capping system

The capping system shall consist of at least the following components:

a. A final grading layer on the waste, consisting of at least six (6) inches of soil, to attain the final slope and provide a stable base for subsequent system components. Daily and intermediate cover may be used for this purpose.

b. An impermeable layer, consisting of at least:

(1) A ~~20~~ 30 mil geomembrane underlain by a geotextile, or

(2) 24 inches of clay at a hydraulic conductivity of 1×10^{-7} cm/sec or depth of equivalent material having a hydraulic conductivity less than 1×10^{-7} cm/sec, such depth to be determined based on the hydraulic conductivity of 24 inches of clay at a hydraulic conductivity of 1×10^{-7} cm/sec.

Alternative materials may be used for the impermeable layer with prior written approval of the Department.

c. A final cover consisting of:

(1) Eighteen (18) inches of soil to provide rooting depth and moisture for plant growth, and

(2) Six (6) inches of topsoil or other material approved by the Department to support the proposed vegetation; or

(3) A suitable layer of alternative material or combination thereof to assure adequate rooting and moisture retention to support the proposed vegetation.

The permittee shall propose a suitable vegetation dependent upon the quality and characteristics of the topsoil and compatible with the intended final use of the facility. Maintenance schedules and application rates for fertilizer and mulch shall also be submitted for approval.

3. Final slopes

a. The grades of the final slope shall be constructed in accordance with the following minimum standards:

(1) The final grade of the top slope, after allowing for settlement and subsidence, shall be designed to promote run-off;

(2) The final grades of the side slopes shall be, at a maximum, three horizontal to one vertical (3:1).

b. The top and side slopes shall be maintained to prevent erosion of the capping system and to insure complete vegetation cover.

I. LANDFILL OPERATION AND MAINTENANCE STANDARDS

1. General

a. Industrial landfills shall be operated so as to create an aesthetically desirable environment and to preclude degradation of land, air, surface water, or ground water.

b. Industrial landfills shall be maintained and operated to conform with the approved Plan of Operation.

2. Details of operation and maintenance

a. Spreading and compacting

The working face shall be confined to the smallest practical area, as is consistent with the proper operation of trucks and equipment.

The waste shall be spread in layers and compacted by repeated passes of the compacting equipment to obtain the degree of compaction specified in the Solid Waste permit.

b. Cover

Approved cover material shall be applied at a frequency and thickness specified by the Department.

c. Control of nuisances and hazards

Odor

The operation of the landfill shall not result in odors associated with solid waste being detected off site.

Litter

The scattering of refuse and wind-blown litter shall be controlled by the use of portable fences, natural barriers, or other suitable methods. No refuse or litter shall be allowed to migrate off site.

Dust, fires

The landfill shall be operated in a manner which eliminates, to the extent possible, dust problems and fires.

d. Access

Access to the site shall be limited to those persons authorized to use the site for the disposal of solid waste and to those hours when an attendant is on duty. This section shall not be construed to limit right of entry by the Secretary or his duly authorized designee pursuant to 7 Del. Code, Section 6024.

Access to the site by unauthorized persons shall be prevented by the use of barriers, fences and gates, or other suitable means.

e. Salvaging

Salvage operations shall be so organized that they will not interfere with the proper disposal of any solid waste. No salvage operation shall be allowed which creates unsightliness, nuisances, health hazards, or potential safety hazards.

f. Personnel

Sufficient numbers and types of personnel shall be available at the site to insure capability for operation in accordance with these regulations.

g. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the landfill in accordance with the provisions of these regulations and the plan of operation. Waste handling equipment shall be cleaned routinely and maintained in accordance with the manufacturer's recommendations.

h. Employee health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

The owner or operator of the landfill shall provide suitable shelter, sanitary facilities, and safe drinking water for personnel at the site.

A reliable telephone or radio communication system shall be provided for site personnel.

First aid equipment shall be available at the site.

3. Recordkeeping

The following information must be recorded, as it becomes available, and retained by the owner or operator of any new or existing industrial landfill until the end of the post-closure care period of the landfill:

a. Records demonstrating that liners, leachate control systems, cover, capping system, and all monitoring systems are constructed or installed in accordance with the design criteria required in Section 6, Subsections C, D, E, F, G, and H,

b. Monitoring, testing, or analytical data where required by Section 6, Subsections D, E, F, G, and H,

c. Volume and/or weight of wastes received

d. Any additional records specified by the Department.

4. Reporting

The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall describe and summarize all solid waste disposal, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

a. The volume or tonnage of solid waste landfilled at the facility,

b. The estimated remaining capacity of the facility, in both tonnage and years,

c. Leachate quantity and quality data as required in Section 6.D.4, and in the Solid Waste permit,

d. Gas monitoring data as required in Section 6.E.3, and in the Solid Waste permit,

e. An updated estimate of the cost of closure and post-closure care for the facility, as required in Section 6.J.3.d,

f. Any intentional or accidental deviations from the approved Plan of Operation, and any unusual situations encountered during the year,

g. All construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations.

The permittee must also submit any additional reports specified in the Solid Waste permit.

In addition to paper copies of reports, the Department may require all or part of any required report to be submitted on machine-readable media in a format mutually acceptable to the Department and the permittee. With approval of the Department, reports submitted on machine-readable media may be substituted for paper reports.

5. Prohibitions

a. Open burning of any solid waste is prohibited within the active portion of the landfill.

b. Scavenging is prohibited on any landfill site.

c. No wastes other than those specified in the permit may be disposed of at the facility.

J. CLOSURE

1. General

The owner or operator of an industrial landfill must close the completed landfill or landfill cell in a manner that:

a. Minimizes the need for further maintenance, and

b. Minimizes the post-closure escape of solid waste constituents, leachate, and landfill gases to the surface water, ground water, or atmosphere.

2. Required submittals; notification

a. An owner or operator of a new industrial landfill must submit a conceptual closure plan for the facility at the time of initial (i.e., construction) permit application.

b. At least 180 days prior to the projected date when wastes will no longer be accepted at the landfill or cell, the landfill owner or operator shall submit to the Department written notification of intent to close the facility or cell, a closure plan, and a closure schedule.

~~e. An owner or operator of an industrial landfill must receive a closure permit before commencing closure of a completed landfill or landfill cell. At the time of notification of intent to close, the owner or operator must also submit a closure schedule and a closure plan or revised closure plan.~~

~~dc.~~ If the Department determines that the closure plan and closure schedule are sufficient to ensure closure in accordance with the performance standards described in Section 6.J.1, it will ~~issue a closure permit~~ modify the solid waste permit to allow closure to take place.

d. The owner or operator shall not commence closure activities before receiving the necessary modifications to the solid waste permit.

e. A copy of the closure plan must be maintained at the facility or at some other location designated by the owner or operator through the post-closure care period of the facility.

3. Closure plan contents

The closure plan for an industrial landfill or cell must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close a landfill and each individual cell thereof in accordance with the closure performance standard in Section 6.J.1, ~~Subsection J.1, a and b.~~

b. A description of the capping system required under Section 6.H. This shall include a description of the system design, the type of cover to be used, and a discussion of how the capping system will achieve the objectives of Section 6.J.1, ~~Subsection J.1, a and b above.~~

c. A description of other activities necessary to satisfy the closure performance standard, including, but not limited to, the removal or disposal of all non-landfilled wastes located on site (e.g., wastes from landfill run-off collection ponds).

d. An estimate of the cost of closing the facility or cell and of the cost of post-closure monitoring and maintenance throughout the post-closure care period. These estimates shall be updated yearly and submitted to the Department as

part of the annual report described in Section 6.I.4. ~~Subsection I.4.~~

e. A plan for post-closure care of the facility sufficient to ensure that the standards described in Section J.1. Subsection J.1 will be met. This will include:

(1) A description of the monitoring and maintenance activities required and the frequency at which these activities will be performed.

(2) The name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

(3) A description of the planned uses of the property during the post-closure period.

f. A plan for control and/or recovery of landfill gases, if appropriate.

g. A topographical map of the site showing the proposed post-closure elevation with reference to mean sea level.

h. A closure construction quality assurance plan.

4. Minimum closure requirements

a. The permittee shall notify the Department at least 30 working days prior to commencing closure activities. The Department shall inspect the site, and the permittee shall perform any corrective work which the Department deems necessary.

b. Finished portions of the landfill shall receive a capping system which meets the requirements of Section 6.H.

c. Finished portions of the landfill shall be planted with appropriate vegetation to promote stabilization of the cover.

d. The closure shall be carried out in accordance with the approved closure plan and according to the approved closure schedule. Any significant deviations from the plan or the schedule must be approved by the Department prior to being initiated.

e. Upon closure of an entire landfill, all non-landfilled wastes located on site shall be removed or disposed of in a manner approved by the Department.

f. After closure of the facility, the site shall be returned to an acceptable appearance consistent with the surrounding area and the intended use of the land.

g. When closure of the landfill or landfill cell is completed, the owner or operator shall submit a final report for the Department's approval. The final report shall certify that the closure of the landfill or cell was completed in accordance with the closure plan to include the construction quality assurance plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The landfill or cell will not be considered closed until the Department has provided its written notification that the closure construction and the final report meet the requirements of the solid waste permit and these regulations. must submit to the Department certification by a

~~professional engineer registered in Delaware that the landfill or cell has been closed in accordance with the specifications in the approved closure plan.~~ The Department will inspect the cell or facility and will either:

(1) Issue a letter of approval to certify that the site has been closed in accordance with the ~~closure~~ solid waste permit, the closure plan, and all applicable regulations; or

(2) Determine that the site is not in compliance with the ~~closure~~ solid waste permit, the closure plan, or applicable regulations; identify the areas of deficiency; and require the owner or operator to take the necessary actions to bring the site into compliance.

h. Facilities entering the post-closure period will be issued a post-closure permit based upon the approved post-closure plan, monitoring requirements, gas and leachate control, maintenance and corrective actions (if required).

K. POST-CLOSURE CARE

1. General

a. The owner or operator of an industrial landfill must continue post-closure care for 30 years after the completion of closure.

b. At any time during the post-closure care period the Department may remove one or more of the post-closure care requirements described in Section 6, Subsection K.2 below if it determines that the requirement(s) is/are no longer necessary for the protection of human health and the environment.

c. At any time after the first five years of the post-closure care period, the Department may reduce the length of the post-closure care period or terminate post-closure care if it determines that such care is no longer necessary.

d. Prior to the time that the post-closure care period is due to expire, the Department may extend the post-closure care period if it determines that the extended period is necessary to protect human health and the environment.

e. If at any time during the post-closure care period there is evidence of a contaminant release from the landfill that presents a significant threat to human health or the environment, action to mitigate the threat will be required of the owner or operator of the facility.

2. Minimum post-closure care requirements

Post-closure care shall be in accordance with the post-closure permit and shall ~~must~~ consist of at least the following:

a. Maintaining the integrity and effectiveness of the capping system, including making repairs as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the cap.

b. Reseeding the cover if insufficient vegetation exists to stabilize the surface.

c. Maintaining and operating the leachate collection and treatment systems until the Department determines that the leachate no longer poses a threat to human health or the environment. The permittee shall submit leachate quantity and quality data to the Department for those parameters and at such frequencies as specified by the Department.

d. Maintaining and operating the ground water monitoring system in accordance with Section 6.G. The permittee shall submit ground water quality data as specified by the Department.

e. Maintaining and monitoring the gas control system in accordance with Section 6.E and the closure plan. The permittee shall submit gas data as specified by the Department.

f. Maintaining and monitoring the surface water management system in accordance with Section 6.F.

3. Prohibitions

a. Standing water shall not be allowed on the closed landfill.

b. Open burning shall not be allowed on the closed landfill.

c. Unless approved in advance by the Department, no activity shall be conducted on a closed landfill which will disturb the integrity of the capping system, liner, containment system, or monitoring systems.

d. Access to the closed landfill shall be limited to those persons who are engaging in activities which are compatible with the intended post-closure use of the site.

4. Post-closure land use

The owner or operator shall implement the post-closure land use plan approved by the Department.

5. Notice in deed to property

a. The owner of the property on which an industrial landfill is located must record a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

1. The land has been used as an industrial waste disposal site, and

2. The use of the land is restricted under this regulation.

b. Included with the notation shall be a map or description clearly specifying the area that was used for disposal.

SECTION 7: TRANSPORTERS

A. GENERAL PROVISIONS (applicable to all persons transporting solid waste in Delaware)

1. No person shall transport solid waste, without first having obtained a permit from the Department, unless specifically exempted by these regulations.

±2. Any vehicle used to transport solid waste shall be so

constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping therefrom, in accordance with Title 21, Section 4371, Delaware Code.

23. The transporter will be responsible for all costs of cleaning up a discharge of solid waste from the vehicle.

34. Compliance with these regulations does not release a transporter from the obligation of complying with any other applicable laws, regulations or ordinances.

æ. Additional waste transporter regulations may apply to transporters of special wastes, e.g. infectious waste. Refer to Section 11 of these Regulations, SPECIAL WASTES MANAGEMENT.

45. Each vehicle ~~engaged in the used to~~ transport of solid waste and required to have a transporter's permit must carry a copy of the permit in the vehicle. The permit must be presented upon request to any law enforcement officer or any representative of the Department.

B. PROVISIONS APPLICABLE TO TRANSPORTERS (EXCEPT FOR TRANSPORTERS OF ONLY DRY WASTE) REQUIRED TO HAVE A SOLID WASTE TRANSPORTER'S PERMIT

1. Applicability

Section 7.B ~~This Subsection (7.B)~~ applies to all transportation activities in Delaware except the following:

a. Transportation of source separated materials for reuse or recycling, provided that the materials remain separate throughout the journey and are not recombined for transport.

b. Transportation of household waste generated in a Delaware residence and transported by the generator of the household waste. ~~(This exclusion shall not apply to small quantity infectious waste generators as defined in Section 11 Part 1).~~

c. On-site transportation of solid waste (i.e., the point of generation and the point of treatment or disposal are on the same site and the vehicle transporting the solid waste will not at any time leave the site).

d. Transportation of solid waste in a vehicle having a gross vehicle weight less than or equal to 26,000 (twenty-six thousand) pounds. (This exclusion shall not apply to the transportation of infectious waste, petroleum-hydrocarbon contaminated soils, or ~~of~~ waste containing asbestos.)

e. Transportation of dry waste only (this activity is subject to the provisions of Subsection 7.C).

f. Transportation of solid waste generated on a farm and transported by the generator of the waste (this exclusion shall not apply to the transportation of infectious waste, petroleum-hydrocarbon contaminated soils, or ~~of~~ waste containing asbestos).

2. Instruction and Training

All drivers of solid waste transportation vehicles, and all of the transporter's employees who may handle solid waste

subject to these regulations, shall receive instruction in how to perform transportation duties in a way that ensures compliance with all applicable regulations and requirements. The instruction shall include, but not necessarily be limited to, the following:

- a. Knowledge of current DOT Motor Carrier Safety Regulations.
- b. Safe vehicle operations to avoid creating hazards to human health, safety, welfare, or the environment.
- c. Knowledge of proper handling procedures for the type of solid waste being transported.
- d. Familiarity with the approved accidental discharge containment plan.
- e. Familiarity with the conditions of the solid waste transporter's permit.

It shall be the responsibility of the transporter to ensure that all drivers and other employees that may handle solid waste receive instruction as described above as frequently as necessary to maintain a level of knowledge that will ensure safe operation of the vehicle during transportation of the solid waste and proper management of an accidental discharge. A description of the driver training program shall be included with the permit application.

3. Vehicle Requirements

- a. All vehicles used in the transportation of solid waste shall be operated and maintained so as to be in compliance with all state and federal regulations and not present a hazard to human health or the environment through unsafe vehicle conditions. The permittee is responsible for the operation and maintenance of all vehicles including leased vehicles operated under his/her permit.
- b. All vehicles must carry safety and emergency equipment in accordance with applicable DOT regulations to ensure protection of the public and the environment.
- c. All vehicles must carry spill containment materials appropriate to the type of solid waste being transported.
- d. Each vehicle engaged in the transportation of solid waste must be fully enclosed or covered to prevent the discharge or release of solid waste to the environment.
- e. The transporter's name shall be prominently displayed on both sides of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.
- f. The transporter's permit number shall be prominently displayed on both sides and the rear of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.

4. Proof of Financial Responsibility

~~All persons that are subject to Section 7.B of these regulations and that were permitted to transport solid waste in Delaware before the adoption of this requirement shall be subject to the requirement upon renewal of their permit, or~~

~~60 days after adoption of this requirement, whichever is later.~~

Proof of financial responsibility for sudden and accidental discharges shall be maintained by the transporter. This financial responsibility may be established by any one or a combination of the following:

a. Automobile liability insurance

(1) For-hire carriers in interstate commerce shall at all times maintain insurance coverage that is in compliance with 49 CFR Part 387 and shall submit a Certificate of Insurance with MCS-90 endorsement demonstrating compliance with this regulation.

(2) Transporters who transport infectious waste, or who transport bulk liquid or bulk gaseous industrial waste, shall at all times maintain commercial automobile liability insurance with a combined single limit of at least \$750,000 with MCS-90 endorsement and shall submit a Certificate of Insurance with MCS-90 endorsement demonstrating compliance with this regulation.

(3) All other carriers shall at all times maintain commercial automobile liability insurance with a combined single limit of at least \$350,000, and shall submit a Certificate of Insurance demonstrating compliance with this regulation.

b. Self insurance equal to or exceeding the above automobile liability insurance limits, and approved by the Department.

c. Other proof of financial responsibility approved by the Department.

5. Management of Accidental Discharges

a. ~~All transporters of applicants for a permit to transport~~ solid waste shall submit to the Department a plan for the prevention, control, and cleanup of accidental discharges of the solid waste. No permit will be issued to a transporter until such a plan has been submitted to and approved by the Department.

b. A copy of the plan shall be maintained in each vehicle engaged in the transportation of solid waste.

c. All accidental discharges of solid waste from a vehicle shall be immediately and completely remediated. If the solid waste cannot be immediately and completely remediated, or if it has the potential to cause damage to the environment or to public health, the discharge shall be immediately reported to the Department. (Accidental discharges of infectious waste are regulated under Section 11, Part 1)

d. The transporter will be responsible for all costs of remediating a discharge of solid waste from the vehicle.

6. Recordkeeping

The following records must be retained by the transporter for at least three years:

- a. The solid waste transporter's permit.

- b. Documentation of the training provided to drivers.
- c. Insurance documents sufficient to demonstrate compliance with Section 7.B.4 of these regulations.
- d. Records of spills or releases of solid waste that exceed five (5) pounds or one (1) cubic foot that occur during the transportation of solid waste in Delaware, and descriptions of the remedial actions taken.

7. Reporting and Documentation

a. Each transporter that picks up and/or deposits solid waste in Delaware shall submit to the Department, on a form prescribed by the Department, an annual report indicating the following:

- (1) Types and weights or volumes of solid waste transported in, into, or out of the state.
- (2) Weight or volume of solid waste delivered to each destination.

b. Any vehicle transporting solid waste through Delaware shall carry documentation indicating the state in which the solid waste was picked up, the date on which it was picked up, and the state in which it will be deposited.

8. Sub-leases and sub-contractors

Sub-leased, and sub-contracted vehicles may be included in a transporter permit, under the following conditions:

a. The vehicles are listed on the permit application or subsequent amendments, with owner and operator of the vehicle identified.

b. The permittee certifies in writing that all information provided in the application or subsequent amendments are applicable to the sub-leased and sub-contracted vehicles, including but not limited to, driver training, vehicle requirements, proof of financial responsibility, management of accidental discharges, recordkeeping, and reporting and documentation.

c. The permittee certifies that the sub-leased or sub-contracted vehicles will comply with all permit conditions.

d. Subcontractors shall carry proof of subcontractor agreement in the vehicle and must present proof to any law enforcement officer or representative of the Department upon request.

C. PROVISIONS APPLICABLE TO TRANSPORTERS OF ONLY DRY WASTE REQUIRED TO HAVE A SOLID WASTE TRANSPORTER'S PERMIT

1. General

No transporter granted a permit to transport only dry waste under the requirements of this Subsection (7.C.) shall transport any solid waste other than dry waste, as defined in these Regulations, without meeting the additional requirements for transporting such other solid waste contained in these Regulations.

2. Applicability

The remainder of this Subsection (7.C) applies to all transportation activities involving only dry waste in Delaware except the following:

a. Transportation of dry waste by a solid waste transporter permittee having a permit issued under Subsection 7.B of these Regulations.

b. Transportation of source separated materials for reuse or recycling, provided that the materials remain separate throughout the journey and are not recombined for transport.

c. Transportation of dry waste generated in a Delaware residence and transported by the generator of the dry waste. ~~(This exclusion shall not apply to small quantity infectious waste generators as defined in Section 11, Part 1).~~

d. On-site transportation of dry waste (i.e., the point of generation and the point of treatment or disposal are on the same site and the vehicle transporting the dry waste will not at any time leave the site).

e. Transportation of dry waste in a vehicle having a gross vehicle weight less than or equal to 26,000 (twenty-six thousand) pounds. (This exclusion shall not apply to the transportation of infectious waste or of waste containing asbestos.)

3. Vehicle Requirements

a. The transporter's name shall be prominently displayed on both sides of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.

b. The transporter's permit number shall be prominently displayed on both sides and the rear of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.

c. All transporters shall at all times maintain commercial automobile liability insurance with a combined single limit of at least \$350,000, and shall submit a Certificate of Insurance demonstrating compliance with this regulation. All persons that are subject to Section 7.C.3. of these regulations and that were permitted to transport solid waste in Delaware before the adoption of this requirement shall be subject to the requirement upon renewal of their permit, or 60 days after adoption of this requirement, whichever is later.

4. Recordkeeping

The following records must be retained by the transporter for at least three years:

a. The dry waste transporter's permit.

b. The transporter's Annual Report required under Section 7.C.5.

5. Reporting and Documentation

a. Each transporter that picks up and/or deposits dry waste in Delaware shall submit to the Department, on a form prescribed by the Department, an Annual Report indicating the following:

- (1) The total estimated weights or volumes of dry

waste transported in, into, or out of the state during the year.

(2) The total estimated weight or volume of dry waste delivered to each destination.

b. Any vehicle transporting dry waste through Delaware shall carry documentation indicating the state in which the dry waste was picked up, the date on which it was picked up, and the state in which it will be deposited.

6. Sub-lease and sub-contractors

Sub-leased, and sub-contracted vehicles may be included in a transporter permit, under the following conditions:

a. The vehicles are listed on the permit application or subsequent amendments, with owner and operator of the vehicle identified.

b. The permittee certifies in writing that all information provided in the application or subsequent amendments are applicable to the sub-leased and sub-contracted vehicles, including but not limited to, driver training, vehicle requirements, proof of financial responsibility, management of accidental discharges, recordkeeping, and reporting and documentation.

c. The permittee certifies that the sub-leased or sub-contracted vehicles will comply with all permit conditions.

d. Subcontractors shall carry proof of subcontractor agreement in the vehicle, and must present proof to any law enforcement officer or representative of the Department upon request.

SECTION 8: ~~DRY WASTE DISPOSAL FACILITIES~~ ~~RESERVED~~

A. ~~SITING~~

~~No new dry waste disposal facility shall be located in an area such that solid waste would at any time be deposited:~~

- ~~1. Within five (5) feet of the seasonal high water table.~~
- ~~2. Within the 100 year flood plain.~~
- ~~3. Within 200 feet of any state or federal wetland.~~
- ~~4. Within 200 feet of any perennial stream.~~
- ~~5. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the Department.~~
- ~~6. So as to be in conflict with any locally adopted land use plan or zoning requirement.~~
- ~~7. Within the wellhead protection area of a public water supply well or well field.~~
- ~~8. In an area that is particularly susceptible to environmental degradation.~~

B. ~~DESIGN~~

1. ~~General~~

~~a. Dry waste disposal facilities shall be planned and designed by Professional Engineers registered in Delaware. Planning and design of these facilities shall be consistent~~

~~with this regulation and based on empirically derived data and state of the art technology.~~

~~b. All dry waste disposal facilities shall conform to the minimum design requirements listed in Section 8.B.2. More stringent designs will be required where deemed necessary by the Department for the protection of ground water resources.~~

2. ~~Minimum design requirements~~

~~All dry waste disposal facilities shall be designed to include at least the following:~~

~~a. A setback area, including a buffer zone with appropriate screening, if deemed necessary by the Department.~~

~~b. A gas monitoring system that meets the requirements of Section 8.C.~~

~~c. A surface water management system that meets the requirements of Section 8.D.~~

~~d. A ground water monitoring system that meets the requirements of Section 8.E.~~

~~e. Final cover that meets the requirements of Section 8.F.~~

C. ~~GAS CONTROL~~

~~1. The owner or operator of a dry waste disposal facility shall monitor the concentration of landfill gas emanating from the solid waste disposal area and shall sample and analyze the gas as required by conditions specified in the facility permit.~~

~~2. If at any time the concentration of landfill gas at the facility boundary or in facility structures is found to exceed 25% of the lower explosive limit, the permittee will be required to submit to the Department design plans for a gas control system capable of evacuating gas from within the waste and preventing the accumulation of gas on site or off site. The design of the system will be subject to Department approval. If the Department determines that the concentration of landfill gas at the site poses a risk to human health or the environment, the permittee will be required to install and operate the gas control system.~~

D. ~~SURFACE WATER MANAGEMENT~~

~~1. An owner or operator of a dry waste disposal facility shall design, construct, and maintain a surface water management system to:~~

- ~~a. prevent erosion of the waste and cover~~
- ~~b. prevent the collection of standing water, and~~
- ~~c. minimize surface water run-off onto and into the waste.~~

~~2. The surface water management system shall include such detention basins, diversion structures, and/or other features as necessary to control, at a minimum, the run-off from the discharge of a 2 hour, 10 year storm.~~

E. ~~GROUND WATER MONITORING~~

1. General provision

Owners or operators of all dry waste disposal facilities shall maintain and operate a ground water monitoring system to evaluate facility impact upon ground water quality.

2. Design and construction of monitoring system

a. The ground water monitoring system shall be designed by a Professional Geologist registered in Delaware.

b. The system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to define the ground water flow system and shall be developed in accordance with Departmental requirements to yield ground water samples that are representative of the aquifer water quality.

c. The number, spacing, location, depth, and screened interval of the monitoring wells shall be approved by the Department prior to installation.

d. All monitoring wells shall be constructed in accordance with the Regulations Governing the Construction of Water Wells and any subsequently approved guidelines. Variation from the existing guidelines must be approved by the Department in writing prior to construction.

3. Ground water sampling

a. The permittee shall submit a ground water sampling plan to the Department at the time of permit application. The sampling plan must include procedures and techniques for:

- (1) Sample collection, preservation, and transport
- (2) Analytical procedures and quality assurance;

and

- (3) Chain of custody control

b. Sample constituents

(1) All facilities shall test for the following parameters:

- (a) Specific conductivity
- (b) Total dissolved solids
- (c) Total organic carbon
- (d) Chloride
- (e) pH
- (f) Chemical oxygen demand
- (g) Total iron
- (h) Any additional parameters specified by the

Department

(2) Test methods used to determine the parameters of b(1) shall be those described in the most current legal edition of EPA Publication Number SW-846, "Test Methods for Evaluating Solid Waste - Physical/Chemical Methods." If SW-846 does not contain test methods for a required parameter, that parameter shall be tested according to methods described in the most recent edition of the EPA publication "Methods of Chemical Analysis for Water and Wastes" or of Standard Methods for the Examination of

Water and Wastewater.

e. The Department may observe, and may request advance notice of, the ground water sampling conducted by the permittee or his/her designee and may request split samples for analysis.

d. If the Department determines that the ground water monitoring data indicate that ground water contamination has occurred, a remedial action program may be required.

4. Reporting

a. All ground water monitoring shall be conducted on a schedule to be determined by the Department and the results submitted within 45 days of sampling.

b. An annual hydrogeologic report will be prepared which shall include:

- (1) Tabulation and graphical presentation of all ground water quality data from current and preceding years;
- (2) Maps showing ground water flow patterns at each time of ground water sampling;
- (3) A discussion of the ground water monitoring results, and
- (4) Recommendations for future monitoring.

F. FINAL COVER**1. Requirement for final cover**

a. Upon closure of the facility or a portion thereof, the permittee shall apply final cover consistent with the intended post-closure use of the facility and designed to control the emission of gas, promote the establishment of vegetative cover (if applicable), and minimize infiltration and percolation of water into, and prevent erosion of, the waste throughout the post-closure care period.

b. The final cover shall be in place 60 days following final waste disposal activity or 60 days after Department approval of the closure plan, whichever is later.

2. Composition of final cover

The final cover shall consist of at least two feet of compacted soil and either:

a. At least six inches of topsoil (or other material approved by the Department) to support vegetation, followed by the application of suitable vegetation, or

b. Other material consistent with the intended use of the land and approved in advance by the Department.

3. Final slopes

a. The grades of the final slopes shall be constructed in accordance with the following minimum standards:

(1) The final grade of the top slope, after allowing for settlement and subsidence, shall be designed to promote run-off;

(2) The final grades of the side slopes shall be, at a maximum, three horizontal to one vertical (3:1).

b. The top and side slopes shall be maintained to prevent erosion of the final cover.

G. OPERATION AND MAINTENANCE STANDARDS

1. General

a. Dry waste disposal facilities shall be operated so as to create an aesthetically desirable environment and to preclude degradation of land, air, surface water, or ground water.

b. Dry waste disposal facilities shall be maintained and operated to conform with the approved plan of operation.

2. Details of operation and maintenance

a. Spreading and compacting

The working face shall be confined to the smallest practical area as is consistent with the proper operation of trucks and equipment.

The waste shall be spread in layers and compacted by repeated passes of the compacting equipment.

b. Cover

Approved cover material shall be applied at a frequency and thickness specified by the Department.

c. Control of nuisances and hazards

Dust and Odors

The owner or operator shall undertake suitable measures to control dust and odors wherever and whenever necessary to conform with all applicable air quality regulations.

Litter

The scattering of refuse and wind-blown litter shall be controlled by the use of portable fences, natural barriers, or other suitable methods. No refuse or litter shall be allowed to migrate off site.

Fires

The facility shall be operated in a manner which minimizes the risk of fires occurring on the site.

d. Access

Access to the site shall be limited to those persons authorized to use the site for the disposal of solid waste and to those hours when an attendant is on duty. This section shall not be construed to limit right of entry by the Secretary or his/her duly authorized designee pursuant to 7 Del. Code, Section 6024.

Access to the site by unauthorized persons shall be prevented

by the use of barriers, fences and gates, or other suitable means.

e. Salvaging

Salvage operations shall be so organized that they will not interfere with the proper disposal of any solid waste. No salvage operation shall be allowed which creates unsightliness, nuisances, health hazards, or potential safety hazards.

f. Personnel

Sufficient numbers and types of personnel shall be available at the site to insure capability for operation in accordance with these regulations.

The facility shall be operated under the close supervision of an individual who is thoroughly familiar with the permit requirements and operational procedures of the facility and is experienced in landfill development and operation.

g. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the facility in accordance with the provisions of these regulations and the Plan of Operation. Waste handling equipment shall be cleaned routinely and maintained in accordance with the manufacturer's recommendations.

h. Employee health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

First aid equipment shall be available at the site.

3. Recordkeeping

The following information must be recorded, as it becomes available, and retained by the owner or operator of the facility until the end of the post-closure care period:

a. Monitoring, testing, or analytical data where required by Section 8, Subsections C, E, or I.

b. Types and volume or weight of wastes received.

c. A complete list of haulers utilizing the facility.

d. Any additional records specified by the Department.

4. Reporting

The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall be on a form acceptable to the Department and shall describe and summarize all solid waste disposal, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall include but not

necessarily be limited to the following:

- a. The volume or tonnage of solid waste landfilled at the facility.
- b. The estimated remaining capacity of the facility, in both tonnage and years.
- c. A list of all haulers utilizing the facility during the year covered by the report.
- d. Gas monitoring data as required in Section 8.C, and in the Solid Waste permit.
- e. An updated estimate of the cost of closure and post-closure care for the facility, as required in Section 8.H.3.e.
- f. Any intentional or accidental deviations from the approved Plan of Operation.
- g. All construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations.

The permittee must also submit any additional reports specified in the Solid Waste permit.

5. Prohibitions

- a. No wastes other than those specified in the permit may be disposed of at the facility.
- b. Open burning of any solid waste is prohibited within the active portion of the facility.
- c. Scavenging is prohibited on any dry waste disposal site.

H. CLOSURE

1. General

The owner or operator of a completed dry waste disposal facility or cell must close the facility or cell in a manner that:

- a. Minimizes the need for further maintenance, and
- b. Minimizes the post-closure escape of solid waste constituents, leachate, and landfill gases to the surface water, ground water, or atmosphere.

2. Required submittals; notification

a. An owner or operator of a dry waste disposal facility must submit a conceptual closure plan for the facility at the time of initial permit application, as required in Section 4.C.1.a (7).

b. At least 180 days prior to the date when wastes will no longer be accepted, the owner or operator shall submit the following to the Department:

- (1) Written notification of intent to close.
- (2) Closure plan.
- (3) Closure schedule.

c. If the Department determines that the closure plan and closure schedule are sufficient to ensure closure in accordance with the standards described in Section 8.H.1, it

will issue a closure permit.

d. A copy of the closure plan must be maintained at the facility or at some other location designated by the owner or operator through the post-closure care period of the facility.

3. Closure plan contents

The closure plan for a dry waste disposal facility or cell must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close the facility or cell in accordance with the closure performance standard in Section 8.H.1.

b. A description of the final cover that will be applied, and a discussion of how the final cover will achieve the objectives of Section 8.H.1.

c. A description of other activities necessary to satisfy the closure performance standard, including, but not limited to, the removal or disposal of all non-landfilled wastes located on site (e.g., wastes from landfill run-off collection ponds):

d. A topographical map of the site showing the proposed post-closure elevations, with reference to mean sea level.

e. An estimate of the cost of closing the facility or cell and of the cost of post-closure monitoring and maintenance throughout the post-closure care period. These estimates shall be updated yearly and submitted to the Department as part of the annual report described in Section 8.G.4.

f. A plan for post-closure care of the facility or cell sufficient to ensure that the standards described in Subsection I.1 will be met. This will include:

(1) A description of the monitoring and maintenance activities required and the frequency at which these activities will be performed.

(2) The name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

(3) A description of the planned uses of the property during the post-closure period.

g. A plan for control and/or recovery of landfill gases, if appropriate.

4. Minimum closure requirements

a. The closure shall be carried out in accordance with the approved closure plan and according to the approved closure schedule. Any deviations from the plan or the schedule must be approved by the Department prior to being initiated.

b. Upon closure of a facility, all non-landfilled wastes located on site shall be removed or disposed of in a manner approved by the Department.

e. When closure is completed, the owner or operator must submit to the Department certification by a Professional Engineer registered in Delaware that the facility has been closed in accordance with the specifications in the approved closure plan. The Department will inspect the

facility and will either:

(1) Issue a letter indicating that the site has been closed in accordance with the closure plan and all applicable regulations; or

(2) Determine that the site is not in compliance with the closure plan or applicable regulations; identify the areas of deficiency; and require the owner or operator to take the necessary actions to bring the site into compliance.

I. POST-CLOSURE CARE

1. General

a. The owner or operator of a dry waste disposal facility must continue post-closure care for 30 years after the completion of closure.

b. At any time during the post-closure care period the Department may remove one or more of the post-closure care requirements described in Section 8, Subsection I.2 below if it determines that the requirement(s) is/are no longer necessary for the protection of human health and the environment.

c. At any time after the first five years of the post-closure care period, the Department may reduce the length of the post-closure care period or terminate post-closure care if it determines that such care is no longer necessary.

d. Prior to the time that the post-closure care period is due to expire, the Department may extend the post-closure care period if it determines that the extended period is necessary to protect human health and the environment.

e. If at any time during the post-closure care period there is evidence of a contaminant release from the landfill that presents a threat to human health or the environment, action to mitigate the threat will be required of the owner or operator of the facility.

2. Minimum post-closure care requirements

Post-closure care must consist of at least the following:

a. Maintaining the integrity and effectiveness of the final cover, including making repairs as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the cover.

b. Reseeding the cover if insufficient vegetation exists to stabilize the surface.

c. Maintaining and operating the ground water monitoring system in accordance with Section 8.E. The permittee shall submit ground water quality data as specified by the Department.

d. Maintaining and monitoring the gas control system in accordance with Sec. 8.C and the closure plan. The permittee shall submit gas data as specified by the Department.

e. Maintaining and monitoring the surface water

management system in accordance with Sec. 8.D.

3. Prohibitions

a. Standing water shall not be allowed on the closed facility or cell.

b. Open burning shall not be allowed on, or within 100 feet of, a closed disposal area.

c. Unless approved in advance by the Department, no activity shall be conducted on a closed dry waste disposal facility or cell which will disturb the integrity of the final cover or the monitoring systems.

d. Access to the closed facility shall be limited to those persons who are engaging in activities which are compatible with the approved post-closure use of the site.

4. Post-closure land use

The owner or operator shall implement the post-closure land use plan included in the closure plan approved by the Department.

5. Notice in deed to property

The owner of the property on which a dry waste disposal facility is located must record a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

a. the land has been used as a solid waste disposal site, and

b. the use of the land is restricted under this regulation.

Included with this notation shall be a map or description clearly specifying the area that was used for disposal.

SECTION 9: RESOURCE RECOVERY FACILITIES

A. APPLICABILITY

This section applies to:

1. Materials recovery facilities, and
2. Thermal recovery facilities.

B. SITING

1. Resource recovery facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. No new resource recovery facility shall be located in an area such that solid waste would at any time be handled:

- a. Within the 100 year flood plain.
- b. Within any state or federal wetland.
- c. Within 1000 feet of any state or federal wildlife refuge, wildlife area, or park.
- d. So as to be in conflict with any locally adopted land use plan or zoning requirement.

In addition, any facility that processes municipal solid waste shall not be located within 10,000 feet of any airport

currently used by turbojet aircraft or 5,000 feet of any airport runway currently used by piston-type aircraft, unless a waiver is granted by the Federal Aviation Administration.

C. DESIGN AND CONSTRUCTION

1. Applicants wishing to construct and operate resource recovery facilities will be encouraged to design the facilities so that they are capable of removing and recycling those materials for which recycling is currently technically and economically feasible. The design should allow for future alteration or upgrading to accomplish removal of additional materials as recycling of these materials becomes feasible.

2. The plans and specifications for a proposed resource recovery facility, ~~or for any addition or alteration to an existing facility,~~ shall be prepared and certified by a Professional Engineer registered in Delaware and shall be submitted as a part of the Solid Waste Management Facility permit application.

3. Construction and installation activities for new facilities ~~and for expansions or alterations of existing facilities~~ shall be carried out in accordance with a third-party quality assurance plan approved by the Department. Expansions or alterations of existing facilities shall be carried out in accordance with an approved third-party quality assurance plan if deemed necessary by the Department.

4. Minimum design requirements

a. All new resource recovery facilities shall be designed to include the following features, as a minimum:

(1) A setback area with appropriate screening.

(2) A means to detect explosion potential and equipment designed to minimize the impact of explosion (if the solid waste to be handled and the equipment to be used have the potential of causing explosion).

(3) A means for maintaining quality control of recovered materials.

(4) Storage capacity for a minimum of three days of storage (at maximum anticipated loading rates) of incoming solid waste, facility process solid waste residues and effluents, and recovered materials. The storage areas must be within enclosed structures if deemed necessary by the Department.

(5) Tipping floors, sorting pads, and solid waste storage areas constructed of material capable of withstanding heavy vehicle usage and of reducing and controlling runoff.

(6) A completely enclosed unloading area, if deemed necessary by the Department.

(7) Adequate floor drains graded to facilitate washdown and to prevent standing water. Drains shall discharge to a sanitary sewer system, holding tank, or appropriate treatment facility.

(8) Surface water and erosion controls.

(9) An auxiliary power system sized to enable

emergency shut down of the facility to occur without causing irreparable damage to the equipment.

(10) Control mechanisms to minimize and contain accidental spillage of reagents, lubricants, or other liquids used as well as residues generated.

(11) A fire detection and protection system capable of detecting, controlling, and extinguishing any fires that may occur as a result of facility operation.

(12) A fence or other security system that will prevent access to the site by unauthorized persons.

(13) A means for weighing or measuring all incoming solid waste, all recyclable materials recovered from the waste, and all residues generated at the facility.

D. OPERATION AND MAINTENANCE STANDARDS

All new and existing resource recovery facilities shall comply with this section.

1. General

a. Facilities shall be operated in a manner that will preclude degradation of land, air, surface water, or ground water.

b. All facilities shall be operated and maintained to conform with the approved Plan of Operation submitted at the time of permit application and approved by the Department.

2. Details of operation and maintenance

a. Unloading of solid waste

Unloading of solid waste shall take place only at clearly marked unloading areas.

b. Storage and handling

(1) External storage of solid waste containing garbage is prohibited. No solid waste shall be stored in such a manner that the storage area or the solid waste becomes a nuisance or endangers human health or the environment.

(2) All solid waste passing through the facility must ultimately be recycled or be disposed of at a solid waste facility authorized to accept that type of solid waste.

(3) Solid waste delivered to the facility shall be processed within the time limit specified by the Department.

(4) Non-putrescible recyclable materials may be stored for up to 30 days. The storage period may be increased, with written approval of the Department, if all of the following conditions are met:

(a) there is a demonstrated need to do so (e.g., a market agreement with terms of receipt based on greater than 30 day intervals or volumes that may take longer than 30 days to acquire);

(b) there is sufficient Department-approved storage area;

(c) an inventory methodology is used to ensure

that the recyclables do not remain on the site for longer than the specified time period; and

(d) the inventory methodology is provided to and approved by the Department before storage begins.

c. Control of nuisances and hazards

Litter

The permittee shall provide for routine maintenance and general cleanliness of the entire site, as well as litter removal along roads approaching the site.

Air Pollution

The operation of the facility shall comply with 7 Del. Code, Chapter 60, and with the Regulations Governing the Control of Air Pollution.

Vectors

The permittee shall implement a vector control plan to prevent the establishment of habitats for nuisance organisms (e.g., flies, maggots, roaches, rodents, and similar vermin) and to mitigate nuisances and hazards to human health and the environment.

Fire

Equipment shall be available on site to control fires, and arrangements shall be made with the local fire protection agency to provide immediate services when needed.

If deemed necessary by the Department, a separate area shall be provided for temporary placement of hot loads received at the facility. The hot load area shall be located away from trees, bushes, and structures, and loads shall be extinguished immediately upon unloading.

d. Access

Access roads to the point of solid waste discharge shall be designed, constructed, and maintained so that traffic will flow smoothly and will not be interrupted by inclement weather.

Access to the site shall be limited to those times when an attendant is on duty and to those persons authorized to deliver solid waste to the site. This section shall not be construed to limit right of entry by the Secretary or his/her duly authorized designee pursuant to 7 Del. Code, Section 6024.

e. Personnel

Sufficient types and numbers of trained personnel shall be available at the site to insure capability for operation in

accordance with these regulations.

The facility shall be operated under the close supervision of an individual who is thoroughly familiar with the requirements and operational procedures of the facility and is experienced in matters of solid waste management.

All thermal recovery facilities shall be operated under the direct supervision of an individual who has successfully completed a training course on use of the specific equipment installed at the facility.

f. Health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

First aid equipment shall be available at the site.

g. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the facility in accordance with the provisions of these regulations and the plan of operation. All solid waste handling equipment shall be cleaned routinely and maintained according to the manufacturer's recommendations.

All processing equipment shall be operated by persons thoroughly trained in the proper operation of the equipment and shall be maintained in good working order.

h. Disposal of process residues and of solid waste that cannot be processed by the facility

(1) Unless specified otherwise in writing by the Department, all residues generated by the operation of a facility shall, within three days of generation, be disposed of, used, or treated in a manner that is consistent with state and federal regulations.

(2) Unless specified otherwise in writing by the Department, all solid waste that is delivered to the facility but that cannot be processed at the facility shall, within three days of receipt, be removed from the facility for disposal, use, or treatment in a manner that is consistent with state and federal regulations.

3. Recordkeeping

The following information must be recorded in a timely manner and the records retained by the owner or operator for at least three years:

a. Types and weight or volume of solid waste received.

b. Weight or volume of each material recycled or marketed.

c. A record of the commercial solid waste haulers (company name, address, and telephone number) using the

facility, and the type and weight or volume of solid waste delivered by each hauler to the facility each day.

- d. Process monitoring data.
- e. Characterization testing of recyclable materials.
- f. Weight or volume of unprocessable solid wastes and of process residues, and location of ultimate disposal of these materials.
- g. Characterization testing of process residues to determine the quality for possible marketing or BTU value.
- h. A record of fires, spills, and uncontrolled releases that occur at the facility, and of hot loads received.
- i. Documentation of training provided to employees.
- j. Fire and safety inspections.
- k. Major equipment maintenance.
- l. Any additional records specified by the Department.

4. Reporting

a. The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall be on a form prescribed by the Department and shall describe and summarize all solid waste processing, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

- (1) Types and weight or volume of solid waste received.
- (2) Weight or volume of each material recycled or marketed, and identification of the markets.
- (3) Weight or volume of unprocessable solid wastes and of process residues, and location of ultimate disposal of these materials.
- (4) A complete list of commercial haulers that delivered solid waste to the facility during the year.
- (5) A discussion of the feasibility of recycling materials that are currently being received at the facility but are not being recycled.
- (6) Descriptions of any intentional or accidental deviations from the approved Plan of Operation.
- (7) Descriptions of all construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations.
- (8) Results of characterization testing of recyclable materials and process residues.
- (9) Any additional information specified by the Department.

b. The permittee shall immediately notify the Department if any of the following occurs:

- (1) A shut down that results in solid waste being diverted from the facility.
- (2) A fire.
- (3) A spill or nonpermitted release.

E. CLOSURE

1. General

When a resource recovery facility ceases accepting solid waste, all of the solid waste on site shall be removed and the facility shall be closed in a manner that will eliminate the need for further maintenance at the site.

2. Required submittals; notification

a. An owner or operator of a resource recovery facility must submit a conceptual closure plan at the time of initial application for a Solid Waste Management Facility Permit.

b. At least 180 days prior to the projected date when solid waste will no longer be accepted at the facility, the owner or operator shall submit to the Department all of the items listed in Section 4.D.1.b. Closure activities shall not commence until the Department has approved the updated closure plan and the closure schedule and has modified the permit to allow closure activities to be carried out.

c. A copy of the closure plan must be maintained at the facility or at some other location designated by the owner or operator until closure has been completed.

3. Closure plan contents

The closure plan for a resource recovery facility must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close the facility, including provisions that will be made for the proper disposal of all solid waste that is on the site when operations cease.

b. An estimate of the cost of closing the facility. This estimate shall be updated yearly and submitted to the Department as a part of the annual report described in Section 9.D.4.

c. A description of the planned post-closure use of the property.

4. Minimum closure requirements

a. Closure shall be carried out in accordance with the approved closure plan.

b. Closure must be complete within one year after the date on which the Department issues a modified permit to allow closure.

c. When closure is completed, the owner or operator must submit to the Department certification by a Professional Engineer registered in Delaware that the facility has been closed in accordance with the specifications in the approved closure plan.

d. When closure has been completed to the satisfaction of the Department, the Department will issue a letter indicating that closure has occurred in accordance with the closure plan.

e. After closure has been completed, the Department may require that the permittee conduct monitoring and/or maintenance activities at the site to prevent or detect and mitigate any adverse environmental or health impacts.

SECTION 10: TRANSFER STATIONS**A. GENERAL PROVISIONS****1. Applicability**

a. This section applies to all solid waste transfer stations in Delaware. Additional requirements may apply to transfer stations handling special solid wastes, such as infectious waste.

b. Compliance with these regulations does not release the owner or operator of a transfer station from the obligation of complying with any other applicable laws, regulations, or ordinances.

2. Exclusions

The following types of facilities are not considered to be transfer stations:

a. Facilities that accept only source separated materials for the purpose of recycling those materials.

b. Materials recovery facilities.

c. Small load collection areas located at permitted landfill sites.

d. Individual dumpsters used for waste generated on site (e.g., at shopping centers, apartment complexes or commercial establishments).

e. Compaction equipment being used exclusively for solid waste generated on site (e.g., in office or apartment complexes, industrial facilities, or shopping centers).

B. SITING

1. Transfer stations shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. Transfer stations shall be located adjacent to access roads capable of withstanding anticipated load limits.

3. No new transfer station shall be located in an area such that solid waste would at any time be handled:

a. Within the 100-year flood plain.

b. Within any state or federal wetland.

c. So as to be in conflict with any locally adopted land use plan or zoning requirement.

C. DESIGN**1. General**

The plans and specifications for a proposed transfer station shall be prepared and certified by a Professional Engineer registered in Delaware and shall be submitted as a part of the transfer station permit application.

2. Minimum design requirements

All transfer stations shall be designed to include at least the following:

a. A leachate collection and disposal system as described in Section 10.D.

b. A means for weighing or measuring all solid waste handled at the facility.

c. Tipping and loading areas contained within structures capable of preventing the development of nuisance conditions (e.g., odors, litter, dust, rodents, insects) if these areas will be within 300 feet of a commercial, institutional, or residential structure that is designed for human occupancy and that is in existence at the time of initial permit application. If tipping and loading areas will not be within 300 feet of a structure designed for human occupancy, the permittee shall evaluate the impact to the surrounding area of handling the solid waste in a non-enclosed facility. In addition, the permittee shall evaluate the need for exhaust systems in enclosed areas and shall install such systems if necessary for the protection of human health.

d. A means to prevent vehicles from backing into the pit while unloading.

e. On-site roads designed to accommodate projected traffic flow in a safe and efficient manner.

f. Separate access for passenger vehicles, if both commercial and passenger vehicles are using the facility.

g. A fence or other security system that will prevent access to the site by unauthorized persons.

D. LEACHATE COLLECTION AND DISPOSAL

1. All transfer stations shall be designed and constructed to include a leachate collection and disposal system that will prevent leachate (including wastewater generated during normal operation such as wash-out and cleaning of equipment, trucks, and floors) from contaminating the soil, surface water, or ground water.

2. The leachate collection and disposal system must be approved in advance by the Department and shall consist of one, or a combination, of the following:

a. Tipping, loading, and unloading areas constructed of impervious material and equipped with drains connected to either:

(1) a sanitary sewer system, or

(2) a corrosion-resistant holding tank.

If the tipping, loading, and unloading areas are not enclosed, the piping and drains to the sewer system or holding tank shall be sized to handle, at a minimum, the run-off that would result from a 2-hour 10-year storm.

b. Containers and compaction units constructed of durable impervious material and equipped with covers that will minimize the entrance of precipitation.

Alternate designs may be used with prior written approval of the Department if the applicant can show that they will prevent leachate from contaminating the soil, surface water,

and ground water.

E. OPERATION AND MAINTENANCE STANDARDS

1. General

a. Transfer stations shall be operated in a manner that will preclude degradation of land, air, surface water, or ground water.

b. Transfer stations shall be maintained and operated to conform with the Plan of Operation submitted at the time of permit application and approved by the Department.

2. Details of operation and maintenance

a. Storage of solid waste

Solid waste shall not remain at the transfer station for more than 72 hours without the written approval of the Department. Any solid waste that is to be kept at the site overnight shall be stored in an impervious enclosed structure.

b. Disposition of solid waste leaving the facility

All solid waste accepted at the transfer station must, upon leaving the transfer station, be delivered to a processing or disposal facility authorized by the Department (or by the appropriate environmental agency, if outside of Delaware) to accept that type of waste.

c. Control of nuisances and hazards

Litter

The permittee shall provide for routine maintenance and general cleanliness of the entire site, as well as litter removal along roads approaching the site if accumulations of litter along the approach roads are clearly the result of the operation of the transfer station.

Vectors

The permittee shall implement a vector control plan to prevent the establishment of habitats for nuisance organisms (e.g., flies, maggots, roaches, rodents, and similar vermin) and to mitigate nuisances and hazards to human health and the environment.

Air Pollution

The operation of the transfer station shall comply with 7 Del. Code Chapter 60 and the Regulations Governing the Control of Air Pollution.

Fire

Equipment shall be available on site to control fires, and arrangements shall be made with the local fire protection agency to provide immediate services when needed.

If deemed necessary by the Department, a separate area shall be provided for temporary placement of hot loads received at the facility. The hot load area shall be located away from trees, bushes, and structures, and loads shall be extinguished immediately upon unloading.

d. Access

Access to the site shall be limited to those times when an attendant is on duty and to those persons authorized to use the site for the disposal of solid waste. This section shall not be construed to limit right of entry by the Secretary or his/her duly authorized designee pursuant to 7 Del. Code, Section 6024.

e. Personnel

Sufficient numbers and types of personnel shall be available at the site to insure capability for operation in accordance with these regulations.

f. Health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

First aid equipment shall be available at the site.

g. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the facility in accordance with the provisions of these regulations and the plan of operation. All waste handling equipment shall be cleaned routinely and maintained according to the manufacturer's recommendations.

3. Recordkeeping

The following information must be recorded in a timely manner and the records retained by the owner or operator for at least three years:

a. A record of the solid waste commercial haulers (company name, address, and telephone number) using the facility and the type and weight or volume of solid waste delivered by each hauler to the transfer station each day.

b. A record of the type and weight or volume of solid waste delivered from the transfer station to its final destination each day.

c. A record of fires, spills, and uncontrolled releases that occur at the facility, and of hot loads received.

d. Fire and safety inspections.

e. Major equipment maintenance.

f. Destination of the solid waste.

4. Reporting

a. The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the

preceding calendar year. The due date for this annual report will be specified in the facility's permit. The report shall be on a form acceptable to the Department and shall describe and summarize all environmental monitoring and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

- (1) Type and weight or volume of waste received.
- (2) A complete list of commercial haulers that hauled waste to or from the facility during the year covered by the report.
- (3) Destination of the solid waste and the type and weight or volume of waste delivered to the destination.
- (4) Descriptions of any intentional or accidental deviations from the approved Plan of Operation.
- (5) Descriptions of all construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations.
- (6) An updated estimate of the cost of closing the facility.
- (7) Any additional information specified by the Department.

b. The owner or operator shall notify the Department immediately if either of the following occurs:

- (1) A fire that requires the services of a fire protection agency.
- (2) A spill or uncontrolled release that may endanger human health or the environment.

5. Prohibitions

a. Solid waste generated outside of the State of Delaware shall not be combined, commingled or aggregated with solid waste that was generated in Delaware and that is required, pursuant to regulations promulgated by the Delaware Solid Waste Authority (DSWA), to be disposed of at a DSWA facility.

b. No liquids, other than those used to disinfect, to suppress dust, or to absorb or cover odors from the solid waste, shall be added to the solid waste.

c. Open burning is prohibited on any transfer station site.

d. Scavenging is prohibited at any transfer station.

F. CESSATION AND CLOSURE

1. General

When a transfer station ceases accepting solid waste, all of the waste on site shall be removed and the facility shall be closed in a manner that will eliminate the need for further maintenance at the site.

2. Required submittals; notification

a. An owner or operator of a new transfer station must submit a conceptual closure plan at the time of initial permit application.

b. At least 60 days prior to the date when waste will no longer be accepted at the facility, the owner or operator shall submit to the Department all of the items listed in Section 4.E.1.b. Closure activities shall not commence until the Department has approved the updated closure plan and the closure schedule and has modified the facility's permit to allow closure activities to be carried out.

c. A copy of the approved closure plan must be maintained at the facility or at some other location designated by the owner or operator until closure has been completed.

3. Closure plan contents

The closure plan for a transfer station must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close the transfer station, including provisions that will be made for the proper disposal of all waste that is on the site when operations cease.

b. An estimate of the cost of closing the facility. This estimate shall be updated yearly and submitted to the Department as a part of the annual report described in Section 10.E.4.a (6).

c. A plan for post-closure care of the facility if such care would be necessary to protect human health and the environment.

d. A description of the planned post-closure use of the property.

4. Minimum closure requirements

a. Closure shall be carried out in accordance with the approved closure plan.

b. Closure must be complete within six months after the date on which the Department issues a modified permit to allow closure.

c. When closure has been completed to the satisfaction of the Department, the Department will issue a letter indicating that closure has occurred in accordance with the closure plan.

d. After closure has been completed, the Department may require that the permittee conduct monitoring and/or maintenance activities at the site to prevent or detect and mitigate any adverse environmental or health impacts.

SECTION 11: SPECIAL WASTES MANAGEMENT

PART 1 - Infectious Waste

A. GENERAL PROVISIONS

~~1. No generator shall engage in the treatment, storage or disposal of infectious waste without the proper permits from the Department.~~

1. All generators of infectious waste shall obtain an Infectious Waste Identification Number by registering with the Department on a form provided by the Department.

2. No person shall engage in the construction, operation, material alteration, or closure of a facility(ies) to be used in the treatment, storage, or disposal operation connected with the management of infectious wastes, nor shall any person enter into the material alteration of a facility, or closure of a solid waste facility managing infectious wastes, unless specifically exempted from the regulations within Section 2.C., without first having obtained the proper permits from the Department.

3. ~~Biological liquid wastes which can be directly discharged into a permitted wastewater treatment system are not subject to these regulations.~~

3. All infectious waste must be packaged in accordance with these regulations.

B. SITING

1. Infectious waste treatment facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. Infectious waste treatment facilities shall be located adjacent to access roads capable of withstanding anticipated load limits.

3. No new infectious waste treatment facility shall be located in an area such that solid waste would at any time be handled:

- a. Within the 100 year flood plain.
- b. Within any state or federal wetland.
- c. So as to be in conflict with any locally adopted land use plan or zoning requirement.

C. DEFINITIONS

The following definitions are specific to the management of infectious waste as used in this part. For general definitions relating to other types of solid waste and the management of solid waste, refer to Section 3 of these regulations.

"6-LOG REDUCTION" means a 6 decade reduction or a millionth (.000001) survival probability in a microbial population, i.e., a 99.9999% reduction.

"ATCC" means American Type Culture Collection.

"AUTOCLAVE TAPE" means tape that demonstrates an evidentiary visible physical change when subjected to temperatures that will provide evidence of sterilization of materials during treatment in an autoclave or similar device.

"CFU" means colony-forming unit.

"CHALLENGE LOADS" means an infectious waste load

that has been constructed by composition (i.e., organic content, moisture content, or other physical or chemical composition).

"CLASS 4 ETIOLOGIC AGENTS" means a pathogenic agent that is extremely hazardous to laboratory personnel or that may cause serious epidemic disease. Class 4 etiologic agents include the following viral agents:

- Alastrim, Smallpox, Monkey pox, and Whitepox (when used for transmission or animal inoculation experiments).
- Hemorrhagic fever agents (including Crimean hemorrhagic fever (Congo), Junin, and Machupo viruses, and others not yet defined).
- Herpesvirus simiae (Monkey B virus)
- Lassa virus
- Marburg virus
- Tick-borne encephalitis virus complex (including Absettarov, Hanzalova, HYPR, Kumlinge, Russian spring-summer encephalitis, Kyasanur forest disease, Omsk hemorrhagic fever and Central European encephalitis viruses)
- Venezuelan equine encephalitis virus (epidemic strains, when used for transmission or animal inoculation experiments)
- Yellow fever virus (wild, when used for transmission or animal inoculation experiments)

"CONTAINER" means any portable enclosure in which a material is stored, managed or transported.

"CONTAMINATION" means the degradation of naturally occurring water, air or soil quality either directly or indirectly as a result of the transfer of diseased organisms, blood or other matter that may contain disease organisms from one material or object to another.

"ETIOLOGIC AGENTS": see "INFECTIOUS SUBSTANCE" ~~means organisms defined to be etiologic agents (causative agent of a disease/s) in Title 49 of the U.S. Code of Federal Regulations at 173.386 (October 1, 1987 Edition).~~

"GENERATOR" means hospital, in or out patient clinics, laboratories, medical offices, dental offices, nursing homes, and in-patient residential facilities serving persons with diseases which may be transmitted through contact with infectious waste as well as veterinary facilities and research laboratories operating within the State of Delaware.

"INCINERATOR" means any enclosed device used to destroy waste material by using controlled flame combustion.

"INDICATOR MICROORGANISM SPORES" means those microorganism spores listed in Appendix A, Table B of Section 11, Part 1.

"INFECTIOUS SUBSTANCE" (formerly called

"ETIOLOGIC AGENTS") means a viable microorganism, or its toxin, which causes or may cause disease in humans or animals, and includes any agent that causes or may cause severe, disabling, or fatal disease. The terms *infectious substance* and *etiologic agent* are synonymous.

"INFECTIOUS WASTE" means those solid wastes which may cause human disease and may reasonably be suspected of harboring human pathogenic organisms, or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. Types of solid wastes designated as infectious include but are not necessarily limited to the following:

1. Biological wastes:

a. Biological liquid wastes means blood and blood products, excretions, exudates, secretions, suctionings and other body fluids including liquid wastes from renal dialysis.

b. Pathological wastes means all human tissues and anatomical remains, including human fetal remains, which emanate from surgery, obstetrical procedures, autopsy, and laboratory procedures.

c. Cultures and stocks of etiologic agents and associated biological wastes means, but is not limited to, specimen cultures, cultures and stocks of infectious substances ~~etiologic agents~~, and wastes from production of biologicals and serums.

d. Laboratory wastes means those wastes which have come in contact with pathogenic organisms or blood or body fluids. Such wastes include, but are not limited to, disposable materials, culture dishes, devices used to transfer, inoculate and mix cultures, paper and cloth which has come in contact with specimens or cultures which have not been sterilized or rendered noninfectious; or laboratory wastes, including cultures of infectious substances ~~etiologic agents~~, which pose a substantial threat to health due to their volume and virulence.

e. Animal tissue, bedding and other waste from animals known or suspected to be infected with a pathogen which also causes human disease, provided that prevailing evidence indicates that such tissue, bedding or other waste may act as a vehicle of transmission to humans.

f. Human dialysis waste materials including blood lines and dialysate membranes.

2. Sharps means any discarded article that may cause puncture or cuts. Such wastes include, but are not limited to, needles, intravenous (IV) tubing with needles attached, scalpel blades, glassware and syringes that have been removed from their original sterile containers. For the purpose of these regulations, only sharps from human or animal health care facilities, human or animal research facilities or human or animal pharmaceutical manufacturing facilities shall be regulated as sharps.

3. Discarded Biologicals means serums and vaccines

produced by pharmaceutical companies for human or veterinary use. These products may be discarded because of a bad manufacturing lot (i.e., off-specification material that does not pass quality control or that is recalled), out-dating or removal of the product from the market or other reasons. Because of the possible presence of infectious substances ~~etiologic agents~~ in these products, the discarded material constitutes infectious waste.

4. Isolation Wastes means discarded materials contaminated with blood, excretions, exudates and/or secretions from humans ~~who that~~ are isolated to protect others from highly communicable diseases (those diseases identified as caused by Class 4 etiologic agents).

5. Other infectious wastes means any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill of any infectious waste.

"LARGE INCINERATOR" means an incinerator which has a capacity of greater than 1000 pounds per hour.

"LOG KILL" (L) means the difference between the logarithms of viable test microorganisms or indicator microorganism spores before and after treatment.

"MANIFEST" means a tracking document designed to record the movement of solid waste from the generator through its trip with a transporter to an approved off-site treatment or disposal facility.

~~"MOTOR VEHICLE" means a vehicle, machine, tractor, trailer, or semi-trailer, or any combination thereof, propelled or drawn by mechanical power and used in transportation or designed for such use.~~

"NONINFECTIOUS" means a state in which potentially harmful microorganisms are absent, free of pathogens.

"RED BAG" means an impermeable, 3-mil polyethylene bag or equivalent, red in color, for the collection, storage, and transport of infectious or regulated medical waste, which meets the following minimum performance requirements:

1. Appearance: opaque, red. Each bag must carry the words "INFECTIOUS WASTE" or "REGULATED MEDICAL WASTE" or "BIOHAZARD" in one-inch (minimum) letters and carry the Biological Hazard Symbol.

2. Dart Impact, F₅₀: 100 grams minimum.

3. Elmendorf Tear: 380 grams minimum (any direction).

4. Heavy metals: 100 ppm maximum combined total.

"REGULATED MEDICAL WASTE" means INFECTIOUS WASTE.

"SHIPMENT" means that waste which is conveyed by a transporter between a generator and a designated facility or a

subsequent transporter.

"SMALL INCINERATOR" means an incinerator which has a capacity equal to or less than 1000 pounds per hour.

"SMALL QUANTITY ~~INFECTIOUS~~ WASTE GENERATOR" means a private practice physician, dentist, veterinarian and any other generator of infectious waste in which three or fewer professionals are in the practice and generates less than 50 pounds per month; or a generator who can demonstrate that their facility generates less than 50 pounds per month of infectious waste.

"STORAGE AREA" means an area designated for the holding of waste for a temporary period, at the end of which time the waste is treated, disposed of, or stored elsewhere.

"TEST MICROORGANISMS" means those microorganisms listed in Appendix A, Table B of Section 11, Part 1.

~~"TRANSPORTATION" means the movement of waste by air, rail, highway, or water.~~

~~"VECTOR" means a living animal, insect or other arthropod which transmits an infectious disease from one host to another.~~

D. EXEMPTIONS

The following solid wastes are not to be managed as infectious wastes:

1. Soiled diapers and feminine hygiene items produced by a person not known to have an infectious disease;
2. Wastes contaminated only with organisms which are not pathogenic to humans, and which are managed in accordance with all applicable regulations of the U.S. Department of Agriculture and the Delaware Department of Agriculture and Consumer Services and all other regulations governing this type of waste stream;
3. Food wastes which are pathogenic to humans only through direct ingestion;
4. Any infectious waste contaminated by, co-incinerated with, or mixed with hazardous, radioactive or toxic waste becomes a hazardous, radioactive or toxic waste and shall then be managed under the appropriate regulations governing those waste types (7 Del. C. Chapter 63, 7 Del. C. Chapter 80 and any applicable federal regulations);
5. Waste consisting of human anatomical remains, including human fetal remains, managed by a licensed funeral director;

Bed linen, instruments, equipment and other reusable items are not wastes until they are discarded. This part

~~section~~ and these regulations apply only to wastes. The regulations do not include the sterilization for disinfection of items that are reused for their original purpose. Therefore, the method of sterilization or disinfection of items prior to reuse is not limited. When reusable items are no longer serviceable and are discarded, they become wastes and subject to these regulations at that time and must be sterilized by steam, incinerated, or otherwise rendered non-infectious; *[this paragraph is being moved from paragraph J.1 of this part]*

7. Waste generated by Delaware households;

8. Ash from incineration of infectious waste once the incineration process has been completed;

9. Residues from treatment and destruction processes of infectious waste once the waste has been both treated and destroyed;

10. Samples of infectious waste transported off-site by EPA or State-designated enforcement personnel for enforcement purposes are excepted from the requirements of this part during the enforcement proceeding; and

11. Biological liquid wastes which are directly discharged into a permitted wastewater treatment system. *[this paragraph is being moved from paragraph A.3 of this part]*

2. Small Quantity Generator Exemptions

1. During the annual renewal of a professional license, it is the responsibility of the generator to provide verification that the conditions of a small quantity generator are met.

2. Should the yearly certification show that a practice of three or fewer professionals produces greater than 50 pounds per month then all portions of this regulation apply.

3. It is the responsibility of the generator to secure a means of proper disposal.

4. Small quantity generators are not required to obtain a permit for storage of infectious waste.

E. SMALL QUANTITY GENERATOR REQUIREMENTS

1. Generators of infectious waste who produce less than 50 pounds per month are considered to be Small Quantity Generators.

2. It is the responsibility of the Small Quantity Generator to arrange for proper waste disposal. A Small Quantity Generator shall contract the services of a permitted transporter of infectious waste, or render the waste non-infectious and non-recognizable using a process or equipment approved by the Department, prior to disposal.

3. Requirements to submit manifest tracking documents shall apply to either the Small Quantity Generator or the transporter contracted by the generator for disposal of the infectious waste. The transporter who consolidates and

transports infectious waste may elect to complete a consolidated manifest for the Small Quantity Generators that he or she services. In this event, the transporter assumes responsibility for the MANIFEST REQUIREMENTS, Section 11, Part 1, P, of these Regulations, which would otherwise apply to the generators of the wastes.-

4. Small Quantity Generators are exempt from the storage time requirements in Section H.5.c of this part as long as not more than 50 pounds of infectious waste are stored and so long as storage does not produce conditions that are offensive or harmful to facility personnel or the public.

5. Small Quantity Generators are exempt from the requirement to file an annual report to the Department. However, they are responsible for maintaining records of infectious waste disposal for a period of at least three years. Documentation shall include:

- a. A description of how the waste was rendered non-infectious and non-recognizable, and
- b. Copies of receipts or manifests for wastes managed by a permitted transporter of infectious waste.

F. PERMIT REQUIREMENTS

1. All application permit requirements found in Section 4.A.2 through 4.A.11 shall be performed unless specifically exempted within this part of the regulations.

~~Permit requirements specific to all infectious waste are as follows:~~

2. Any person required to have a permit for activities that will occur in the management of infectious waste shall apply for a permit in accordance with Section 4.E of these regulations and the appropriate sections of the Regulation No. 2 of the Regulations Governing Air Pollution Control, Delaware Regulations Governing the Control of Air Pollution. No activity shall occur prior to receipt of a ~~permit issued by the Department.~~ all permits required by the Department. ~~This application must include the following required information:~~

- ~~a. The name and location of the generator of the waste;~~
- ~~b. A description of the origin and content of the waste, its containerization and the expected volume and frequency of waste disposal at the facility;~~
- ~~c. A description of the facility where the waste will be rendered noninfectious prior to disposal, including its name and the exact location of the facility;~~
- ~~d. A description of the processing methods to be used for each type of waste, including schematic drawings (e.g. blueprints, etc.);~~
- ~~e. A description of the containers to be used for the storage during the collection and during the movement within the facility, including the total length of storage;~~
- ~~f. A description of the alternatives to be used should the~~

~~processing equipment become inoperable, and the procedures should storage of the waste become necessary resulting from the lack of prompt processing;~~

~~g. A description of the handling and safety measures that will be employed for each type of waste, including personal protection and safety as well as modifications to the operational safety plan that are required to meet the best available technology;~~

~~h. A description of the monitoring and quality assurance program will be required for all methods used to render the waste noninfectious;~~

~~i. A description of modifications to an existing processing facility that are required to process the waste, including schematic drawings.~~

~~2. Within six months after the enactment of these regulations, owners/operators of existing facilities shall submit an application in accordance with these regulations to the Department requesting a permit to operate an infectious waste facility.~~

3. A new or revised operation plan for treatment, storage and/or disposal of infectious waste shall be submitted to the Department whenever there is an increase of more than 15 percent over a three calendar month average in the maximum quantity of infectious waste receiving treatment, storage or disposal per month by the facility or when changes are otherwise made in an existing operation plan.

~~4. Within thirty days of the effective date of these regulations, all generators must register with the Department.~~

G. PROHIBITIONS

1. Infectious waste may not be disposed at a sanitary landfill unless the waste has been rendered noninfectious and non-recognizable. (In the case of extracted teeth, sterilization followed by landfilling would be acceptable).

2. Compactors, grinders or similar devices may not be used by a generator to reduce the volume of infectious waste until after the waste has been rendered noninfectious, or unless the device is part of an approved treatment process which renders the waste non-infectious.

3. Infectious wastes shall not be sent to a recycling facility.

4. Waste consisting of human anatomical remains, including human fetal remains, may not be disposed of at sanitary landfills. The remains must be incinerated, cremated or interred in accordance with 24 Del. C. Chapter 31.

5. Trans-chutes shall not be used to transfer infectious waste between locations where it is contained.

H. PACKAGING, LABELING, AND STORAGE REQUIREMENTS FOR INFECTIOUS WASTE

1. Responsibility for packaging and labeling.

The generator of infectious waste shall not submit for transport, storage, treatment or disposal any waste which is not packaged in accord with ~~Sections 11 Part 1 G and 11 Part 1, K. this part. As a bag or other container becomes full, it must be immediately sealed, packaged, labeled and managed as described in this part, and 11 Part 1, K.~~ Contractors or other agents may provide services to the generator, including packaging and labeling of infectious waste; however, no contract or other relationship shall relieve the generator of the responsibility for packaging and labeling the infectious waste as required by these regulations.

~~b. Section 11 Part 1, G does not apply to infectious waste that has been incinerated or sterilized under this article if the waste or ash residue from the waste is stored separately from other waste.~~

2. Packaging Requirements prior to storage, treatment, transport or disposal.

All infectious waste shall be packaged as follows ~~before it is stored, treated, transported or disposed of:~~

a. Infectious wastes, other than sharps:

(1) ~~Waste shall be contained in two (one bag inside the other) impermeable, plastic bags each sealed separately. Each bag must have a minimum thickness of 3 mil. Each bag must also carry the word biohazard and the universal Biological Hazard Symbol, or the words infectious waste. RED BAGS. The bags shall be individually tied or sealed. As a bag or other container becomes full, it must be immediately sealed, packaged, labeled and managed as described in this part.~~

(2) All bags containing infectious waste shall be red in color. Waste contained in red bags shall be considered infectious waste and managed as infectious waste.

(3) Bags shall be sealed by lapping the gathered open end and binding with tape or closing device such that no liquid can leak.

(4) In addition to the plastic bag containers described in this section, all infectious wastes must be enclosed in a double-walled corrugated fiberboard box or equivalent rigid container before it is transported beyond the site of generation. ~~The box or container must meet the standards of 49 CFR 178.210, October 1, 1987 Edition, for a classified strength of at least a 200 pound test and be class DOT 12B60.~~

b. Sharps

Sharps shall be contained in leakproof, rigid, puncture-resistant containers that are tightly lidded. As soon as the first sharp is placed in an empty container, the container shall be labeled with the word "SHARPS", and the Biological Hazard Symbol.

3. Labeling requirements.

All infectious waste shall be labeled immediately after packaging. ~~The~~ labels shall be securely attached to the outer layer of packaging and be clearly legible. The label may be a tag securely affixed to the package. Indelible ink shall be used to complete the information on the labels, and the labels shall be at least three inches by five inches in size.

a. The following information shall be included on label one:

(1) The name, address and business telephone number of the generator,

(2) "Infectious" or "Regulated Medical Waste" in large print,

(3) "Pathological Waste," if pathological waste is included in the contents, and

(4) The name, address and business telephone number of ~~the~~ haulers or other persons to whose control the infectious waste will be ~~was~~ transferred.

b. The following shall be included on label two: the Biological Hazard Symbol. The label shall be not less than three by five inches.

4. Etiological agents. Infectious substances

All infectious substances that are transported must be packaged as described in 49 CFR 173.387, October 1, 1987, Edition, even when that transport is wholly within the boundaries of the State.

~~All etiological agents, as defined in 49 CFR 173.386, October 1, 1987, Edition, that are transported must be packaged as described in 49 CFR 173.387, October 1, 1987, Edition, and labeled as described in 49 CFR 173.388, October 1, 1987, Edition, even when that transport is wholly within the boundaries of the State.~~

5. Storage of infectious waste

a. Infectious waste shall be contained in a manner that:

(1) Affords protection from vectors, rain and wind,

(2) Prevents the spread of infectious agents,

(3) Does not provide a breeding place or food source for insects or rodents, and

(4) Prevents the leakage of waste from the storage bag or container.

b. Infectious waste shall be placed in separate containers from other waste at the point of origin in the producing facility.

c. Infectious waste may not be stored at the waste producing facility for more than the following periods of time:

(1) Up to fourteen days at room temperature (18 to 28 degrees Celsius, 65 to 82 degrees Fahrenheit) or up to 45 days in a refrigerator (2 to 7 degrees Celsius, 36 to 44 degrees Fahrenheit) for all types of infectious waste, so long as it does not produce conditions that are offensive or harmful to facility personnel or the public welfare.

(2) Ninety days in a freezer (-20 to -18 degrees

Celsius, -4 to -1 degrees Fahrenheit) not used for food or patient related items.

(3) Exemption. Sharps which are disposed in a container specifically designed for sharps and which is sealed so as to prevent leaks when it is full, are exempt from the time limit on storage.

~~d. Infectious waste other than sharps shall be packaged in accord with Section 11 Part 1 G.2 and shall be contained in one of the following ways:~~

~~(1) Two disposable polyethylene bags, or equivalent material approved by the Department, both bags equaling a cumulative total of at least 6 mils for on site storage. The bags shall be individually tied.~~

~~(2) Leakproof, rigid, puncture resistant containers that are tightly lidded.~~

~~e. Sharps shall be contained in leakproof, rigid, puncture resistant containers that are tightly lidded.~~

~~f. Bags used for containment of infectious waste shall be in compliance with Section 11 Part 1 G.2 and red in color and conspicuously labeled with one of the following:~~

~~(1) The words "infectious waste."~~

~~(2) The word "biohazard" and the universal biohazard symbol.~~

g. A container used for the storage of infectious waste may not be reused unless one of the following applies:

(1) It has been decontaminated utilizing a Department-approved decontam-ination procedure; or

(2) The surface of the container has been protected from direct contact with infectious waste.

h. Reusable containers for infectious waste shall be thoroughly washed and decontaminated by a method approved by the Department of Health and Social Services or the Department each time they are emptied, unless the surfaces of the containers have been completely protected from contamination by disposable liners, bags or other devices removed with the waste. Approved methods of decontamination include, but are not limited to, agitation to remove visible soil combined with one of the following procedures:

(1) All parts of the container shall come in contact with hot water of at least 82 degrees C (180 degrees F) for a minimum of 15 seconds.

(2) All parts of the container shall come in contact with chemical sanitizer by rinsing with or immersion in one of the following for a minimum of 3 minutes:

(a) Hypochlorite solution (500 ppm available chlorine),

(b) Phenolic solution (500 ppm active agent),

(c) Iodophor solution (100 ppm available iodine), or

(d) Quaternary ammonium solution (400 ppm active agent).

(3) Reusable pails, drums, dumpsters or bins used for containment of infectious waste shall not be used for

containment of waste to be disposed of as noninfectious waste or for other purposes except after being decontaminated by procedures as described in ~~Section 11 Part 1 G.5.h. this paragraph.~~

i. Containment of infectious waste shall be in an area separate from other wastes. Areas used for the containment of infectious waste shall be secured so as to deny access to unauthorized persons and shall be marked with prominent warning signs and the biohazard symbol on, or adjacent to, the exterior of entry doors, gates or lids. Wording of warning signs shall be in English, "CAUTION -- INFECTIOUS WASTE STORAGE AREA -- UNAUTHORIZED PERSONS KEEP OUT". Warning signs shall be readily legible during daylight from a distance of at least 25 feet.

I. MANAGEMENT OF SPILLS OF INFECTIOUS WASTE

Spill containment and cleanup kit. All infectious waste management facilities are required to keep a small containment and cleanup kit within one hundred feet of any area where infectious wastes are managed. The facility shall maintain and implement a plan that provides the means of decontamination of any person having had bodily contact with infectious waste while transporting the waste to the treatment or disposal site or while handling or disposing of the waste at the site.

J. CLOSURE REQUIREMENT

When a facility that has been used for infectious waste management is to cease operations involving infectious wastes, it shall be thoroughly cleaned and disinfected. All waste shall be disposed of in accord with these regulations, and items of equipment shall be disinfected. (Note: Due to the variability in the type of infectious waste facilities, the Department will specify individual closure requirements in the permit issued to the facility.)

K. METHODS OF TREATMENT AND DISPOSAL

1. All treatment of infectious waste must utilize a method that will render the waste non-infectious.

2. All pathological waste must be incinerated, cremated or interred in accordance with 24 Del. C. Chapter 31. Other disposal methods are not acceptable for this type of waste. This requirement does not prohibit the disposal of certain specified wastes in a permitted wastewater treatment system (see Section D.11 of this part). ~~(See General Provisions) in a sanitary sewer. (In the case of extracted teeth, sterilization followed by landfilling would be acceptable).~~

L. RECORDKEEPING AND REPORTING REQUIREMENTS

All ~~generators and~~ waste management or treatment facilities that manage infectious waste shall maintain, for a period of three years, the following records and assure that they are accurate and current:

1. A list containing the names of all individuals responsible for the management of infection control for the facility, their address, their phone numbers and the periods covering their assignment of this duty.

2. The date, persons involved and short description of events in each spill of infectious wastes.

3. A notebook or file containing the policies and procedures of the facilities for dealing with infectious wastes.

4. A log of all special training received by persons involved in the management of infectious waste.

5. A log of infectious waste generated at the site or received from off-site, including the amount, the date of generation, receipt dates, and the date of shipment.

6. Anyone that sterilizes or incinerates infectious waste shall maintain a log indicating the method of monitoring the waste as well as a verification that it has been rendered noninfectious.

7. The operator of a facility that incinerates infectious waste shall submit to the Department, at least annually during the life of the facility, a chemical analysis of composite samples of the ash residue. Parameters that are to be monitored will be specified in the permit.

M. EVIDENCE OF EFFECTIVENESS OF TREATMENT

1. Treatment of infectious waste must be conducted in a manner which:

a. Eliminates the infectious potential of the waste. A treatment process eliminates the infectious potential of infectious waste if the owner or operator of a treatment unit demonstrates that an Initial Efficacy Test and Periodic Verification Test(s) have been completed successfully.

(1) Successful completion of an Initial Efficacy Test is demonstrated by a 6-log reduction/kill of test microorganisms. For a thermal unit that maintains the integrity of container, a 6-log kill of indicator microorganism spores may be used as an alternative test.

(2) Successful completion of a Periodic Verification Test is demonstrated by:

(a) a 6-log kill of test microorganisms or indicator microorganism spores as provided in Subsection 11, Part 1, L.1.a; or

(b) a minimum 3-log kill of indicator microorganism spores that have been correlated with a 6-log kill of test microorganism; or

(c) an alternate method submitted to and

approved by the Department.

b. Disposes treatment residues in accordance with these regulations.

c. Provides for quality assurance programs that must include, at a minimum, a written plan that:

(1) Designates responsibility to personnel.

(2) Describes parameters that must be monitored to insure effectiveness of the treatment process.

(3) Identifies monitoring devices.

(4) Ensures that monitoring devices are operating properly.

(5) Establishes appropriate ranges for operating parameters.

(6) Identifies Person(s) who shall collect and organize data for inclusion in operating records.

(7) Identifies Person(s) who shall evaluate any discrepancies or problems.

(8) Identifies Person(s) who shall propose actions to correct problems identified, and

(9) Identifies Person(s) who shall assess actions taken and document improvement.

d. Provides for periodic biological testing, where appropriate, that demonstrates proper treatment of the waste.

e. Provides for assurances that clearly demonstrate that infectious waste has been properly treated; and

f. Is in compliance with all federal, state and local laws and regulations pertaining to environmental protection.

2. Initial Efficacy Test.

a. The manufacturer, owner, or operator of a treatment unit shall conduct an Initial Efficacy Test, pursuant to Appendix A of this Section, for each model prior to its operation. If significant mechanical changes are made to a treatment unit, the Initial Efficacy Test must be repeated. The treatment units are considered to be the same model if they:

(1) Are manufactured by same company,

(2) Have the same company name, and

(3) Have no significant mechanical changes.

b. The Initial Efficacy Test shall be conducted using option 1, 2 or 3 as described in Appendix A of this Section, using the challenge loads listed in Table C of Appendix A, or by an equivalent procedure that meets the requirements of the Initial Efficacy Test and has been approved by the Department. If any of the challenge loads fails the Initial Efficacy Test, the operating conditions must be revised and the Initial Efficacy Test must be repeated for all challenge loads. The Initial Efficacy Test must also meet the requirements of this Section.

c. Composition of challenge loads

(1) For treatment units designed to treat all types of infectious wastes, all three types of challenge loads must be used in conducting the Initial Efficacy Test. The three (3) types of challenge loads represent infectious waste with a high moisture content, low moisture content and high

organic content. The quantity of each challenge load must equal 100% of the maximum capacity of the treatment unit. Each challenge load must consist of a minimum 5% (by weight) of each of the following categories: blood/broth cultures, fibers, metals, sharps, plastics, pathological waste, glass, non-woven fibers, and bottles of liquids. Table C of Appendix A contains the moisture and organic content requirements that must be met in each type of challenge load.

(2) For treatment units designed to treat select categories of infectious waste (e. g., sharps treatment unit), modification in the composition of the challenge load(s) may be used if approved by the Department in writing.

d. The Initial Efficacy Test must be conducted under the same operating conditions under which the treatment unit operates on a day-to-day basis. The feed rate for the treatment unit must remain constant throughout the Initial Efficacy Test. This feed rate must never be exceeded during the operation of the treatment unit.

e. The Initial Efficacy Test must be performed so that:

(1) Each container of the test microorganisms and/or indicator microorganism spores is placed in the load to simulate the worst case scenario (i. e., that part of load that is the most difficult to treat). For example, the worst case scenario for an autoclave would be to place the container(s) of test microorganisms and/or indicator microorganism spores within a sharps container that must in turn be deposited in a plastic biohazard bag that is then located centrally within the challenge loads.

(2) Test microorganisms and/or indicator microorganisms must be cultured and enumerated in accordance with instructions provided by the supplier of microorganisms and Standard Methods for the Examination of Water and Wastewater.

f. A Document of Initial Efficacy Test must be retained in the treatment facility, and made available during normal business hours for inspection and photocopying by an authorized representative of the Department. The Document of Initial Efficacy Test must include at the minimum:

(1) A detailed description of the test procedures used, including all test data generated, with descriptions of data handling, and interpretation of final test results.

(2) A detailed description and verification of the operating parameters (e. g., temperature, pressure, retention times, chemical concentrations, irradiation dose, and feed rates).

(3) A description of quality assurance/quality control procedures and practices for the culture, storage and preparation of test and/or indicator microorganisms (including, but not limited to, organism history, source, stock culture maintenance, and enumeration procedures). The purity of the test microorganisms and/or indicator microorganism spores must be certified by a commercial or clinical laboratory.

3. Periodic Verification Test(s)

a. The effectiveness of the treatment unit shall be verified by conducting Periodic Verification Test(s) which must be carried out in accordance with this Subsection.

b. Periodic Verification Test(s) must be conducted quarterly or more frequently if required by the permit or recommended by the manufacturer.

c. The manufacturer, owner, or operator of a treatment unit must perform Periodic Verification Test(s) that satisfy at least one (1) of the following:

(1) Passing the Initial Efficacy Test by using option 1, 2 or 3 of appendix A of this part (whichever is applicable). The three challenge loads described in Appendix A, Table C, do not need to be used. The test microorganism or indicator microorganisms must be placed in a representative load in accordance with Subsection 11, Part 1, L.2.e.(1). For example, an autoclave may use option 3 (e. g., demonstrate at a minimum the destruction of one million *Bacillus stearothermophilus* spores) to meet the Periodic Verification Test requirement. In the case of an incinerator a stainless steel pipe with threaded ends and removable caps lined with ceramic insulation may be used to contain a glass culture vial with a *Bacillus subtilis* spores strip. The pipe with the spore strips may be placed in the load of infectious waste for the Periodic Verification Test. After the treatment, the pipe with the spore strips may be recovered and the spores may be cultured to assess whether, at a minimum, one million spores have been destroyed to meet the Periodic Verification Test(s) requirement.

(2) Correlating the log kill (L) of the test microorganisms in the Initial Efficacy Test to an equivalent log kill (T) of indicator microorganism spores in accordance with Appendix B. The equivalent log kill (T) of indicator microorganism spores must be used for all subsequent Periodic Verification Tests. The correlation must be done with three challenge loads identified in Table C of Appendix A (See Subsection 11, Part 1, L.3.d below for further requirements).

(3) Submitting to and obtaining written approval by the Department for a procedure that is equivalent to Subsection 11, Part 1, L.3.c.(1) and (2). Examples of alternatives include, but are not limited to, use of another indicator microorganism, or measurement of disinfectant concentrations in the treated residue. For incinerators only, an example of an alternative is visually inspecting the ash from each load of treated infectious waste to ensure that all infectious waste within the load is completely combusted. The approval of an alternative by the Department may require more frequent testing and/or monitoring of the treatment unit.

d. If correlation is being used for the Periodic Verification Test, (i. e., the correlation of log kill (L) of the test microorganisms with equivalent log kill (T) of the indicator microorganism spores) the following procedures

apply:

(1) At a minimum, an initial population of one million indicator microorganism spores per gram of waste solids in each challenge load must be used.

(2) The fraction of surviving indicator microorganism spores that correlates to a log kill (L) of six (6) for each test microorganism must be used for future Periodic Verification Test(s). [For example, if a log kill (L) of four (4) for the indicator microorganism spores per gram of waste solids is achieved during this demonstration, then a population of 10,000 of indicator microorganism spores must be used in future Periodic Verification Test(s).] Challenge loads described in Appendix A, Table C, do not need to be used. The test microorganism or indicator microorganism spores must be placed in a representative load in accordance with Subsection 11, Part 1, L.2.e.(1).

(3) An equivalent log kill (T) of at least three (3) for the indicator microorganism spores must be achieved to ensure that all test microorganisms are destroyed.

(4) Test microorganisms and/or indicator microorganism spores must be cultured and enumerated in accordance with instructions provided by the supplier of the microorganisms and Standard Methods for the Examination of Water and Wastewater.

(5) The Periodic Verification Test and Initial Efficacy Test may be run concurrently to verify the correlation.

e. If a load of infectious waste fails a Periodic Verification Test, the Periodic Verification Test(s) must be repeated. The operator shall implement the quality assurance program and contact the manufacturer. If applicable, identify and correct the exact problem(s) until the unit can eliminate the infectious potential of the infectious waste. If the operating parameters are altered another Initial Efficacy Test must be performed to demonstrate the effectiveness of the unit and, if applicable, another Periodic Verification Test correlation, pursuant to Subsection 11, Part 1, L.3.c must be repeated. Loads of infectious waste that were processed prior to receiving the results showing a failure of Periodic Verification Test are considered treated. A second Periodic Verification Test must be run immediately after the first Periodic Verification Test indicates failure. The second Periodic Verification Test is to determine whether or not the treatment unit is eliminating the infectious potential of the waste. After the second Periodic Verification Test shows a failure of the treatment unit, any waste processed after the first detection of failure is considered infectious waste and must be managed accordingly.

f. Results of the Periodic Verification Test(s) must be received, verified and made available for inspection by the Department within 2 weeks of when the test was conducted. When a Periodic Verification Test is used to confirm the failure of a treatment unit, the results of the Periodic Verification Test(s) must be made available in accordance

with the requirements of subsection h below.

g. A Document of Correlating Periodic Verification Demonstration must be prepared by and retained for at least three (3) years at the treatment facility during normal business hours for inspection by the Department. The Document of Periodic Verification Demonstration must include, at a minimum:

(1) A detailed description of the test procedures used and the correlation between the log kill (L) of the test microorganisms and the equivalent log kill (T) of the indicator microorganism spores. An evaluation of the test results must include all test data generated, a description of data handling, and a presentation and interpretation of test results.

(2) A detailed description and verification of the operating parameters (e. g., temperature, pressure, retention times, chemical concentrations, irradiation dose, and feed rates).

(3) A description of quality assurance/quality control procedures and practices for the culture, storage and preparation of test and/or indicator microorganisms (including, but not limited to, organism history, source, stock culture maintenance, and enumeration procedures). The purity of the test microorganisms and/or indicator microorganism spores must be certified by a commercial or clinical laboratory.

h. Records of Periodic Verification Test(s) must be prepared and retained for at least three (3) years at the treatment facility, and made available at the treatment facility during normal business hours for inspection by the Department. These records will include, at the minimum:

(1) The date(s) on which the Periodic Verification Test(s) were performed.

(2) Operating parameters (e. g., temperature, pressure, retention times, chemical concentrations, irradiation dose and feed rates).

(3) Test protocols.

(4) Evaluation of test results.

(5) The name(s), date, signature(s) and title(s) of person(s) conducting the Periodic Verification Test(s).

(i) Periodic Verification Test(s) must be conducted under the same operating conditions under which the treatment unit operates on day-to-day basis. The feed rate for the treatment unit is the maximum feed rate at which the unit operates on day-to-day basis. The feed rate must remain constant throughout the Periodic Verification Test(s). This feed rate must never be exceeded during the operation of the treatment unit.

N. TRANSPORTATION

All transporters of infectious waste must be in compliance with all applicable federal and state regulations and codes.

1. Temperature Control and Storage Period

The transporter must deliver infectious waste to a disposal facility within 15 days from collection from the generation facility.

a. Infectious waste shall be transported in a manner that:

- (1) Affords protection from vectors, rain and wind,
- (2) Prevents the spread of infectious agents,
- (3) Does not provide a breeding place or food source for vectors, and
- (4) Prevents leakage of waste from the storage bags or other containers.

b. Infectious waste shall be transported to off-site processing or disposal facilities in a manner consistent with ~~Section 11 Part I G~~ of these regulations.

c. Motor Vehicles for transporting infectious waste shall be: ~~(1)~~ noncompaction type vehicles.

~~(a)~~ Surfaces of vehicles that have been in direct physical contact with infectious waste, because of a leak in a container or because of some other reason, shall be decontaminated as soon as possible after unloading. Surfaces of vehicles that have not been in direct physical contact with infectious waste shall be decontaminated weekly.

2. Packaging, Labeling and Placards

a. No person shall transport or receive for transport any infectious waste that is not packaged and labeled in accord with these regulations.

b. Any vehicle holding infectious waste in transport shall have a warning sign in bold letters, a minimum of 4 inches in height and in a color that contrasts the color of the vehicle, that indicates the cargo is infectious waste.

c. Vehicle access door labeling:

(1) Transporters in interstate commerce must comply with one of the following labeling options:

(a) The access doors to the cargo area of the vehicle must meet the requirement for intrastate transporters of infectious waste, as described in ~~paragraph 11.M.2.c.(2), Section N.2.c.(2) of this part; or~~

(b) The access doors to the cargo area of the vehicle must comply with the labeling requirements of the state of origin of the infectious waste or the labeling requirements of the state of destination of the infectious waste. Examples of the labeling must be submitted to and approved by the Department prior to transport of the infectious waste through Delaware.

(2) Transporters in intrastate commerce: The access doors to the cargo area of the vehicle must bear a sign with the words **INFECTIOUS WASTE** in bold, four inch letters. Such sign must be easily readable from a distance of 25 feet. The access doors to the cargo area of the vehicle must additionally bear a sign with the universal biological hazard symbol with minimum symbol dimension of six inches, and with the word **BIOHAZARD** in bold letters at least one inch in height. The symbol must be easily

recognizable from a distance of 25 feet.

3. Management of Spills of Infectious Waste

a. Spill containment and cleanup kit.

All infectious waste transportation vehicles are required to keep within the vehicle the containment and cleanup kit specified in the permit. The vehicle shall be equipped with a written plan, approved by the Department, that provides the means of decontamination of a release of infectious waste while transporting the waste to the treatment or disposal site or while handling the waste at the site. The driver shall be trained by the employer to implement this plan.

b. As required in 7 Del. C. Chapter 60, the Department is to be notified immediately of all spills.

4. Loading and Unloading

Persons manually loading or unloading containers of infectious waste on or from transport vehicles shall ~~be required to~~ wear protective gloves or clothing, as appropriate.

O. STERILIZATION

1. Application

The requirements of this part apply to all persons that steam sterilize infectious waste.

2. Performance Standards

All persons that steam sterilize infectious waste shall maintain the following level of operational performance at all times:

a. Operational temperature and detention.

Whenever infectious wastes are treated in a steam sterilizer, all the waste shall be subjected to a temperature of not less than 250 degrees Fahrenheit for 90 minutes at 15 pounds per square inch of gauge pressure or not less than 272 degrees Fahrenheit for 45 minutes at 27 pounds per square inch of gauge pressure. Other combinations of operational temperatures, pressure and time may be used if the installed equipment has been proved to achieve a reliable and complete kill of all microorganisms in waste at capacity. Complete and thorough testing shall be fully documented, including tests of the capacity of kill *B. stearothermophilus*.

b. Operational controls and records.

(1) Each package of waste to be steam sterilized shall have autoclave tape attached that will indicate if the sterilization temperature has been reached and waste will not be considered satisfactorily sterilized if the indicator fails to indicate that the temperature was reached during the process.

(2) Steam sterilization units shall be evaluated for effectiveness with spores of *B. stearothermophilus* no less than once every 40 hours of operation or once per month,

whichever is more often.

(3) A log shall be kept at each sterilization unit that is complete for the proceeding three year period. The log shall record the date, time, temperature, pressure, type of waste, type of container(s), closure on container(s), pattern of loading, water content, operator of each usage; the type and approximate amount of waste treated; the post-sterilization reading of the temperature sensitive tape; the dates and results of calibration; and the results of effectiveness testing with B. stearothermophilus.

(4) Infectious waste shall not be compacted or subjected to violent mechanical stress before sterilization; however, after it is fully sterilized it may be compacted in a closed container.

3. Compliance with Other Parts of these Regulations

In general, sterilizer facilities shall comply with all other parts of these regulations. The site of the sterilizer facility is a storage facility and must comply with those regulations. Spills or the opening in an emergency of any infectious waste package, shall comply with the regulations pertaining to spills.

4. Off-Site Operations

Any person who operates off-site facilities for the sterilization of infectious waste shall operate those facilities in compliance with a plan approved by the Department. The plan shall address in detail practices, procedures and precautions in the unloading, preparation and sterilizer loading of the waste.

P. MANIFEST REQUIREMENTS

1. A generator of infectious waste shall complete a manifest before shipping, or causing the shipment of, infectious waste off site. The manifest shall consist of a multicopy form provided by the Department or equivalent approved in writing by the Department.

2. No person shall accept custody of infectious waste unless the waste is packaged in accordance with the requirements of ~~Section H, Part 1, G,~~ Section H of this part and is accompanied by a properly completed manifest which complies with the requirements of Section P of this part. ~~this subsection.~~ Upon accepting custody of infectious waste, the transporter shall sign and date the manifest. After the manifest has been signed and dated by both the generator and the transporter, the generator shall retain one copy of the form. The transporter shall keep the remaining four copies until the waste is delivered to the infectious waste facility. ~~Upon accepting custody of the infectious waste, the infectious waste management facility shall sign and date the manifest. After the manifest has been signed and dated by the infectious waste management facility, the transporter shall retain a copy of the form and the infectious waste~~

~~management facility shall send a copy of the form to the generator. Upon ultimate disposal the infectious waste management facility shall send a signed and dated copy of the form to the Department.~~

3. The operator of an infectious waste management facility may accept custody of infectious waste only if the waste is accompanied by a manifest which complies with the requirements of Section P of this part. ~~the subsection.~~ Upon accepting the waste, the operator of the infectious waste management facility shall sign and date the manifest, give one copy to the transporter, and keep the remaining three copies. ~~After the waste has been treated or disposed of in accordance with the requirements of the section, the~~ The operator shall:

a. Sign and date the remaining three copies of the manifest certifying that the waste ~~has been so treated or disposed of;~~ will be treated and/or handled in accordance with all applicable regulations and facility permits. When multiple consignments are received and disposed as a batch, a cover letter with a list of manifest numbers, date received, date rendered non-infectious, certification of disposal, signature and date may be substituted for individual certification on each manifest. The cover letter must be mailed to the State with manifests attached. The generator copy of these manifests may use a date and signature stamp in lieu of original signature.

b. Send one copy of the manifest to the generator no later than fifteen calendar days from the date on which the waste was treated or disposed of;

c. Send one copy of the manifest to the Department; and

d. Keep the remaining copy.

4. Any generator of infectious waste who does not receive a copy of the manifest signed by the operator of the infectious waste management facility within fifteen calendar days of the date of shipment shall immediately contact the transporter and the facility to determine the status of the shipment. If, within twenty days of the date of shipment, the generator still has not received a signed copy of the manifest from the infectious waste management facility, the generator shall notify the Department in writing. The notification shall include a legible copy of the manifest as signed by the generator and transporter, a description of the efforts made by the generator to locate the shipment, and the results of those efforts.

5. Copies of the manifest shall be retained by all parties for at least three years.

6. Each generator of infectious waste shall submit an annual report on a form provided by the Department, summarizing the information from all manifests completed during the preceding calendar year. This report shall be submitted to the Department within ninety days after the end of the calendar year. The information contained in the report shall include, but not be limited to, the following:

a. A description of infectious waste generated and

transported off site for treatment and disposal;

b. The total weight of infectious waste generated and transported off site for treatment and disposal;

c. The names and addresses of persons engaged by the generator to transport infectious waste off site;

d. The names and locations of the infectious waste management facilities with which the generator contracted for the treatment and/or disposal of infectious waste.

7. Each transporter of infectious waste shall submit an annual report on a form provided by the Department, summarizing the information from all manifests completed during the preceding calendar year. This report shall be submitted to the Department within ninety days after the end of the calendar year. The information contained in the report shall include, but not be limited to the following:

a. A description of infectious waste transported off site for treatment and disposal;

b. The total weight of infectious waste transported off site for treatment and disposal;

c. The names and addresses of generators contracting with the transporter to transport infectious waste off site.

d. The names and locations of the infectious waste management facilities where the transporter deposited the infectious waste for treatment and /or disposal.

SECTION 11, PART 1

APPENDIX A

Initial Efficacy Test Procedures

The manufacturer, owner, or operator of an infectious waste treatment unit must carry out an Initial Efficacy Test by using Option 1, 2, or, 3 below, as appropriate for the type of unit, or other procedures, if approved in advance by the Department.

1. Option 1

This option consists of two (2) Phases:

a. Phase 1: Determining the dilution of each test microorganism from the treatment unit for each challenge load (Types A through C) identified in Table C of this Appendix.

(1) Prepare and sterilize by autoclaving two (2) challenge loads of Type A as identified in Table C. Reserve one challenge load for Phase 2.

(2) Process each test microorganism in separate runs through the treatment unit. Prior to each run, determine the number of viable test microorganisms in each container, in accordance with applicable manufacturer's recommendations and Standard Methods for the Examination of Water and Wastewater.

(3) Process each challenge load within thirty (30)

minutes after introducing the container of test microorganism into the treatment unit. The container of test microorganisms and the challenge loads must be processed together without the physical and/or chemical agents designed to kill the test microorganisms. For example, in treatment units that use chemical disinfectant(s), an equal volume of liquid (e. g., sterile saline solution (0.9%, volume/volume), phosphate buffer solution, or tap water) must be substituted in place of the chemical disinfectant(s).

(4) Obtain at least five (5) representative grab samples from the processed residue of each challenge load in accordance with Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846). The number of viable test microorganisms in each grab sample must be determined in accordance with applicable manufacturer's recommendations and Standard Methods for the Examination of Water and Wastewater.

(5) Calculate the effect of dilution for the treatment unit as follows:

$$SA = \log N_0A - \log N1A: \text{ where } \log N1A \geq 6$$

where:SA is the log of the number of viable test microorganisms (CFU/gram of waste solids) that were not recovered after processing challenge load Type A.

N_0A is the number of viable test microorganisms (CFU/gram of waste solids) introduced into the treatment unit for challenge load Type A.

$N1A$ is the number of viable test microorganisms (CFU/gram of waste solids) remaining in the processed residue for challenge load Type A.

If $\log N1A$ is less than 6, then the number of viable test microorganisms introduced into the treatment unit must be increased and steps (1) through (6) in Phase 1 must be repeated until $\log N1A$ is ≥ 6 . N_0A is the inoculum size for challenge load Type A in Phase 2 below.

(6) Repeat steps (1) through (5) in Phase 1 for challenge loads of infectious waste for Type B and C identified in Table C of this Appendix to determine the effect of dilution (SB and SC respectively).

b. Phase 2: Determining the log kill of each test microorganism in each challenge load (Type A through C) identified in Table C of this Appendix.

(1) Using the inoculum size (N_0A) determined in Phase 1 above, repeat Phase 1 steps (1) through (5) under the same operating parameters, except that the physical and/or chemical agents designed to kill the test microorganisms must be used.

(2) Calculate the effectiveness of the treatment unit by subtracting the log of viable cells after the treatment from the

log of the viable cells introduced into the treatment unit as inoculum, as follows:

$$LA = \text{Log } N_{0A} - SA - \text{Log } N_{2A} \quad 36$$

where:LA is the log kill of the test microorganisms (CFU/gram of waste solids) after treatment in the challenge load Type A.

N_{0A} is the number of viable test microorganisms (CFU/gram of waste solids) introduced into the treatment unit as the inoculum for challenge load Type A as determined in Phase 1 above.

SA is the log of the number of viable test microorganisms (CFU/gram of waste solids) that were not recovered after processing challenge load Type A in Phase 1 above.

N_{2A} is the log of the number of viable test microorganisms (CFU/gram of waste solids) remaining in the treated residue for challenge load Type A.

(3) Repeat steps (1) and (2) in Phase 2 for challenge loads Types B and C identified in Table C of this Appendix to determine the effectiveness of the treatment unit (LB and LC respectively).

2. Option 2:

a. Place one microbiological indicator assay containing one of the test microorganisms at numbers greater than one million in a sealed container that remains intact during the treatment. The inside diameter of the container must be no larger than required to contain the assay vial(s). The vial(s) must contain the test microorganisms.

b. Place the container of test microorganisms within a Type A challenge load as identified in Table C of this Appendix.

c. Process the load.

d. Calculate the effectiveness of the treatment unit by subtracting the log of viable cells after treatment from log of viable cells introduced into the treatment unit as inoculum, as follows:

$$LA = \text{Log } N_0 - \text{Log } N_{2A} \quad 36$$

where:LA is the log kill of the test microorganisms (CFU/gram of waste solids) after treatment in the challenge load Type A.

N_0 is the number of viable test microorganisms (CFU/gram of waste solids) introduced into the treatment unit as the inoculum.

N_{2A} is the log of the number of viable test microorganisms

(CFU/gram of waste solids) remaining in the treated residue for challenge load Type A.

e. Repeat steps a through d in this option for challenge loads Types B and C identified in Table C of this Appendix to determine the effectiveness of the treatment unit (LB and LC respectively).

3. Option 3:

a. Place one microbiological indicator assay containing at least one million spores of one of the indicator microorganisms listed in Table B of this Appendix, in a sealed container that remains intact during treatment. The inside diameter of the container must be no larger than required to contain the assay vial(s).

b. Place the container of the indicator microorganisms within a Type A challenge load as identified in Table C of this Appendix.

c. Process the load.

d. Calculate the effectiveness of the treatment unit by subtracting the log of viable cells after treatment from log of viable cells introduced into the treatment unit as inoculum, as follows:

$$LA = \text{Log } N_0 - \text{Log } N_{2A} \quad 36$$

where:LA is the log kill of the test microorganisms (CFU/gram of waste solids) after treatment in challenge load Type A.

N_0 is the number of viable indicator microorganisms (CFU/gram of waste solids) introduced into the treatment unit as the inoculum.

N_{2A} is the log of the number of viable test microorganisms (CFU/gram of waste solids) remaining in the treated residue for challenge load Type A.

e. Repeat steps a through d in this option for challenge loads Types B and C identified in Table C of this Appendix to determine the effectiveness of the treatment unit (LB and LC, respectively).

APPENDIX A: TABLES

TABLE A: Test Microorganisms

- a. Staphylococcus aureus (ATCC 6538)
- b. Pseudomonas aeruginosa (ATCC 15442)
- c. Candida albicans (ATCC 18804)
- d. Trichophyton mentagrophytes (ATCC 9533)
- e. MS-2 Bacteriophage (ATCC 15597-B1)
- f. Mycobacterium smegmatis (ATCC 14468)

TABLE B: Indicator Microorganisms

- a. *Bacillus subtilis* (ATCC 19659)
- b. *Bacillus stearothermophilus* (ATCC 7953)
- c. *Bacillus pumilus* (ATCC 27142)

TABLE C: Challenge Loads

This Table identifies the three types of challenge loads of infectious waste that must be used as a part of Initial Efficacy Test and Periodic Verification Test(s).

COMPOSITION OF CHALLENGE LOADS % (w/w)

Type	A	B	C
Moisture	£5	³50	-----
Organic	---- -	---	³70

APPENDIX B

Correlating Periodic Verification Procedures

1. Use a certified microbiological indicator assay containing the test microorganisms and indicator microorganism spores.
2. Place the test microorganisms and indicator microorganism spores into sealed containers that remain intact during treatment.
3. Place a container of the test microorganisms and indicator microorganism spores in each challenge load (as described in Appendix A, Table C) to simulate the worst case scenario (i. e., that part of load that is the most difficult to treat). For example, the worst case scenario for an autoclave would be to place the container of test microorganisms and indicator microorganism spores within a sharp container that must in turn be deposited in a plastic biohazard bag that is then located centrally within the treatment unit.
4. Determine the effectiveness of the treatment unit by calculating the log kill (L) of the test microorganisms in accordance with Option 2 of Appendix A. The equivalent kill (T) of the indicator microorganism spores is calculated by subtracting the log of viable cells after treatment from the log of viable cells introduced into the treatment unit as inoculum as follows:

$$TA = \text{Log } N_0 - \text{Log } N_{2A}^3$$

where:TA is the equivalent log kill of the viable indicator microorganisms (CFU/gram of waste solids) after treatment in the challenge load Type A.

N_0 is the number of viable indicator microorganism spores (CFU/gram of waste solids) introduced into the treatment unit as the inoculum (³6).

N_{2A} is the number of viable indicator microorganisms (CFU/gram of waste solids) remaining after treatment in challenge load Type A.

5. Repeat steps 1 through 4 for challenge loads Types B and C identified in Table C of Appendix A to determine the correlation between the log kill of the test microorganisms and equivalent kill of the indicator microorganism spores (LB and LC, respectively).

SECTION 11: SPECIAL WASTES MANAGEMENT

Part 2 - Municipal Solid Waste Ash

A. GENERAL PROVISIONS

1. Municipal solid waste (MSW) ash is considered a hazardous waste, as defined in the Delaware Regulations Governing Hazardous Waste (DRGHW), unless the generator of the ash can demonstrate that the ash is not a hazardous waste. In order to make such a demonstration, the owner or operator of the generating facility must show that the ash does not exhibit the Toxicity Characteristic (TC) as described in DRGHW, §261.24. Any person desiring to make such a demonstration shall develop and implement a sampling and analysis plan designed to provide reliable information on the chemical properties of the ash. The plan shall be submitted to the Solid Waste Management Branch as a part of the facility's application for a Solid Waste Facility permit. The facility will not be permitted to operate until the Department has approved the plan.

2. The sampling and analysis plan shall include the following:

- a. A detailed description of the sampling protocol (how and where samples will be collected, how many samples will be collected, how samples will be composited, how samples will be handled and stored, etc.)
- b. A description of the analyses that will be performed on the samples.
- c. A description of the procedures that will be used to ensure the quality of the sampling and analysis data.

3. The owner or operator of a facility in Delaware desiring to process MSW ash generated in another state must first receive written approval from the Department to accept MSW ash from that generator. To receive such an approval a person must:

- a. Demonstrate, to the Department's satisfaction, that the ash does not exceed the levels specified in the TC; and
- b. Develop, and receive Department approval of, a plan for sampling and analysis of the incoming MSW ash.

B. SAMPLING

1. This subsection describes the minimum amount of sampling that the Department deems appropriate for MSW ash generated by facilities that meet the following two

assumptions:

- a. The waste feed prior to incineration is not segregated by type of generator, and
- b. The ash generated is not separated by size during storage or disposal.

If either of these two assumptions is not valid, then a facility-specific sampling and analysis program shall be designed by knowledgeable personnel and shall be implemented after receiving Department approval.

2. The sampling strategy shall be sufficient to enable the facility owner or operator to assess the properties of the ash and to ascertain its variability over time.

3. The sampling strategy shall provide for reassessment of the ash at least quarterly, in accordance with a Department-approved schedule. In determining how often to recharacterize the ash, the generator shall consider all facility-specific and external factors that could cause the ash properties to vary. These factors include:

- a. Changes in the composition of the waste (e.g., new types of industries moving into the area, institution of recycling programs in the collection area, seasonal changes affecting population or waste composition).
- b. Changes in plant design (e.g., addition of dry scrubber, addition of quench tank).
- c. Significant changes in plant operating conditions (e.g., increase in combustion time or temperature, change in lime utilization rate).

4. The sampling strategy shall include the following steps:

a. Determine the most convenient location for sampling. In situations where the sampling can be conducted either from transport vehicles or from the waste conveyance device, the Department recommends sampling from the transport vehicle (i.e. dump truck, barge).

b. Construct a sampling device (trough, bucket, shovel, thief, etc.) to be used to gather a grab sample of the entire depth of the hopper, pile, or truck load, or the entire width of the belt conveyor, drag chain flight, or vibrating conveyor. ASTM standards for sampling unconsolidated waste materials from trucks may be used for guidance if the ash is to be sampled from trucks.

c. If a conveyor is to be the sample location, collect the entire width of the conveyor at a fixed point each hour for eight (8) hours. If trucks are to be sampled, randomly select eight trucks to sample during the eight-hour period. In certain situations, where fewer than eight truckloads are generated, a different schedule may be necessary (e.g., less than one truck per hour). Composite all samples for the period into an eight-hour composite. Containerize, label, and set aside for further processing.

d. Collect a second eight-hour composite during the course of the work day. The second composite should be collected during a different shift from the first composite.

e. For an initial waste characterization, collect samples each day for a minimum of one week's operation (i.e., fourteen composite samples).

C. ANALYSIS

1. Each composite sample shall be tested, using Method 1311 [Toxicity Characteristic Leaching Procedure (TCLP)], and the results analyzed, to determine whether the ash passes or fails the TC as defined in the DRGHW, §261.24.

2. All testing shall be performed following the specific procedures described in "Test Methods for Evaluating Solid Waste" (SW-846).

3. The testing shall be performed by an independent laboratory.

4. In lieu of TCLP, testing for total concentration of constituents (i.e., the contaminants listed in DRGHW, §261.24, Table 1) may be performed. If no constituent is present at a concentration exceeding the TC regulatory limit, the waste may be considered non-hazardous. However, if the concentration of any constituent exceeds the TC regulatory limit, TCLP must be performed to determine whether the waste is hazardous.

5. If it has been demonstrated that none of the organic constituents listed in DRGHW, §261.24, Table 1, is present in the ash at a detectable level, the ash need not be routinely tested for the organics.

D. QUALITY ASSURANCE AND QUALITY CONTROL

The sampling and analysis plan shall include:

1. A detailed description of the steps that will be taken to ensure quality control, and

2. A provision for appointing a knowledgeable person to oversee the sampling and analysis program to ensure that all procedures are followed.

E. DATA EVALUATION

The following approach shall be used in evaluating the data to determine whether the ash passes or fails the TC (see SW-846, Chapter Nine, Tables 9-1 and 9-2 for statistical formulas to use in making the calculations):

1. Determine the mean TC concentration (\bar{x}) of the fourteen eight-hour composite samples for each regulated analyte (equation 2a of Table 9-1).

2. Determine the standard deviation(s) of the data employed to calculate the mean (i.e., the individual composite results) (equation 3a and 4 of Table 9-1).

3. Determine the upper bound of the 90 percent (one-sided) confidence interval for the mean for each analyte (equation 6 of Table 9-1).

4. If the upper bound of the interval is below the applicable regulatory threshold for all analytes listed in DRGHW, §261.24, then the waste passes the TC. If the

upper bound of the interval is above the applicable regulatory threshold for any analyte listed in DRGHW, §261.24, then the waste fails the TC.

SECTION 12: SEVERABILITY

If any provision of these regulations, or the application of any provision of these regulations to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of these regulations, shall not be affected thereby.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code,
Section 103 (7 Del.C. 103)

1. TITLE OF THE REGULATIONS:

Wildlife and fresh water fish regulations update and revision.

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The wildlife and fresh water fish regulations last received a complete revision in 1971 and have been revised multiple times since then. The Division of Fish and Wildlife proposes to delete all existing regulations and adopt entirely new ones, based on the existing regulations with modifications. The new regulations will add new definitions; eliminate gunning rig permits; establish a beaver harvesting season; reconsider the terrapin season; eliminate limits for released game on shooting preserves; clarify the limits on harvesting deer and the issuance of quality deer tags; permit the use of bait for hunting deer, revise rules for using state wildlife areas to prohibit target shooting, establish limits for horseback and trail bike riding; prohibit nailed tree stands, clarify the training of dogs, and review the use of motor vehicles, limit deer drives; establish a new section to limit the sale and/or possession of certain nongame wildlife and prohibit the sale of bear parts and other exotic animals if such sale is prohibited in the place of origin; redefine the limit on squirrels and rabbits at four; establish rules for falconry; and consider other technical changes recommended by the public in readopting the existing regulations.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

The proposed regulations will be effective until modified by future regulatory action. They are likely to serve as a basic framework of law for at least ten years.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT: Title 7, Chapter 1, Section 103.

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

This action is noted in Start Action Notice 98-26, approved on October 14, 1998. A preliminary draft of the proposed regulations will be available by October 29. A workshop to receive public input to the draft regulations will be held on Tuesday, November 10, 1998, 7:30 p.m. at the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover. Written comments may be submitted before the workshop or until November 12. A public hearing to consider revised draft regulations will be held on Tuesday, December 29, 1998, 7:30 p.m. at the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover. Written comments on the revised draft regulations will be received until January 30, 1999.

7. PREPARED BY:

H. Lloyd Alexander, Jr., 302-739-5297 or FAX 739-6157. Division of Fish and Wildlife, Wildlife Section, 89 Kings Highway, Dover, DE 19901.

The material in this document will serve as the basis for developing revised wildlife and freshwater fish regulations. The Existing regulations serve as the core material for this draft. A number of changes are included in the draft including:

- New and revised definitions
- Beaver harvesting season
- Limits on harvesting terrapin
- Revise limit for released game on shooting preserves
- Clarify the limits and tags for deer hunting
- Permit the use of bait for deer hunting
- Revise the rules for state wildlife areas – prohibit target shooting; limit horseback and trail bike riding; prohibit the use of nailed tree stands; clarify the training of dogs; clarify the use of motor vehicles; limit deer “drives”
- Establish a new section to limit the sale and/or possession of rare nongame wildlife and the sale of wildlife parts
- Establish rules for falconry
- Consider technical changes suggested by the public.

A public workshop to review these proposed regulations was held on Tuesday, November 10, at 7:30 p.m. in the Richardson and Robbins Building, 89 Kings Highway, Dover, DE. A public hearing on the regulations will be held at the same place and time on December 29, 1998. Public participation is welcome and encouraged. Written comments were accepted until November 12 for the workshop and January 30, 1999 for the hearing. Brief oral comments on the regulations will also be accepted at the January 26, 1999, Advisory Council on Game and Fish meeting.

*** PLEASE NOTE THAT DUE TO THE NUMEROUS CHANGES IN THE FOLLOWING REGULATIONS IT WAS NOT POSSIBLE TO REFLECT THE ADDITIONS AND DELETIONS THROUGH FORMATING. THEREFORE THE DEPARTMENT OF NATURAL**

RESOURCES REQUESTED THAT THIS PROPOSED REGULATION BE TREATED AS A COMPLETE REVISION OF THE EXISTING REGULATION. FOR MORE INFORMATION CONTACT THE DIVISION OF FISH AND WILDLIFE.

GOVERNING FISHING AND HUNTING IN THE STATE OF DELAWARE

Drafted October, 1998
Revised November 13, 1998

REGULATION WL1. DEFINITIONS

1. "Antlered deer" shall mean any deer with one or more antlers three inches long or longer, measured from the base of the antler where it joins the skull to the tip of the antler following any curve of the antler. An antlerless deer shall be defined as any deer that has no antlers or antlers less than three inches in length.

2. "Baited field" shall be widely defined to include any farmfield, woodland, marsh, water body or other tract of land where grain, salt, or crop has been placed to attract wildlife to be hunted.

3. "Bait" shall mean food material, compound or mixture of ingredients which wildlife is able to consume.

4. "Lure" shall mean any mixture of ingredients, element or compound which attract wildlife, but the wildlife is unlikely to consume.

5. "Director" shall mean the Director or Acting Director of the Division of Fish and Wildlife of the Department.

6. "Division" shall mean the Division of Fish and Wildlife of the Department.

7. An "endangered species" shall be those species of the animal kingdom listed as endangered or threatened by the U.S. Department of Interior; those species listed by the Delaware Natural Heritage Program ranking system as S1, S2 if susceptible to extirpation, SH and SX; and other species listed by regulatory action.

8. An "established blind" shall be a waterfowl blind erected by a landowner on their property for the purpose of taking migratory waterfowl or a blind erected for the purpose of taking migratory waterfowl on another's property with the consent of the landowner.

9. An "established road" shall be a road maintained for vehicular use by the Division and authorized by the Division on wildlife area maps.

10. "Fish or "to fish" shall mean to take, catch, kill or reduce to possession or attempt to take, catch, kill or reduce to possession any freshwater fish by any means whatsoever."

11. "Liberated game" are those animals released pursuant to 7Del.C.585, and from captive stock or legally imported into the State of Delaware. Such animals include the cottontail rabbit, bobwhite quail, mallard duck, chukar and pheasant.

12. A muzzleloading rifle shall be considered "loaded" if the powder and ball, bullet or shot is loaded in the bore. A muzzleloading rifle shall not be considered loaded if the cap, primer, or priming powder (in a flintlock) is removed and the striking mechanism or nipple used to ignite the cap, primer or priming powder is removed.

13. "Longbow" shall mean a straight limb, reflex, recurve or compound bow. All crossbows or variations thereof and mechanical holding and releasing devices are expressly excluded from the definition.

14. "Nongame wildlife" shall mean any native animal species not commonly under the domestication of man, except those species defined by statute or regulation as game and fish.

15. "Possession" in addition to its ordinary meaning, includes the location in or about the defendant's person, premises, belongings, vehicle or otherwise within his reasonable control.

16. A "refuge" is an area of the state owned or any other lands designated by the Department as a refuge. A landowner other than the State of Delaware may request that certain of their lands be designated a refuge and will be so designated, with the Department's approval, if such designation is thought to be in the best interested of the conservation of wildlife. Refuges shall normally be closed at all times to all forms of hunting, except as permitted by the Director in writing for wildlife management purposes.

17. The term "roadway" shall include all roads and their associated rights-of-ways that are owned by the Delaware Department of Transportation, county or political subdivision of the state.

18. "Seasons" shall be those periods of time during which designated species of wildlife may be lawfully hunted pursuant to the regulation of the Department. It shall be unlawful to hunt those species of wildlife for which a season is designated at any time other than during that season.

19. A "trout stream" is any body of water or part thereof as designated by the Department upon notice of such designation being published in at least one newspaper of general circulation throughout the State at least five days in advance of the opening of the trout season.

20. "Wildlife" shall be any animal species not commonly under the domestication of man, including but not limited to those animals defined by statute as game or protected wildlife or freshwater fish.

21. "Vehicle" shall include any means in or by which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.

FISHING

REGULATION FF3. PERMITS

The Director may issue a permit, authorizing the holder thereof to fish by means of nets or other device from any of the non-tidal waters of this State. Such permits will be issued for fisheries research and management purposes only.

REGULATION FF5. BAG LIMIT AND SEASONS**Section 1. Closed Seasons**

There shall be no closed season, size limits or possession limits on any species of fish taken by hook and line in any non-tidal waters of this State, except as prescribed by this regulation, or otherwise by statute.

Section 2. Bass**Subsection A. Statewide limits**

(a) It shall be unlawful for any person to have in possession at or between the place where taken and his or her personal abode or temporary place of lodging more than six (6) largemouth and/or smallmouth bass.

(b) Unless otherwise authorized in this regulation, it shall be unlawful for any person to possess any largemouth or smallmouth bass less than twelve (12) inches in total length. Any bass taken which is less than the (12) inches shall be returned to the water as quickly as possible with the least possible injury.

Subsection B. Becks Pond

(a) Notwithstanding the provisions of Subsection A, Section 2 of this Regulation, it shall be unlawful for any person to have in possession while fishing on Becks Pond, New Castle County, more than two (2) largemouth and/or smallmouth bass.

(b) Notwithstanding the provisions of Subsection A, Section 2 of this regulation, it shall be unlawful for any person to have in possession while fishing on Becks Pond, New Castle County, any largemouth or smallmouth bass less than fifteen (15) inches in total length. Any largemouth or smallmouth bass less than fifteen (15) inches in total length shall be immediately returned to Becks Pond with the least possible injury.

Subsection C. Andrews Lake

(a) Notwithstanding the provisions of Subsection A, Section 2 of this regulation, it shall be unlawful for any person to have in possession while fishing on Andrews Lake any largemouth bass measuring from twelve (12) inches to and including fifteen (15) inches in total length.

(b) Notwithstanding the provisions of Subsection A, Section 2 of this regulation, it shall be unlawful for any person to have in possession, while fishing on Andrews Lake, more than one (1) largemouth bass of the six (6) allowed in possession to be larger than fifteen (15) inches in

total length. Bass measuring less than twelve (12) inches may be taken and possessed within the six (6) allowed in possession while fishing on Andrews Lake.

Subsection D. Derby and Hearn's Pond

(a) Notwithstanding the provisions of Subsection A, Section 2, of this regulation, it shall be unlawful for any person to have in possession while fishing on Derby Pond or Hearn's Pond any largemouth bass measuring from fifteen (15) inches to and including eighteen (18) inches total length.

(b) Notwithstanding the provisions of Subsection A, Section 2, of this regulation, it shall be unlawful for any person to have in possession while fishing on Derby Pond or Hearn's Pond more than one (1) largemouth bass of the six (6) allowed in possession to be larger than eighteen (18) inches. Bass measuring less than fifteen (15) inches may be taken and retained up to the legal possession limit while fishing on Derby Pond or Hearn's Pond.

Section 3. Trout**Subsection A. Season**

It shall be unlawful for any person to fish for rainbow, brown and/or brook trout in designated trout streams during any period of the year, except between and including the first Saturday of April and the second Saturday of March each succeeding year.

Subsection B. Hours of Fishing

It shall be unlawful for any person to fish for rainbow, brown and/or brook trout in designated trout streams on the opening day of the trout season before 7:30 a.m. and thereafter for the remainder of the trout season between one-half hour after sunset and one-half hour before sunrise.

Subsection C. Possession

No person shall catch and/or have in their possession in any one day during the prescribed open season more than six (6) rainbow, brown and/or brook trout. On any day after a person takes and possess their legal limit of trout, said person is prohibited from fishing in a designated trout stream on the same day, unless otherwise authorized by law or regulation.

Subsection D. Trout Stamp

It shall be unlawful for any person to fish in a designated trout stream on or before the first Saturday in April and June 30, of the same year, and on or before the first Saturday in October and November 30, of the same year, unless said person has in his possession a valid trout stamp, or, unless said person is exempted by law from having a trout stamp.

Subsection E. Restricted Trout Stream

A restricted trout stream is a stream or portion of a stream that may be fished only with artificial flies having one single pointed hook, and a fly rod. There may not be more than two flies on a line at any one time. All other kinds or methods of fishing are prohibited on any restricted trout stream.

It shall be unlawful for any person to use any metallic, wooden, plastic or rubber spinners, spoons, lures, plugs and/or natural bait is forbidden on any restricted trout stream.

It shall be unlawful for any person to have in his possession more than four (4) trout within 50 feet of any restricted trout stream. On the restricted trout stream only, trout may be caught and released as long as the four (4) trout possession limit is not exceeded. All trout released must be returned to the water as quickly as possible with the least possible injury.

Subsection F. Closure of Trout Stream

It shall be unlawful for any person to fish in designated trout streams within two weeks (14 days) of a scheduled opening of the trout season.

Section 4. Striped Bass (hybrids)

It shall be unlawful for any person to have in his possession while fishing in the non-tidal waters of this State more than two (2) striped bass (Morone saxatilis) and/or striped bass hybrids (Morone saxatilis crysops) or any striped bass or striped bass hybrid under the length of fifteen (15) inches measured from the tip of the snout to the tip of the tail.

Section 5. Panfish Limits

It shall be unlawful for any person to have in possession, while fishing in any state-owned non-tidal water, more than fifty (50) panfish in aggregate to include bluegill, pumpkinseed, black crappie, white crappie, white perch or yellow perch, provided no more than twenty-five (25) of the fifty (50) allowed in possession are of any one species.

REGULATION FF6. CLOSURE OF POND DURING DRAWDOWNS

It shall be unlawful for any person to fish in any pond or lake owned by the Department when the water level in said pond or lake is lowered for the purpose of aiding in the control of aquatic vegetation, the conservation of fishes, or the repair of water control facilities provided said pond or lake is duly posted with signs by the Division that states said pond or lake is closed to fishing.

REGULATION FF7. METHOD OF TAKE**Section 1. Non-tidal Waters**

It shall be unlawful for any person to take fish from the non-tidal waters of this State except by means of hook and line while under the immediate observation of the person using it. Carp and shad may be taken as set forth otherwise in this regulation.

Section 3. Tumbleholes (Spillway pools)

It shall be unlawful to fish, by use of any seine or net, except minnow traps with maximum dimensions of 2' x 1' x 1' or nets not larger than six feet square, within any tumblehole and/or within 100 yards below a spillway of any lake, pond or impounded marsh within the State of Delaware. Carp may be taken by seine or net by special permit from the Director and under the supervision of a representative of the Division.

Section 4. Carp

It shall be unlawful to take carp, except by the following methods: hook and line, bow and arrow, spear. Carp may be taken by seine or net from fresh water ponds and non-tidal streams with special permission from the Director and under the supervision of a representative of the Division.

Section 5. Shad

It shall be unlawful, except as otherwise provided by law, to take shad except by hook and line, said line is to have no more than two (2) lures attached. Each lure may have no more than one (1) single pointed hook.

Section 6. Snagging of Game Fish

a) It shall be illegal for any person to fish in the non-tidal waters of this State with hooks (single, double or treble) knowingly used to snag or otherwise catch or attempt to snag or otherwise catch any game fish by hooking said game fish in any part of the anatomy other than in the mouth.

b) Game fish are defined as smallmouth bass, largemouth bass, black or white crappie, rock bass, white bass, walleye, northern pike, chain pickerel, muskellunge (or hybrids), salmon, trout, sunfishes and white bass/striped bass hybrids.

REGULATION FF8. ICE FISHING**Section 1.**

a) It shall be unlawful for any person to fish more than five (5) hook and lines in non-tidal water through ice, provided the number of hooks on any one line does not exceed three.

b) It shall be unlawful for any person to leave any hook and line being fished through the ice unattended.

REGULATION FF9. SPEED AND WAKE OF MOTORBOATS ON DIVISION PONDS

It shall be unlawful for any person to operate a motorized vessel, except at a slow-no wake speed on any pond or lake owned, leased or licensed by the Division.

REGULATION FF10. FISH STOCKING PRACTICES

Section 1. Stocking Fish Practices

It shall be unlawful for any person to stock any species of fish into non-tidal public waters in Delaware without the written approval of the Director.

This regulation does not prohibit the stocking of private impoundments.

Section 2. Transportation, Possession, Sale

It shall be unlawful for any person to transport, purchase, possess, or sell walking catfish (Clarius batrachus) or the white amur or grass carp (Ctenopharyngodon idella) without the written approval of the Director.

REGULATION FF11. LAKE COMO

It shall be unlawful for any person to use or have in his possession any live fish, as bait, while fishing in Lake Como, Smyrna.

HUNTING

REGULATION WL13. METHOD OF TAKE

Section 1. General

It shall be unlawful to hunt any protected wildlife with any weapon other than a bow and arrow, a shotgun not larger than number 10 gauge, 22 caliber rimfire pistol for taking raccoons or opossums or other wildlife that is lawfully confined in a trap, or a muzzleloading rifle with a barrel length of twenty inches or more during the lawful primitive deer-hunting season; except that frogs may be taken with a hook, spear or gig and snapping turtles may be taken by spear, gig, trap or net; or as otherwise provided by law.

Section 2. Gray Squirrel

Hunting gray squirrels with a 22 caliber rimfire rifle or muzzleloading rifle not larger than 36 caliber firing a round projectile is permitted south of the Chesapeake and Delaware Canal during that part of the gray squirrel season which is not concurrent with the rabbit, quail or pheasant seasons as they are described in Regulation WR17.

Section 4. Bow and Arrow

Subsection A. General

No person shall use or have in their possession or under their control, while hunting, any: Poison arrow, arrow with explosive tip, or any bow drawn, held or released by mechanical means; except the Director may issue permits to

hunters who are permanently disabled to use crossbows, provided the applicant has a physician's certification that he or she is unable to use conventional archery equipment. Effective September 1, 1993, hunters with the following disabilities shall be eligible for crossbow permits: Full confinement to a wheelchair; single or double amputee above the elbow, or be a double amputee below the elbow; permanent physical disorder which cannot be surgically corrected and prevents the use of an arm or hand; lung disease to the extent that forced (respiratory) expiatory volume for one (1) second when measured by spirometer is less than one (1) liter or arterial oxygen tension (po) is less than 60 mm/Hg on room air at rest; cardiovascular disease to the extent that functional limitations are classified in severity as class III or class IV according to standards accepted by the American Heart Association.

Subsection B. Crossbows

Crossbows may be used in lieu of shotguns for hunting deer during periods designated by the Department. Crossbows used for deer hunting must be between 125 and 200 pounds of pull weight, manufactured after 1980, and have a mechanical safety.

Section 5. Hunting from Boats

Subsection A. Distance for Blinds

During the season for the hunting of migratory waterfowl it shall be unlawful for any person to hunt any wildlife, other than to tend traps set for wildlife lawfully trapped for their hides, while such person is in a boat of any kind that is within 1500 feet of an established blind, except that any person may retrieve crippled waterfowl by the use of a boat in accordance with Federal regulations; and except that any person may use a boat for transportation to and from an established blind lawfully used by him; and except that a person may hunt from a boat that is firmly secured and enclosed in an established blind. Notwithstanding the provisions of this section, any person may hunt migratory waterfowl within 1500 feet of an established blind, from a boat, with permission of the blind owner.

Subsection B. Gunning Rigs

During the season for hunting migratory waterfowl it shall be unlawful for any person to hunt in the Delaware River and Bay, on the Delaware side of the ship channel, from the Appoquinimink River south to the Murderkill River, within 300 yards of the shoreline (high tide line), without written permission of the closest adjoining landowner(s). It shall be unlawful for tender boats servicing gunning (layout) rigs to be further than 800 yards from the rig or to conduct any activity except to pick up downed birds or service the rig.

It shall be unlawful to hunt from a boat, or a floating or

fixed blind in the Little River in areas bounded on both sides by State land, except as permitted in writing by the Director.

Section 6. Muskrats

No person shall shoot muskrats at any time except with written permission of the Director.

Section 7. Otters

Every otter trapped in Delaware must be tagged by an authorized representative of the Division. All otters sold in Delaware or shipped out of the state must be tagged in accordance with the requirements of the Endangered Species Scientific Authority, an agency of the U.S. Department of Interior.

Section 8. Muzzleloading Pistols

A single shot muzzleloading pistol of .42 caliber or larger using a minimum powder charge of 40 grains may be used to provide the coupe-de-grace on deer during the primitive weapon season.

Section 9. Placement of Leghold Traps

Subsection 1.

(a) No person shall set a leghold trap at any time in this state except from December 1 through March 10 (March 20 on embanked meadows) in New Castle County and December 15 through March 15 in Kent and Sussex counties and after obtaining the landowner's or their authorized representative's consent.

(b) In addition to the time periods stated above, it shall be lawful with permission of the landowner to use leghold traps in New Castle County or Kent County from the southerly boundary of New Castle County Route 380, and east and southeast of the center line of U.S. Route No. 13, thence following said center line of U.S. Route No. 13 to the point where U.S. Route No. 13 forms a junction with U.S. Route No. 113 and thence along the center line of U.S. Route No. 113 to a line dividing Kent County from Sussex County during any time of the year except on Sundays.

Subsection 2.

(a) No person shall set long-spring, "Stop-Loss" traps or jump traps larger than No. 1 1/2 or coil-spring traps larger than No. 1 in any location except: in any marsh ordinarily subject to the rise and fall of the tide; in a diked marsh that was formerly tidal; below the mean high tide line in a river ordinarily subject to the rise and fall of the tide; on an island surrounded by tidal marsh or diked marsh that was formerly tidal; or in the areas described in Subsection 1 (b) of this section. The term diked marsh does not include mill ponds or any stream running into a mill pond.

(b) In addition to the areas listed in paragraph (a) of this subsection, traps described in this subsection may be

set for river otter in mill ponds and streams leading into such ponds only by underwater sets, and only by special permit. Said permit will be issued free of charge by the Division for under water sets to landowners who specify the names of persons who will trap their land.

(c) No person shall set or make use of long-spring or "Stop-Loss" traps or jump traps larger than No. 1 1/2 or coil-spring traps larger than No. 1 without first permanently attaching a metallic tag on each trap, bearing in plain English either: 1) the words "Trapping License, Delaware", the number of the trapping license issued to the owner of the traps and the year of issuance; or, 2) the owner's name and address.

(d) In addition to the areas listed in paragraph (a) of this subsection, traps described in this subsection and live traps may be set for beaver only by under water sets and only by special permit. Said permit will be issued free of charge by the Division to landowners or their agents. Applications must describe the location to be trapped and contain the names of persons who will conduct the trapping.

Subsection 3.

(a) No person shall set a long-spring or "Stop-Loss" trap or jump trap No. 1 1/2 or smaller or a coil spring trap No. 1 or smaller in any location in this State except in the area described in subsection 2 of this section and in the following locations:

- (1) A marsh of any size ordinarily subject to the rise and fall of the tide, or
- (2) a ditch, or
- (3) a stream, or
- (4) on land not subject to cultivation of crops due to a normally marshy condition.

(b) For the purpose of this subsection, the term, normally marshy condition is defined as land with one or more of the following associated plant groupings growing upon it: cordgrass, sedges, rushes, cattails, threesquare or phragmites.

(c) For the purpose of this subsection, the term ditch is defined as a long, narrow channel dug into the earth as a trough for drainage or irrigation of the soil which normally contains flowing water.

Subsection 4.

When information is furnished to a Fish and Wildlife Agent from the owner, tenant or sharecropper of any land that any species of wildlife is detrimental to crops, property or other interests on land on which he resides or controls, upon investigation, that Fish and Wildlife Agent may issue a permit to such person or his agent for the use of leghold traps to control said species of wildlife. Said permit may be issued at any time of the year.

Subsection 5.

The setting of each trap in violation of this section shall be a single offense.

REGULATIONS WL14. WILD TURKEYS

Section 1.

It shall be unlawful for any person, other than authorized representatives of the Division, to release or possess Meleagris gallopavo (wild turkey) in Delaware without a permit from the Division. The prohibition to possess and/or release Meleagris gallopavo shall include both birds taken from the wild and birds bred in captivity.

Section 2. Season

The Division may establish a season for taking bearded wild turkeys by permit. The Division will determine the terms and conditions of the issuance of permits and it shall be unlawful to hunt wild turkey except as permitted by the written authorization of the Division. It shall be unlawful to obtain a valid turkey hunting permit until a person attends a Division approved course of instruction in turkey hunting. Hunters must check any turkey taken at an authorized checking station by 2:30 p.m. on the day of kill. It shall be unlawful to hunt turkeys except from one-half hour before sunrise to 1:00 p.m. It shall be unlawful to use bait or dogs and hunters may not "drive" turkeys or shoot them from their roost trees. The season limit shall be one bearded turkey. It shall be unlawful to use any weapon to hunt wild turkeys except a 10, 12, 16, or 20 gauge shotgun loaded with size 4, 5, or 6 shot or a longbow with a broadhead arrow, 7/8 inches in minimum width. Wild turkey hunters must wear camouflage clothing and may not wear any garment with the colors white, red, or blue. Hunters may use artificial turkey decoys of either sex that are not wholly or partially made from any part of a turkey that was formerly alive.

REGULATION WL16. FEDERAL REGULATIONS ADOPTED

Section 1. Federal Laws

It shall be unlawful for any person to hunt, buy, sell or possess any migratory game bird or part thereof, except in such manner and numbers as may be prescribed by regulations promulgated under the provisions of the Federal Migratory Bird Treaty Act, which regulations are hereby made a part of the regulations of the Department. Provided, however, that such federal regulations shall not apply if the Department or other provisions of the Delaware Code may prescribe further restrictions for the taking of migratory game birds.

Section 2. Sea Ducks

Scoters, eiders and old squaw ducks may be taken during their special season not less than 800 yards seaward

from the Delaware Bay shore beginning at an east/west line between Port Mahon and the Elbow Cross Navigation Light south to the Atlantic Ocean or in the Atlantic Ocean.

Section 3. Non-toxic Shot

Subsection A. Required Usage

Non-toxic shot, as defined by federal regulations, shall be required for waterfowl hunting in Delaware. It shall be unlawful to possess shells loaded with lead shot while waterfowl hunting.

Subsection B. Maximum Shot Size

It shall be unlawful to hunt, except for deer, in Delaware with any size non-toxic shot (as defined by federal regulations) pellet(s) larger than size T (.20 inches in diameter).

Section 4. Special Mallard Release Areas

The Division may issue permits to allow the taking of captive-reared mallards during the established waterfowl season under applicable federal regulations. Permits will only be issued to persons who control 100 acres of land including suitable waterfowl habitat; agree to follow a management plan and federal regulations; maintain a log of guests and birds harvested. Failure to follow the management plan or violation of state or federal laws may result in the revocation of a Special Mallard Release Area Permit. Waterfowl may only be hunted on Special Mallard Release Areas from one-half hour after sunrise to one hour before sunset.

REGULATION WL17. SEASONS

Section 1. Protected Wildlife

It shall be unlawful to hunt, sell, ship or possess any species of protected wildlife except as permitted by law.

Section 2. Beaver

Beavers may be hunted or trapped in accordance with the statutes and regulations of the State of Delaware governing the taking of beavers: From December 1 to March 20 of each year, with a daily limit of four. Landowners or their agents may obtain a permit from the Division to take, possess and sell beavers causing damage on their property at any time. Beaver hides and the meat of lawfully taken beaver harvested anywhere within or outside of Delaware may be sold.

Section 3. Opossum

The opossum may only be hunted or trapped during the lawful season to hunt or trap raccoons.

Section 4. Ruffed Grouse

There shall be no season during which ruffed grouse may be hunted, possessed, shipped or sold.

Section 6. Gray Squirrel

Gray squirrel may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of gray squirrel: From September 15 (September 14 if September 15 is a Sunday) through the first Saturday in November; and from the Monday that immediately precedes Thanksgiving through the day that precedes the January shotgun/muzzleloader deer season. Squirrel hunting shall be unlawful during any period and in any area when it is lawful to hunt deer with firearms. The daily limit shall be four.

Section 7. Rabbit

Rabbits may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of rabbits: From the Monday that immediately precedes Thanksgiving through the first Saturday in February, except that no rabbit hunting shall be lawful during any period when it is lawful to hunt deer with a firearm, except that rabbit may be hunted during December or January firearm deer seasons when the hunter wears 400 square inches of blaze (hunter) orange on the head, back and chest combined. The daily limit shall be four.

Section 8. Pheasant

Male pheasant may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of pheasant: From the Monday that immediately precedes Thanksgiving through the day that precedes the January shotgun/muzzleloader deer season, except that pheasant may be hunted during December firearm deer seasons when the hunter wears 400 square inches of blaze (hunter) orange on the head, back and chest combined.

Section 9. Quail

Bobwhite quail may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bobwhite quail: From the Monday that immediately precedes Thanksgiving through the first Saturday of February, except that no quail hunting shall be lawful during any period when it is lawful to hunt deer with a firearm, except that quail may be hunted during December or January firearm deer seasons when the hunter wears 400 square inches of blaze (hunter) orange on the head, back and chest combined. The daily limit shall be six.

Section 10. Raccoon

Subsection A. Trapping Season

Raccoon may be trapped in accordance with the statutes and regulations of the State of Delaware: From December 1 to March 10 (season closed March 20 on embanked

meadows) in New Castle County; and from December 15 to March 15 in Kent and Sussex Counties. The season is open throughout the year in Eastern New Castle and Kent Counties pursuant to 786 of Title 7.

Subsection B. Hunting Season

Raccoon may be hunted in accordance with the statutes and regulations of the State of Delaware: From September 1 (September 2 if September 1 is a Sunday) through October 31 for chase only whereby raccoon and opossum may not be killed, except that the season shall be closed during all periods of the muzzleloader deer season; and from November 1 through the last day of February, except closed the entire period of the shotgun and/or muzzleloader seasons for deer; and from March 1 through March 31 for chase only whereby raccoon and opossum may not be killed. As provided by S 791 of 7 Delaware code, certain areas are open throughout the year to kill raccoon except during the shotgun/muzzleloader deer seasons.

Section 11. Red Fox

Red fox may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of red fox: From October 1 through the last day of April, except that the season shall be closed during the entire period of the shotgun and/or muzzleloader seasons for deer. Red foxes may be shot during the season established by 788 of Title 7, with the following weapons and projectiles: Bow and Arrow; shotgun with shot up to size 2 lead or T steel; rimfire rifle, centerfire rifle up to 25 caliber using hollow point bullets with a maximum bullet weight of 75 grains; or a muzzleloading rifle.

Section 12. Frog

Subsection A. Open Season for Bullfrogs

Bullfrogs (*Rana catesbiana*) may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bullfrogs: From May 1 through September 30 of each year.

Subsection B. Limit

The daily aggregate limit for hunting bullfrogs shall be twenty-four (24) with either a hunting and/or a fishing license.

Section 13. Closed Seasons

It shall be unlawful to hunt any game animals except as provided by the regulations and statutes of the State of Delaware or by the Federal statutes and regulations governing migratory game birds.

Section 14. Terrapin

It shall be unlawful for any person to hunt or fish for diamond-back terrapin during any period of the year, except

between and including the fifteenth day of July and first day of October. The daily limit shall be four.

Section 15. Crows

It shall be unlawful for any person to hunt common crows during any period of the year, except Thursdays, Fridays and Saturdays between and including the fourth Thursday of June and the last Saturday of March each succeeding year, unless said person holds a valid depredation permit. The hunting of crow is restricted only by the provisions of federal regulations pertaining to the taking of common crows. Crows may be taken without a permit when committing damage or about to commit damage.

Section 16. Snapping Turtles

It shall be unlawful for any person to hunt for snapping turtles during any period of the year, except between and including the fifteenth day of June and the fifteenth day of May. No person shall sell, offer for sale or kill any snapping turtle with a carapace length of less than eight inches, measured on the curvature.

Section 17. Pheasant

Subsection A. Female Pheasant

It shall be unlawful for any person to hunt or possess any female pheasant at any time, except as permitted on licensed shooting preserves, by licensed game breeders or otherwise as permitted by law.

Subsection 2. Male Pheasant

It shall be unlawful for any person to hunt or possess more than two (2) male pheasants in any one day during the pheasant season, except as permitted by law.

Subsection 3. Scientific or Propagating Purposes

It shall be unlawful to possess pheasants for scientific and propagating purposes without a valid permit from the Director.

Subsection 4. Shooting Preserves

Nothing in this regulation shall be construed so as to limit the number or sex of pheasants that may be harvested by any one person on restricted, experimental, propagating and shooting preserves as provided in Regulation WL21.

Section 18. Season Dates

Specific dates for hunting seasons will be published officially each year in an annual publication entitled the "Delaware Hunting and Trapping Guide."

REGULATION WL21. RESTRICTION ON RESTRICTED, EXPERIMENTAL PROPAGATING AND SHOOTING PRESERVES

It shall be unlawful to hunt liberated game on restricted preserves from April 1st through October 14th inclusive, of any given calendar year.

REGULATION WL23. DEER

Section 1. Limit

(1) No person shall, in any one fiscal year (July 1 - June 30), hunt or have in their possession more than two deer taken by all methods allowed by law as herein specified, except that only one may be a buck with one or more antlers of three inches in length or longer. (2) In addition to the two deer limit (one antlered buck) established by Part (1) of this subsection, other deer may be taken pursuant to the conditions established in Part (6) of this Subsection. (3) The Division may issue additional permits to take deer during the open seasons, with permits costing ten dollars each, as specified in the terms distributed with the permits. (4) For the purposes of this section only, a person "driving deer" and not in possession of any weapons shall not be treated as if they are hunting deer providing they are assisting lawful hunters. (5) It shall be unlawful to purchase, sell, expose for sale, transport or possess with the intent to sell, any deer or any part of such deer at any time, except that hides from deer lawfully killed and checked may be sold when tagged with a non-transferable tag issued by the Division. Said tag must remain attached to the hide until it leaves the state or is commercially processed into leather. The provisions of the proceeding two sentences do not apply to venison approved for sale by the United States Department of Agriculture and imported into Delaware. (6) The Division may issue additional permits to take deer, with permits costing ten dollars each, in accordance with the following provisions. (A) Permits are valid during any deer season. (B) Deer taken under the bonus permits shall be checked at a state approved deer checking station. (C) Permits are only valid for antlerless deer (both antlers must be less than three inches), except that each hunter may purchase one additional tag for ten dollars to take a second antlered buck with a minimum outside antler spread of fifteen inches. (D) Permits are valid statewide.

Section 2. Tagging and Designated Checking Stations

Subsection A. Attaching Tags

It shall be unlawful for any person to hunt and kill a deer within this state and fail to attach an approved tag to said deer immediately upon killing of same. The tag shall either be the deer tag detached from a Delaware hunting license, special antlerless tag, quality buck tag or, for that person who is not required to have a hunting license in this state and does not have said license, a legible tag of substantial material stating their name, address and reason for not having a valid Delaware hunting license.

Subsection B. Retention of Tag

Tags shall remain attached to the deer until legally checked in at an official checking station by an authorized agent of the Division as described in Subsection C of this section (Regulation 23).

Subsection C. Checking Stations

Every person killing a deer within this state shall, within 24 hours of killing said deer, deliver the same to a checking station designated by the Division. Deer may also be delivered to an authorized employee (or agent) of the Division at other times to be checked.

Subsection D. Dressing

No person shall remove from any deer any part thereof, except those internal organs known as the viscera, or cut the meat thereof into parts until it has been examined by an authorized agent of the Division as provided in Subsection C.

Subsection E. Receipt Tag

The Division shall issue, at a checking station or otherwise, an official receipt tag proving the deer was checked by an authorized agent. Said receipt tag must always remain with the deer carcass, until the meat is prepared and stored in refrigeration for food, as proof the deer was lawfully checked.

Subsection F. Deer Hunting with Tags Detached from License

No person may hunt deer with any license that has the applicable deer tag detached (torn off) from the license, even though said tag may be in the possession of the hunter. Persons who have deer tags accidentally detached from their license may, upon application to the Division, have a new duplicate license issued in order to obtain a valid deer tag.

Section 3. Method of Take**Subsection A. Shotgun**

No person shall hunt deer during the shotgun season using a shotgun of a caliber smaller than 20 gauge, or load said shotgun with missiles smaller than that commonly known as buckshot, or have in his possession any shell loaded with missiles smaller than buckshot.

Subsection B. Bow and Arrow

No person, while hunting deer during the bow season, shall have in their possession while engaged therein any weapons or firearms other than a bow and sharpened broadhead arrows having minimum arrowhead width of 7/8 of an inch, or a knife.

Subsection C. Refuge in Water

No person shall at any time shoot, kill, wound, or attempt to shoot, kill or wound a deer (buck or doe) while the same is taking refuge in or swimming through the waters of any stream, pond, or lake, tidal waters or their tributaries.

Subsection D. Dogs

No person shall make use of a dog for hunting during the shotgun or muzzleloader seasons for deer (in each county), except as permitted in the hunting of migratory waterfowl from an established blind or for hunting dove, quail or rabbit on properties closed to deer hunting with firearms during December and January.

Section 4. Illegal Hunting Methods

No person shall set, lay or use any trap, snare, net, or pitfall or make use of any artificial light, or other contrivance or device for the purpose of hunting deer. This definition does not include the placement of minerals, grain, fruit or other nontoxic compounds that may be used for purpose of attracting deer in order to hunt them.

Section 5. Seasons**Subsection A. Shotgun Seasons**

Deer may be hunted by shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: From the Friday in November that precedes Thanksgiving by thirteen (13) days, through the second Saturday succeeding said Friday for a total of eight (8) hunting days; and from the Saturday that precedes the third Monday in January through the following Saturday in January for a total of seven (7) hunting days.

Subsection B. Archery Seasons

Deer may be hunted with longbow in accordance with statutes and regulations of the State of Delaware governing the hunting of deer: From September 1 (September 2 if September 1 is a Sunday) through the last day of January, provided, that blaze orange shall be worn at all times when it is also lawful to hunt with any type of firearm in accordance with 718 of Title 7.

Subsection C. Muzzleloader Seasons

Deer may be hunted with muzzle loading rifles in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: From Saturday that precedes the second Monday (Columbus Day observed) in October through the next Saturday (a seven (7) day season); and from the Monday that follows the close of the January shotgun season through the next Saturday (a six (6) day season).

Subsection D. Special Antlerless Season

Only antlerless deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware from the second Saturday through the third Saturday in December (a seven (7) day season).

Subsection E. Crossbow Season

Crossbows may be used in lieu of shotguns during that part of the November shotgun season that runs from Monday through Saturday of each year and in any shotgun or muzzleloader deer season open in December or January.

Subsection F. Special shotgun season for young and non-ambulatory hunters

Deer may be hunted on the first Saturday of November by non-ambulatory (wheelchair confined) hunters, and hunters twelve years of age or older but less than sixteen years of age (12 to 15 inclusive) who have completed an approved course in hunter training. Young hunters must be accompanied by a licensed non-hunting adult who is twenty-one years of age or older. Young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun.

REGULATION WL25. GENERAL RULES AND REGULATIONS GOVERNING LAND AND WATERS ADMINISTERED BY THE DIVISION

Section 1. Motor Vehicles

Subsection A. General

It shall be unlawful for any person to enter upon the lands or waters administered by the Division, with any wheeled or tracked vehicles, except on established roads or as otherwise permitted by the Division.

Subsection B. Noise

It shall be unlawful to trespass or enter upon any lands or waters, administered by the Division, with any motor vehicle that causes excessive or unusual noise or with any vehicle that does not have a muffler or any vehicle that has a defective or modified muffler which allows unusual or excessive noise.

Subsection C. Speed Limit

It shall be unlawful for any person to drive a motor vehicle in excess of twenty (20) miles per hour when on lands administered by the Division unless otherwise authorized by the Director.

Subsection D. Non-licensed Vehicles

It shall be unlawful for any person to enter upon the lands or waters administered by the Division with any motor driven vehicle that does not bear a valid license number and have a valid registration recognized by the State of

Delaware. The operation of minibikes, gocarts, snowmobiles and all terrain vehicles is expressly forbidden except with a permit from the Division.

Subsection E. Parking

(a). It shall be unlawful for any person to park any vehicle on Division lands in such a manner as to obstruct the use of a boat ramp, roadway or trail. Any vehicle parked in such a way as to obstruct a boat ramp, road or trail will be subject to removal, with the owner of said vehicle bearing all costs involved in such removal.

(b). Unless otherwise authorized by the Director, it is unlawful for any person to park and leave unattended any vehicle or trailer in Division parking lots unless said person is lawfully using Division parking and/or ramp facilities for direct access to waters or lands administered by the Division.

Section 2. Conditions of Use

Subsection A. Trespass

It shall be unlawful for any person to trespass upon lands or waters administered by the Division when those lands or waters have been closed by the Division for any of the following reasons:

1. Safety.
2. Protection of Department property.
3. When deemed necessary for the management of wildlife.

Subsection B. Hours of Entry

It shall be unlawful for any person to be present upon lands or waters administered by the Division between sunset and sunrise, unless such person is lawfully hunting or fishing or has been authorized by written permission of the Director.

Subsection C. Camping

It shall be unlawful for any person to camp on areas administered by the Division, except conservation oriented groups may, with written permission of the Director, camp on lands specified in such permit.

Subsection D. Swimming

It shall be unlawful for any person to swim in areas administered by the Division, except by written permission of the Director.

Subsection E. Dumping

(a). It shall be unlawful for any person to throw, dump, dispose of or otherwise place any trash, refuse or similar material in or on lands or waters administered by the Division.

(b). It shall be unlawful for any person to place residential, commercial or household garbage, trash or similar material in Division trash receptacles or containers.

(c). Unless otherwise authorized by the Director, it is unlawful to deposit any material, structure, debris, or other objects on lands and/or waters administered by the Division.

Subsection F. Destruction of State Property

(a). It shall be unlawful for any person to destroy, mutilate, deface, injure, or remove any part thereof, of any Division property, equipment, furniture, fixtures, buildings, monuments, markers, tables, signs, plaques, vehicles or boats.

(b). It shall be unlawful for any person in any manner to cut down, destroy, break, dig, take or carry away without lawful authority or consent, any shrub, tree, bush, vine or plant being or growing on any state-owned property.

(c). It shall be unlawful to erect or use any portable or permanent deer stand that involves the use of nails or screws placed in a tree.

Section 3. Hunting, Firearms, and Dogs

Subsection A. Hunting

(a). It shall be unlawful to hunt on areas administered by the Division, except as permitted by the Director in writing and specified on maps distributed by the Division.

(b). A daily permit must be lawfully obtained before hunting waterfowl at Augustine, Cedar Swamp, Little Creek, Woodland Beach, Ted Harvey, Prime Hook and Assawoman Wildlife Areas. Permits may be obtained on the area from an authorized agent of the Division and must be returned upon leaving the area for which the permit is issued. The Director may specify the hours of a permit's effectiveness and determine the conditions of its issuance.

Subsection B. Waterfowl

(a). It shall be unlawful to hunt waterfowl on areas administered by the Division, except from State built blinds, or other blinds authorized by the Division, or by written permission of the Director.

(b). It shall be unlawful to enter tidal and/or impounded areas administered by the Division during the waterfowl season, except for access as authorized by paragraph (a) of this subsection.

Subsection C. Trapping

It shall be unlawful to trap or attempt to trap on areas administered by the Division, except for those persons holding a valid contract with the Division to do so, or except authorized agents of the Division who are conducting authorized wildlife management practices, or except for scientific purposes as specifically authorized in writing by the Director.

Subsection D. Firearms on Division Areas

(a). It shall be unlawful for any individual to possess a

firearm or have a firearm on his person on lands administered by the Division between March 1 and August 31 (inclusive) except as authorized by the Director in writing.

(b). It shall be unlawful for anyone to possess a rifled firearm of any description at any time on those lands bordering the Chesapeake and Delaware Canal licensed to the Department by the Government of the United States for wildlife management purposes, except muzzleloaders during the primitive weapon season.

(c). It shall be unlawful to discharge any firearm on lands or waters administered by the Division on Sunday, except in areas designated by the Director or with a permit from the Director.

(d). It shall be unlawful to discharge any firearm on lands or waters administered by the Division to target shoot or to use a firearm for any purpose other than to pursue or attempt to take lawful game species during an open season, under conditions approved by the Director on a map of the area.

Subsection E. Dikes

It shall be unlawful to be in possession of any firearm on any dike administered by the Division at any time unless such person is temporarily crossing a dike at a ninety degree angle.

Subsection F. Deer Hunting By Driving

It shall be unlawful for residents to participate in deer drives, except where authorized on area maps between the hours of 9:00 a.m. and 3:00 p.m. No more than six resident hunters may participate in driving deer at any one time. Nonresidents may not participate in deer drives at any time. Nonresidents are restricted to hunting deer from stationary locations. Nonresidents may not possess a loaded firearm during the deer season except to hunt from a stationary location or to retrieve a deer that they wound.

Section 4. Horses/Bicycles

It shall be unlawful to ride horses or bicycles on, or allow horses to use, any Division lands except on established roads normally open to vehicular traffic and areas designated by the Division.

Section 5. Concessions, Posters and Solicitations

No person shall erect, post or distribute any placard, sign, notice, poster, billboard or handbill within lands or waters administered by the Division without written authorization of the Director. Vending of merchandise, food or services within lands or waters administered by the Division is prohibited without written authorization of the Director. It shall be unlawful for any person to do any form of solicitation for money or goods on any lands administered by the Division without written authorization of the Director.

Section 6. Firewood

A written permit shall be required for any person to remove firewood from Division lands, except when special firewood areas are designated by the Division Director in writing.

Section 7. Dog Training**Subsection A. General**

It shall be unlawful to train dogs on lands or waters owned or administered by the Division except during open hunting seasons for the game that the dog is being trained to hunt, except on designated dog training areas and except as permitted by the Director in writing on area maps.

Subsection B. C & D Canal Summit Area

It shall be unlawful to enter the dog training area west of the Summit Bridge (Rt. 896), designated on an area map of the C & D Canal Wildlife Area, for any purpose other than to train dogs or hunt for deer during the shotgun deer seasons. It shall be unlawful to fish, operate a model or full size boat, ride horses or bicycles, or conduct any other activity on the area.

REGULATION WL27. WILDLIFE THEFT PREVENTION FUND

The Division will pay up to \$1000.00 for information leading to the arrest and conviction of any person found guilty of: Class 1 - Rewards of \$100.00 to \$1000.00 - (1) Commercialization of Wildlife; (2) Killing of an endangered/threatened species; Class 2 - Rewards of \$100.00 to \$500.00 - (1) Illegally hunting black ducks, canvasbacks, turkeys, or Canada geese; (2) Poisoning of wildlife; (3) Gross over-limits of wildlife; (4) Illegally hunting waterfowl or deer on state game refuges; (5) Illegally hunting/trapping out of season or at night; (6) Hunting during license revocation; (7) Possessing, tending or setting killer traps with a jaw spread in excess of 5 inches; Class 3 - Rewards up to \$100.00 - (1) Illegally taking or wounding wildlife with a rifle. The confidentiality of informants and their payments will be maintained by administrative procedures. Department employees, peace officers and their immediate families are not eligible for rewards.

REGULATION WL29. NUISANCE GAME ANIMALS**Section 1.**

Within the limits of residential or commercial areas of incorporated cities or towns, or within residential or commercial structures, the following game animals may be controlled (killed) without a permit when they are causing damage: gray squirrel, raccoon, opossum. Methods used to control said animals must be consistent with provisions of

Title 7 of the Delaware Code and only live traps may be used (without a depredation permit) outside of established trapping seasons.

Section 2.

The Division may designate licensed pest control operators as cooperators to control nuisance wild animals. Said cooperators must agree to follow guidelines for control as determined by the Division and notify potential clients of their fees.

REGULATION WL31. SHORELINE REFUGES OF THE DELAWARE RIVER AND BAY

Any land located between the high tide line and the low tide line, adjoining the Delaware River and Bay in the areas listed herein, shall be a State Wildlife Area and subject to the rules pertaining thereto: From the Smyrna River south to the St. Jones River. This section will only be operative on areas when adjoining landowners to said lands agree to their designation as state wildlife area and agree to co-sign complaints concerning violations.

This regulation shall not pertain to beach communities containing three or more cottages: Woodland Beach; Pickering Beach; or Kitts Hummock. This regulation shall not pertain to legally licensed surf fishing vehicles where regulations permit the use of surf fishing vehicles or to other uses by special permit.

REGULATION WL32. WATERFOWL REFUGE

It shall be unlawful to hunt waterfowl in that part of Drawer Creek west of US Route 13 to where the tributaries of the creek meet routes 428 and 429.

REGULATION WL33. WILDLIFE REHABILITATION PERMITS

It shall be unlawful for any person to hold wildlife in captivity for the purpose of rehabilitation without a permit from the Division and any other permits required by the U.S. Fish and Wildlife Service. Licensees must conform to the training, housing and veterinary care standards of the National Wildlife Rehabilitators Association. Animals held under rehabilitation permits must be released to the wild or euthanized if release is not feasible. Rehabilitation facilities must be available for inspection by Division employees during normal working hours of the State. The Division may require applicants to apply on standardized forms. Licensed veterinarians are exempt from the licensing requirements of this section when rendering temporary treatment to injured wildlife and they make provisions to return any injured animals to the wild.

REGULATION 35. FALCONRY

Section 1. Federal Regulations Adopted.

It shall be unlawful for any person to practice the sport of falconry except in such a manner as prescribed by regulations promulgated under provisions of 50 CFR (Code of Federal Regulations) 21.3, 21.28 and 21.29, which regulations are hereby made part of the regulations of the Department as prescribed in Title 7, Section 725. Provided, however, that parts of those regulations shall not apply if the Department prescribes further restrictions governing falconry.

Section 2. Permits.

Residents wishing to practice falconry shall apply to the Division, successfully pass a written test and have their facilities and equipment inspected as prescribed in 50 CFR, prior to a falconry permit being issued. The Division shall participate in any joint state/federal permit system available. Permits shall be effective, unless revoked, for a period of up to three years and coincide with the state fiscal year. Nonresidents wishing to hunt by falconry in Delaware must hold a valid state/federal falconry permit from their home state and abide by any restrictions applicable to resident falconers. The issuance of Apprentice Class permits shall be limited to person 15 years of age or older.

Section 3. Taking of Raptors.

It shall be unlawful to take any birds of prey from the wild without a permit from the Division. The Director will establish a limit on the number of raptors that may taken each year and report this limit annually to the Advisory Council on Game and Fish, that will provide a public forum to consider the decision. In 1999 the Division will consider the issuance of no more than twelve (12) permits for taking birds of prey from the wild in Delaware, including no more than three (3) nestling red-tailed hawks or great horned owls. Delaware falconers will have the first opportunity to apply for permits to remove nestlings during the period January 1 to February 28. Non-resident falconers may apply for available permits to take nestlings starting on March 1, providing their home state allows Delaware residents the reciprocal opportunity to remove nestling raptors. The taking of nestling (eyas) birds shall be limited to red-tailed hawks and great horned owls during the period from March 1 to June 15. The season for the taking of passage birds shall be from September 1 to January 12. Resident falconers shall have the first opportunity to obtain permits during the period from January 1 to September 30 to capture passage raptors. Starting on October 1 of each year, non-resident falconers may apply to obtain any available permits to take passage raptors in Delaware, providing their home state has a reciprocal arrangement that permits Delaware residents to take passage raptors. It shall be unlawful to remove raptors from private property without the express consent of the landowner. It shall also be unlawful to remove raptors from State Parks, State Forests, State Wildlife Areas, State Owned

Wetland Mitigation Sites, National Wildlife Refuges, Nature Preserves, Natural Areas, and County or Local Parks without the advance approval of the agency administering the property. The permit to remove a raptor from the wild must be in possession of the falconer when attempting to capture a raptor. Apprentice falconers must be under the direct supervision of their sponsor when removing raptors from the wild. Raptors taken from the wild in Delaware may not be sold or bartered.

Section 4. Hunting.

Falconry is a legal method of take for all game birds and animals in Delaware. The hunting season for resident species with falconry shall be from September 1 of each year to February 28 of each year. A permittee whose raptor accidentally kills wildlife that is not during an open season shall leave the dead wildlife where it lies, except the raptor may feed upon the wildlife before leaving the site of the kill, provided that the wildlife shall not be reduced to possession by the falconer and the falconer shall cease hunting with the raptor that makes the accidental kill for the remainder of the day. It shall be unlawful to hunt under a falconry permit unless the falconer has specific permission of the landowner to hunt.

Section 5. Marking

Any raptor possessed under a Delaware falconry permit must be banded with a permanent, non-reusable numbered band issued by the U.S. Fish and Wildlife Service or the Division. Captive reared raptors may be marked with either a permanent, non-resuable, numbered band or if sold, a numbered seamless band. Markers shall be removed from birds which die or are intentionally released into the wild and must be forwarded to the Division within ten day along with a report that documents the fate of the bird.

Section 6. Release

No hybrid or raptors that are not indigenous to Delaware may be released into the wild.

REGULATION 37. COLLECTION OR SALE OF NONGAME WILDLIFE

Section 1. Commercial Collection

It shall be unlawful to collect or possess and North American nongame wildlife species or any part thereof for commercial purposes without a permit from the Director. The permit will limit the terms and conditions for collecting or possessing said wildlife within the state. Federally or state listed threatened and endangered species may not be collected or possessed without appropriate federal/state permits.

Section 2. Collection and Possession

It shall be unlawful for any person to remove from the wild or possess for non-commercial purposes, any nongame wildlife species, their eggs or parts without a permit from the Director. For non-commercial purposes one individual of any single species of nongame wildlife, other than State Heritage Program ranked S1, S2, SX or SH or federally protected migratory birds, may be collected and possessed without a permit. A permit will not be required for school activities that are part of an approved curriculum or for projects approved by nationally chartered youth groups such as 4-H, Boy Scouts of America or Girl Scouts of America. Federally listed threatened and endangered species may not be collected or possessed without federal permits.

It shall be unlawful to remove nongame animals from the wild and later release said animals back to the wild.

Section 3. Captive Breeding

It shall be unlawful to breed in captivity any North American nongame wildlife species without a nongame breeders permit from the Director. Said permit will limit the terms and conditions for captive breeding of said wildlife. Captive bred species cannot be released into the wild. A signed bill of sale shall accompany any captive bred species that are sold. Federally listed threatened and endangered species may not be collected or possessed without the appropriate federal permits. This section shall not apply to raptors regulated by federal and state falconry regulations.

Section 4. Pre-Act Collections

Persons owning nongame wildlife that was in their possession prior to the date of the effective date of this regulation shall have six months to register said wildlife with the Division. Once registered, said wildlife may be legally possessed.

Section 5. Sale or Possession of C.I.T.E.S. Listed Species

It shall be unlawful to sell or possess bear gall bladder, or other viscera from any species of bear, or any part of other species listed as prohibited by the Convention on Trade In Endangered Species (C.I.T.E.S.). The possession of any part of a bear must be in conformance with C.I.T.E.S.

SEVERABILITY:

If any section, subsection, sentence, phrase or word of these regulations shall be declared unconstitutional under the Constitution of the State of Delaware or of the United States or by a State or Federal Court of competent jurisdiction, the remainder of these regulations shall be unimpaired and shall continue in full force and effect and proceedings thereunder shall not be affected.

ADOPTION:(These draft revised regulations are planned for adoption in early 1999. All regulations will only be adopted after full public review and revision under Delaware's

Administrative Procedures Act and the Department's Regulatory Development Process as adopted on October 21, 1997.) Delaware Division of Fish and Wildlife.

DIVISION OF FISH & WILDLIFE

Statutory Authority: 23 Delaware Code,
Sections 2113A(a) and 4114 (23 Del. C.
2113A(a), 2114)

BOATING REGULATIONS

BR-1. GENERAL.

Section 1. Code of Federal Regulations.

These regulations reference provisions from the Code of Federal Regulations (CFR), revised as of July 1, 1997, and October 1, 1996, for U.S.C. Titles 33 and 46, respectively.

Section 2. Application of Regulations.

Unless otherwise specified, these regulations shall apply to all vessels used on the waters of ~~the~~ this State.

Section 3. Obedience to Orders by Enforcement Officers.

It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce these regulations.

BR-2. DEFINITIONS.

For purposes of BR-3 through BR-12, the following words and phrases shall have the meaning ascribed to them unless the context clearly indicates otherwise:

(1) "All-round light" shall mean a light showing an unbroken light over an arc of the horizon of 360 degrees.

(2) "Boat" shall mean any vessel manufactured or used primarily for non-commercial use; leased, rented, or chartered to another for the latter's non-commercial use; or engaged in the carrying of 6 or fewer passengers.

(3) "Coast Guard approved" shall mean that the equipment has been determined to be in compliance with Coast Guard specifications and regulations relating to the materials, construction, and performance.

(4) "Commercial hybrid PFD" shall mean a hybrid PFD approved for use on commercial vessels identified on the PFD label.

(5) "Division" shall mean the Division of Fish and Wildlife.

(6) "Enforcement officer" shall mean a sworn member of a police force or other law-enforcement agency of this State or of any county or municipality who is responsible for the prevention and the detection of crime and the

enforcement of the laws of this State or other governmental units within the State.

(7) "Especially hazardous condition" shall mean a condition which endangers the life of a person on board a vessel.

(8) "First aid" shall mean emergency care and treatment of an injured person before definitive medical and surgical management can be secured.

(9) "Grossly negligent" shall mean the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness.

(10) "Issuing authority" shall mean a state where a numbering system for vessels has been approved by the Coast Guard or the Coast Guard where a numbering system has not been approved. Issuing authorities are listed in Appendix A.

(11) "Licensing agent" shall mean a qualified person authorized by the Division to ~~register vessels~~ distribute boat registrations pursuant to § 2113(d) of Title 23.

(12) "Masthead light" shall mean a white light placed over the fore and aft centerline of a vessel showing an unbroken light over an arc of the horizon of 225 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on either side of the vessel, except that on a vessel of less than 12 meters (39.4 ft.) in length the masthead light shall be placed as nearly as practicable to the fore and aft centerline of the vessel.

(13) "Motorboat" shall mean any vessel 65 feet (19.8 m) in length or less equipped with propulsion machinery, including steam.

(14) "Motor vessel" shall mean any vessel more than 65 feet (19.8 m) in length propelled by machinery other than steam.

(15) "Navigable channel" shall mean a channel plotted on a National Oceanic and Atmospheric Administration nautical chart or a channel marked with buoys, lights, beacons, ranges, or other markers by the Coast Guard or with Coast Guard approval.

(16) "Negligent" shall mean the omission to do something which a reasonable person, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent person would not do.

(17) "Open boat" shall mean a motorboat or motor vessel with all engine and fuel tank compartments, and other spaces to which explosive or flammable gases and vapors from these compartments may flow, open to the atmosphere and so arranged as to prevent the entrapment of such gases and vapors within the vessel.

(18) "Operator" shall mean that person in control or in charge of the vessel while the vessel is in use.

(19) "Owner" shall mean a person who claims lawful

possession of a vessel by virtue of legal title or equitable interest therein which entitles him/her to such possession.

(20) "Passenger" shall mean every person carried on board a vessel other than:

(a) The owner or the owner's representative;

(b) The operator;

(c) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(d) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his/her carriage.

(21) "Personal flotation device" shall mean a device that is approved by the Commandant of the Coast Guard pursuant to 46 CFR Part 160.

(22) "PFD" shall mean personal flotation device.

(23) "Racing shell", "rowing scull", "racing canoe" or "racing kayak" shall mean a manually propelled vessel that is recognized by national or international racing associations for use in competitive racing and one in which all occupants row, scull, or paddle, with the exception of a coxswain, if one is provided, and is not designed to carry and does not carry any equipment not solely for competitive racing.

(24) "Recreational vessel" shall mean any vessel being manufactured or operated primarily for pleasure; or leased, rented, or chartered to another for the latter's pleasure. It does not include a vessel engaged in the carrying of six or fewer passengers.

(25) "Restricted visibility" shall mean any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorms, or any other similar causes.

(26) "Sidelights" shall mean a green light on the starboard side and a red light on the port side each showing an unbroken light over an arc of the horizon of 112.5 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on its respective side. On a vessel of less than 20 meters (65.6 ft.) in length, the sidelights may be combined in one lantern carried on the fore and aft centerline of the vessel, except that on a vessel of less than 12 meters (39.4 ft.) in length the sidelights when combined in one lantern shall be placed as nearly as practicable to the fore and aft centerline of the vessel.

(27) "Slow-No-Wake" shall mean as slow as possible without losing steerage way and so as to make the least possible wake. (This almost always means speeds of less than 5 miles per hour.)

(28) "Special flashing light" shall mean a yellow light flashing at regular intervals at a frequency of 50 to 70 flashes per minute, placed as far forward and as nearly as practicable on the fore and aft centerline of the tow and showing an unbroken light over an arc of the horizon of not less than 180 degrees nor more than 225 degrees and so fixed as to show the light from right ahead to abeam and no more than 22.5 degrees abaft the beam on either side of the vessel.

(29) "State of principal use" shall mean a state on whose waters a vessel is used or to be used most during a calendar year. It shall mean this State if the vessel is to be used, docked, or stowed on the waters of ~~the~~ this State for over 60 consecutive days.

(30) "Sternlight" shall mean a white light placed as nearly as practicable at the stern showing an unbroken light over an arc of the horizon of 135 degrees and so fixed as to show the light 67.5 degrees from right aft on each side of the vessel.

(31) "Towing light" shall mean a yellow light having the same characteristics as the sternlight.

(32) "Type I PFD" shall mean any Coast Guard approved wearable device designed to turn most unconscious wearers in the water from a face down position to a vertical and slightly backward position. The Type I PFD has the greatest required buoyancy: the adult size provides at least 22 pounds buoyancy, and the child size provides at least 11 pounds buoyancy.

(33) "Type II PFD" shall mean any Coast Guard approved wearable device designed to turn some unconscious wearers from a face-down position to a vertical and slightly backward position. An adult size device provides at least ~~452~~ 15.5 pounds buoyancy, the medium child size provides at least 11 pounds, and the infant and small child sizes provide at least 7 pounds buoyancy.

(34) "Type III PFD" shall mean any Coast Guard approved wearable device designed to maintain conscious wearers in a vertical and slightly backward position. While the Type III PFD has the same minimum buoyancy as the Type II PFD, it has little or no turning ability.

(35) "Type IV PFD" shall mean any Coast Guard approved device designed to be thrown to a person in the water and grasped and held by such person until rescued. It is not designed to be worn. Type IV devices, which include buoyant cushions, ring buoys, and horseshoe buoys, are designed to have at least 16.5 pounds buoyancy.

(36) "Type V PFD" ~~is~~ shall mean any Coast Guard approved wearable device designed for a specific and restricted use. The label on the PFD indicates the kinds of activities for which the PFD may be used and whether there are limitations on how it may be used.

(37) "Type V hybrid PFD" ~~is~~ shall mean any Coast Guard approved wearable device designed to give additional buoyancy by inflating an air chamber. When inflated it turns the wearer similar to the action provided by a Type I, II, or III PFD (the type of performance is indicated on the label). The exact specification and performance of the PFD will vary somewhat with each device.

(38) "Use" shall mean to operate, navigate, or employ.

(39) "~~Water ski~~" or "~~water skiing~~" shall include ~~all forms of water skiing, skiing on an aquaplane, knee board or other contrivances, parasailing or any activity where~~ whereby a person is towed behind or alongside a boat vessel.

BR-3. REGISTRATION, NUMBERING, AND MARKING OF VESSELS.

Section 1. Applicability.

This regulation shall apply to all vessels propelled by any form of mechanical power, including electric trolling motors, used or placed on the waters of ~~the~~ this State, except the following:

- (1) Foreign vessels temporarily using such waters;
- (2) Military or public vessels of the United States, except recreational-type public vessels;
- (3) A vessel whose owner is a state or subdivision thereof, other than this State, which is used principally for governmental purposes, and which is clearly identifiable as such;
- (4) A vessel used exclusively as a ship's lifeboat; and
- (5) Vessels which have been issued valid marine documents by the Coast Guard.

Section 2. Vessel Number Required.

(a) Except as provided in Section 3 of this regulation, no person shall use or place on the waters of [~~the~~ this] State a vessel to which this regulation applies unless:

- (1) It has a number issued on a certificate of number by this State; and
- (2) The number is displayed as described in Section 8 of this regulation.

(b) This regulation shall not apply to a vessel for which a valid temporary certificate has been issued to its owner by the issuing authority in the state in which the vessel is principally used.

Section 3. Reciprocity.

(a) When the state of principal use is a state other than this State and the vessel is properly numbered by that state, the vessel shall be deemed in compliance with the numbering system requirements of this State in which it is temporarily used.

(b) When this State becomes the state of principal use for a vessel numbered by another state, the vessel's current number shall be recognized as valid for a period of 60 consecutive days before numbering is required by this State.

Section 4. Other Numbers and Letters Prohibited.

No person shall use a vessel to which this regulation applies that has any letters or numbers that are not issued by an issuing authority for that vessel on its forward half.

Section 5. Certificate of Number Required (Registration Card).

(a) Except as provided in Section 3 of this regulation, no person shall use a vessel to which this regulation applies unless it has on board:

- (1) A valid certificate of number or temporary

certificate for that vessel issued by this State; or

(2) For rental vessels described in subsection (b) of this section, a copy of the lease or rental agreement, signed by the owner or the owner's authorized representative and by the person leasing or renting the vessel, that contains at least:

(a) The vessel number that appears on the certificate of number; and

(b) The period of time for which the vessel is leased or rented.

(b) The certificate of number for vessels less than 26 feet in length and leased or rented to another for the latter's non-commercial use for less than 24 hours may be retained on shore by the vessel's owner or representative at the place from which the vessel departs or returns to the possession of the owner or the owner's representative.

Section 6. Inspection of Certificate.

Each person using a vessel to which this regulation applies shall present the certificate of number, lease, or rental agreement required by Section 5 of this regulation to any enforcement officer for inspection at the officer's request.

Section 7. Location of Certificate of Number.

No person shall use a vessel to which this regulation applies unless the certificate of number, lease, or rental agreement required by Section 5 of this regulation is carried on board in such a manner that it can be handed to a person authorized under Section 6 of this regulation to inspect it.

Section 8. Numbers: Display; Size; Color.

(a) Each number required by Section 2 of this regulation shall:

(1) Be painted on or permanently attached to each side of the forward half of the vessel, except as allowed by subsection (b) or required by subsection (c) of this section;

(2) Be in plain vertical block characters of not less than 3 inches in height;

(3) Contrast with the color of the background and be distinctly visible and legible;

(4) Have spaces or hyphens that are equal to the width of a letter other than "I" or a number other than "1" between the letter and number groupings (example: DL 5678 D or DL-5678-D); and

(5) Read from left to right.

(b) When a vessel is used by a manufacturer or by a dealer for testing or demonstrating, the number may be painted on or attached to removable plates that are temporarily but firmly attached to each side of the forward half of the vessel.

(c) On vessels so configured that a number on the hull or superstructure would not be easily visible, the number shall be painted on or attached to a backing plate that is attached to the forward half of the vessel so that the number is visible from each side of the vessel.

(d) Expired validation decals shall be removed and only effective decals shall be displayed.

Section 9. Notification of Issuing Authority.

The person whose name appears as the owner of a vessel on a certificate of number shall, within 15 days, notify the Division of:

(1) Any change in said person's address;

(2) The theft or recovery of the vessel;

(3) The loss or destruction of a valid certificate of number;

(4) The transfer of all or part of said person's interest in the vessel; and

(5) The destruction or abandonment of the vessel.

Section 10. Surrender of Certificate of Number.

The person whose name appears as the owner of a vessel on a certificate of number shall surrender the certificate to the Division or a licensing agent within 15 days after it becomes invalid under subsections (b), (c), (d) or (e) of Section 14 of this regulation.

Section 11. Removal of Number and Validation Decal.

The person whose name appears on a certificate of number as the owner of a vessel shall remove the number and validation sticker from the vessel when:

(1) The vessel is documented by the Coast Guard;

(2) The certificate of number is invalid under Section 14(c) of this regulation; or

(3) This State is no longer the state of principal use.

Section 12. Application for Certificate of Number.

Any person who is the owner of a vessel to which Section 1 of this regulation applies may apply for a certificate of number for that vessel by submitting the following to the Division or ~~the nearest~~ a licensing agent:

(1) The application prescribed by the Division;

(2) The fee required by § 2113(a) of Title 23; and

(3) Proof of ownership as required by Section 22 of this regulation.

Section 13. Duplicate Certificate of Number.

If a certificate of number is lost or destroyed, the person whose name appears on the certificate as the owner may apply for a duplicate certificate by submitting the following to the Division or a licensing agent:

(1) The application prescribed by the Division; and

(2) The fee required by § 2113(b) of Title 23.

Section 14. Validity of Certificate of Number.

(a) Except as provided in subsections (b), (c), (d) and (e) of this section, a certificate of number is valid until the date of expiration prescribed by this State.

(b) A certificate of number issued by this State is invalid after the date upon which:

(1) The vessel is documented or required to be documented;

(2) The person whose name appears on the certificate of number as owner of the vessel transfers all of his/her ownership in the vessel; or

(3) The vessel is destroyed or abandoned.

(c) A certificate of number issued by this State is invalid if:

(1) The application for the certificate of number contains a false or fraudulent statement; or

(2) The fees for the issuance of the certificate of number are not paid.

(d) A certificate of number is invalid 60 days after the day on which another state becomes the state of principal use.

(e) A certificate of number is invalid when the person whose name appears on the certificate involuntarily loses his/her interest in the numbered vessel by legal process.

Section 15. Validation Stickers.

(a) No person shall use a vessel that has a number issued by this State unless a validation sticker was issued with the certificate of number and the sticker:

(1) Is displayed within 6 inches of the number; and

(2) Meets the requirements in subsections (b) and (c) of this section.

(b) Validation stickers shall be approximately 3 inches square.

(c) The year in which each validation sticker expires shall be indicated by the colors, blue, international orange, green, and red, in rotation beginning with green for stickers that expired in 1975 (see Appendix B).

Section 16. Contents of Application for Certificate of Number.

(a) Each application for a certificate of number shall contain the following information:

(1) Name of each owner;

(2) Address of at least one owner, or the address of the principle place of business of an owner that is not an individual, including zip code;

(3) Mailing address, if different from the address required by paragraph (a)(2) of this section;

(4) Date of birth of the owner;

(5) Citizenship of the owner;

(6) State in which vessel is or will be principally used;

(7) The number previously issued by an issuing authority for the vessel, if any;

(8) Expiration date of certificate of number issued by the issuing authority;

(9) Official number assigned by the Coast Guard, if applicable;

(10) Whether the application is for a new number,

renewal of a number, or transfer of ownership;

(11) Whether the vessel is used for pleasure, rent or lease, dealer or manufacturer demonstration, commercial passenger carrying, commercial fishing, or other commercial use;

(12) Make of vessel or name of vessel builder, if known;

(13) Year vessel was manufactured or built, or model year, if known;

(14) Manufacturer's hull identification number, if any;

(15) Overall length of vessel;

(16) Whether the hull is wood, steel, aluminum, fiberglass, plastic, or other;

(17) Type of vessel (open, cabin, house, etc.);

(18) Whether the propulsion is inboard, outboard, inboard-outdrive, jet, or sail with auxiliary engine;

(19) Whether the fuel is gasoline, diesel, or other;

(20) Social security number, or, if that number is not available, the owner's driver's license number (if the owner is other than an individual, the owner's taxpayer identification number, social security number, or driver's license number);

(21) The signature of the owner.

(b) An application made by a manufacturer or dealer for a number that is to be temporarily affixed to a vessel for demonstration or test purposes may omit items 13 through 20 of subsection (a) of this section.

Section 17. Contents of a Certificate of Number.

(a) Except as allowed in subsection (b) of this section, each certificate of number shall contain the following information:

(1) Number issued to the vessel;

(2) Expiration date of the certificate;

(3) State of principal use;

(4) Name of the owner;

(5) Address of the owner, including zip code;

(6) Whether the vessel is used for pleasure, rent or lease, dealer or manufacturer demonstration, commercial passenger carrying, commercial fishing, or other commercial use;

(7) Manufacturer's hull identification number (or the hull identification number issued by the Department), if any;

(8) Make of vessel;

(9) Year vessel was manufactured;

(10) Overall length of vessel;

(11) Whether the vessel is an open boat, cabin cruiser, houseboat, etc.;

(12) Whether the hull is wood, steel, aluminum, fiberglass, plastic, or other;

(13) Whether the propulsion is inboard, outboard, inboard-outdrive, jet, or sail with auxiliary engine;

(14) Whether the fuel is gasoline, diesel, or other;

(15) A quotation of the State regulations pertaining to change of ownership or address, documentation, loss, destruction, abandonment, theft or recovery of vessel, carriage of the certificate of number on board when the vessel is in use, rendering aid in a boat accident, and reporting of vessel casualties and accidents.

(b) A certificate of number issued to a manufacturer or dealer to be used on a vessel for test or demonstration purposes may omit items 7 through 14 of subsection (a) of this section if the word "manufacturer" or "dealer" is plainly marked on the certificate.

Section 18. Contents of Temporary Certificate.

A temporary certificate issued pending the issuance of a certificate of number shall contain the following information:

- (1) Make of vessel;
- (2) Length of vessel;
- (3) Type of propulsion;
- (4) State in which vessel is principally used;
- (5) Name of owner;
- (6) Address of owner, including zip code;
- (7) Signature of owner;
- (8) Date of issuance; and
- (9) Notice to the owner that the temporary certificate is invalid after 60 days from the date of issuance.

Section 19. Form of Number.

(a) Each number shall consist of the two capital letters "DL" denoting this State as the issuing authority, followed by:

- (1) Not more than four numerals followed by not more than two capital letters (example: DL 1234 BD); or
- (2) Not more than three numerals followed by not more than three capital letters (example: DL 567 EFG).

(b) A number suffix shall not include the letters "T", "O", or "Q," which may be mistaken for numerals.

Section 20. Size of Certificate of Number.

Each certificate of number shall be 2½ by 3½ inches.

Section 21. Terms and Conditions for Vessel Numbering.

Except for a recreational-type public vessel of the United States, the State shall condition the issuance of a certificate of number on title to, the original manufacturer's or importer's statement or certificate of origin, copy of notarized bill of sale, or other proof of ownership of a vessel.

Section 22. Boat Registration Records.

(a) All valid records shall be filed alphabetically by the last names of owners and numerically by "DL" registration numbers;

(b) Invalid records shall be maintained for three years at which time they shall be destroyed.

BR-4. CASUALTY REPORTING SYSTEM REQUIREMENTS.

Section 1. Administration.

The casualty reporting system of this State shall be administered by the Boating Law Administrator who shall:

- (1) Provide for the reporting of all casualties and accidents required by Section 2 of this regulation;
- (2) Receive reports of vessel casualties or accidents prescribed by Section 3 of this regulation;
- (3) Review accident and casualty reports to assure accuracy and completeness of reporting; and
- (4) Determine the cause of casualties and accidents reported.

Section 2. Report of Casualty or Accident.

(a) The operator of a vessel shall submit the casualty or accident report prescribed in 33 CFR § 173.57 to the reporting authority prescribed in Section 4 of this regulation when, as a result of an occurrence that involves the vessel or its equipment:

- (1) A person dies;
- (2) A person ~~loses consciousness or receives is~~ injured and requires medical treatment beyond first aid ~~or is disabled for more than 24 hours;~~
- (3) Damage to the vessel and other property totals more than \$500.00; or
- (4) A person disappears from the vessel under circumstances that indicate death or injury.

(b) A report required by this section shall be made:

- (1) Immediately if a person dies within 24 hours of the occurrence;
- (2) Immediately if a person ~~loses consciousness or receives is injured and requires~~ is injured and requires medical treatment beyond first aid, ~~or is disabled for more than 24 hours or disappears from a vessel; and~~
- (3) Within 5 days of the occurrence or death if an earlier report is not required by this subsection.

(c) When the operator of a vessel cannot submit the casualty or accident report required by subsection (a) of this section, the owner shall submit the casualty or accident report.

(d) The accident or casualty report completed by a Fish and Wildlife Agent may be substituted to meet the requirements of this section.

Section 3. Casualty or Accident Report.

Each report required by Section 2 of this regulation shall be in writing, dated upon completion, and signed by the person who prepared it and shall contain, if available, the information about the casualty or accident required by the Coast Guard pursuant to 33 CFR § 173.57.

Section 4. Where to Report.

The report required by Section 2 of this regulation shall be submitted to the Boating Law Administrator, Department of Natural Resources and Environmental Control, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901.

Section 5. Immediate Notification of Death, Disappearance, or Physical Injury.

(a) When, as a result of an occurrence that involves a vessel or its equipment, a person dies or disappears from a vessel or sustains an injury requiring more than first aid, the operator shall, without delay, by the quickest means available, notify the Division of Fish and Wildlife Enforcement Section, Telephone: 302-739-4580 or 1-800-523-3336, of:

- (1) The date, time, and exact location of the occurrence;
- (2) The name of each person who died, disappeared, or sustained an injury;
- (3) The number and name of the vessel; and
- (4) The names and addresses of the owner and operator.

(b) When the operator of a vessel cannot give the notice required by subsection (a) of this section, at least one of the persons on board shall notify the Division of Fish and Wildlife Enforcement Section, Telephone: 302-739-4580 or 1-800-523 3336, or determine that the notice has been given.

Section 6. Rendering of Assistance in Accidents.

(a) The operator of a vessel involved in an accident shall:

(1) Render necessary assistance to each individual affected to save that affected individual from danger caused by the accident, so far as the operator can do so without serious danger to the operator's or individual's vessel or to individuals on board; and

(2) Give the operator's name and address and identification of the vessel to the operator or individual in charge of any other vessel involved in the accident, to any individual injured, and to the owner of any property damaged.

(b) An individual complying with subsection (a) of this section or gratuitously and in good faith rendering assistance at the scene of a casualty without objection by an individual assisted, is not liable for damages as a result of rendering assistance or for an act or omission in providing or arranging salvage, towage, medical treatment, or other assistance when the individual acts as an ordinary, reasonable, and prudent individual would have acted under the circumstances.

BR-5. WATER SKIING.

Section 1. Water Skiing.

(a) No person shall operate a vessel on any waters of this State for purposes of towing a person on water skis unless there is in such vessel a competent person, in addition to the operator, in a position to observe the progress of the person being towed. The observer shall be considered competent if he/she can, in fact, observe the person being towed and relay any signals from the person being towed to the operator. This subsection shall not apply to Class A vessels operated by the person being towed and designed to be incapable of carrying the operator in or on the vessel.

(b) No person shall engage in water skiing unless such person is wearing a Type I, Type II, Type III, or Type V PFD. This provision shall not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in an official regatta, boat race, marine parade, tournament, or exhibition.

(c) No person shall engage in water skiing and no person shall operate a vessel towing a person so engaged on any waters of ~~the~~ this State with a tow line that exceeds 75 feet.

(d) No person shall engage in water skiing and no person shall operate a vessel towing a person so engaged on any waters of ~~the~~ this State on which water skiing is prohibited.

(e) No person shall engage in water skiing and no person shall operate a vessel towing a person so engaged between sunset and sunrise.

(f) The operator of a vessel towing a water skier shall comply with all laws and regulations as they pertain to the individual's class of vessel and shall maneuver the vessel in a careful and prudent manner, so as not to interfere with other vessels or obstruct any channel or normal shipping lane, and maintain reasonable distance from persons and property, so as not to endanger the life or property of any person.

(g) No person shall engage in water skiing in such a manner as to strike or threaten to strike any person, vessel, or property, and no person shall operate a vessel or manipulate a tow line or other towing device in such a manner as to cause a water skier to strike or threaten to strike another person, vessel, or property.

(h) No person shall engage in water skiing and no person shall operate a vessel towing a person so engaged within one hundred (100) feet of any person in the water, a pier, dock, float, wharf, or vessel anchored or adrift, or in any direction of boat launching ramps, both public and private.

Section 2. Prohibited Water Skiing Areas.

Water skiing shall be prohibited in the following areas:

- (1) The Rehoboth-Lewes Canal, in its entirety;
- (2) The channel through Masseys Landing from Buoy No. 12 off Bluff Point to Buoy No. 19A;
- (3) The Assawoman Canal, in its entirety;

- (4) The Indian River Inlet between Buoy No. 1 and the Coast Guard Station;
- (5) Roosevelt Inlet from 100 yards off jetty entrance to the Canal;
- (6) White Creek south of Marker No. 9A; and
- (7) Any ~~designated public~~ marked swimming areas, unless authorized by a special permit issued by the Department.

Section 3. Obedience to Orders by Enforcement Officers.

It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.

BR-6. VESSEL SPEED.

Section 1. Safe Boat Speed.

(a) Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

(b) The speed of all vessels on the waters of this State shall be limited to a Slow-No-Wake speed when within 100 feet of:

- (1) Any shoreline where "Slow-No-Wake" signs have been erected by the Department;
- (2) Floats;
- (3) Docks;
- (4) Launching ramps;
- (5) ~~Congested beaches~~ Marked swimming areas;
- (6) Swimmers; or
- (7) Anchored, moored, or drifting vessels.

(c) No person shall operate a vessel at a rate of speed greater than is reasonable having regard to conditions and circumstances such as the closeness of the shore and shore installations, anchored or moored vessels in the vicinity, width of the channel, and if applicable, vessel traffic and water use.

Section 2. Responsibility of Operator.

The operator of any vessel on the waters of this State shall be legally responsible for injuries, damages to life, limb, or property caused by his/her vessel or vessel wake.

Section 3. Obedience to Orders by Enforcement Officers.

It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.

BR-7. NEGLIGENT AND GROSSLY NEGLIGENT OPERATION OF A VESSEL.

Section 1. Negligent or Grossly Negligent Operation.

(a) No person shall operate any vessel on the waters of ~~the~~ this State in a negligent manner.

(b) No person shall operate any vessel on the waters of ~~the~~ this State in a grossly negligent manner.

(c) Depending upon the degree of negligence, the following shall constitute a violation of subsection (a) or (b) of this section:

(1) Failure to reduce speed in areas where boating is concentrated, endangering life, limb, and/or property;

(2) Operating at excessive speed ~~under storm conditions, in fog or other low-visibility conditions~~ at times of restricted visibility;

(3) Operating at excessive speed when maneuvering room is restricted by narrow channels or when vision is obstructed by such things as jetties, land, or other vessels;

(4) Impeding the right-of-way of a stand-on or privileged vessel so as to endanger risk of collision;

(5) Towing a water skier in a restricted area or where an obstruction exists;

(6) Operating a vessel within swimming areas when bathers are present;

(7) Operating a vessel in areas posted as closed to vessels due to hazardous conditions;

(8) Operating a vessel through an area where a regatta or marine parade is in progress in a way that could present a hazard to participants or spectators and interfere with the safe conduct of the event;

(9) Operating a vessel with any person sitting on the bow, gunwales, or stern with legs hanging over the side except a sailboat equipped with lifelines while engaged in a race for which a permit has been secured under § 2120 of Title 23;

(10) Operating a vessel or use any water skis while under the influence of alcohol, any narcotic drug, barbiturate, marijuana, or hallucinogen;

(11) Loading a vessel with passengers or cargo beyond its safe carrying capacity;

(12) Operating a vessel with an engine of a higher horsepower rating than the rating noted on the vessel's capacity plate or in the manufacturer's specifications; and

(13) Other actions deemed by an enforcement officer to be in violation of subsection (a) or (b) of this regulation.

Section 2. Obedience to Orders by Enforcement Officers.

It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.

BR-8. TERMINATION OF UNSAFE USE OF A VESSEL.

Section 1. Especially Hazardous Conditions.

Especially hazardous conditions warranting termination of voyage shall include, but not be limited to,:

- (1) Insufficient ~~life-saving devices~~ number of Coast Guard approved PFDs;
- (2) Insufficient ~~fire-fighting devices~~ extinguishing equipment;
- (3) Overloaded beyond manufacturer's recommended safe loading capacity;
- (4) Failure to display required navigation lights;
- (5) Fuel leakage from either the fuel system or engine;
- (6) Fuel accumulation ~~(other than fuel tank)~~ in the bilges;
- (7) Failure to meet ventilation requirements for tank and engine spaces;
- (8) ~~Failure to meet~~ Improper backfire flame control requirement;
- (9) Excessive leakage or accumulation of water in bilges;
- (10) Deteriorated condition of vessel; or
- (11) Any other condition deemed hazardous by an enforcement officer.

Section 2. Enforcement.

(a) Enforcement officers shall, if a violation of this regulation is observed, and in their judgment such a deficiency creates an especially hazardous condition to the occupants of the vessel, direct the operator to take specific steps to correct the unsafe condition.

(b) *Compliance by operator.* - Immediate compliance by the operator is required for safety purposes. Failure to comply with the directives of an enforcement officer shall result in a citation under Section 3 of ~~this regulation~~ BR-1 as well as for the specific violation which created the unsafe condition.

Section 3. Obedience to Orders by Enforcement Officers.

It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.

BR-9. MINIMUM REQUIRED EQUIPMENT FOR VESSELS USING STATE WATERS.

PART A - General.

Section 1. Applicability.

- (a) This regulation does not apply to:
 - (1) Military or public vessels of the United States, other than recreational-type public vessels; and
 - (2) A vessel used exclusively as a ship's lifeboat.
- (b) Part B of this regulation prescribes general provisions applicable to all vessels covered by this regulation. Part C prescribes minimum required equipment

for recreational vessels used on the waters of ~~the~~ this State. Part D prescribes minimum required equipment for vessels other than recreational vessels that are not required to be documented.

Section 2. Compliance with Coast Guard Regulations.

Pursuant to § 2114 of Title 23, every vessel shall be provided with the equipment prescribed by Coast Guard regulations, and any amendments or changes thereto, even if such amendments or changes thereto have not been enacted into law by this State or promulgated as regulations by the Division.

PART B - Provisions Applicable to All Vessels Covered by this Regulation.

Section 1. Fire-Extinguishing Equipment.

(a) All hand portable fire extinguishers, semiportable fire extinguishing systems, and fixed fire extinguishing systems shall be Coast Guard approved pursuant to 46 CFR § 25.30-5.

(b) All required hand portable fire extinguishers and semiportable fire extinguishing systems shall be of the "B" type; i.e., suitable for extinguishing fires involving flammable liquids such as gasoline, oil, etc., where a blanketing or smothering effect is essential. The number designations for size will start with "I" for the smallest to "V" for the largest. For the purpose of this regulation, only sizes I through III will be considered. Sizes I and II are considered hand portable fire extinguishers and sizes III, IV, and V are considered semiportable fire extinguishing systems which shall be fitted with suitable hose and nozzle or other practicable means so that all portions of the space concerned may be covered. Examples of size graduations for some of the typical hand portable fire extinguishers and semiportable fire extinguishing systems are set forth in the following table:

TYPE	SIZE	FOAM (GALLONS)	CO2 (POUNDS)	DRY CHEMICAL (POUNDS)	HALON (POUNDS)
B	I	1½	4	2	2½
B	II	2½	15	10	10
B	III	12	35	20	7

~~(d)~~(c) All hand portable fire extinguishers and semiportable fire extinguishing systems shall have permanently attached thereto a metallic name plate giving the name of the item, the rated capacity in gallons, quarts, or pounds, the name and address of the person or firm for whom approved, and the identifying mark of the actual manufacturer.

~~(e)~~(d) Vaporizing-liquid type fire extinguishers

containing carbon tetrachloride or chlorobromomethane or other toxic vaporizing liquids are not acceptable as equipment required by this part.

~~(f)~~(e) Hand portable or semiportable extinguishers which are required on their name plates to be protected from freezing shall not be located where freezing temperatures may be expected.

~~(g)~~(f) The use of dry chemical, stored pressure, fire extinguishers not fitted with pressure gauges or indicating devices, manufactured prior to January 1, 1965, may be permitted on motorboats and other vessels so long as such extinguishers are maintained in good and serviceable condition. The following maintenance and inspections are required for such extinguishers:

(1) When the date on the inspection record tag on the extinguisher shows that 6 months have elapsed since last weight check ashore, then such extinguisher is no longer accepted as meeting required maintenance conditions until reweighed ashore and found to be in a serviceable condition and within required weight conditions;

(2) If the weight of the container is $3 \frac{1}{4}$ ounce less than that stamped on the container, it shall be serviced;

(3) If the outer seal or seals (which indicate tampering or use when broken) are not intact, an enforcement officer may inspect such extinguisher to see that the frangible disc in the neck of the container is intact; and if such disc is not intact, the container shall be serviced; and

(4) If there is evidence of damage, use, or leakage, such as dry chemical powder observed in the nozzle or elsewhere on the extinguisher, the container shall be replaced with a new one and ~~the container~~ extinguisher shall be properly serviced or the extinguisher shall be replaced with another approved extinguisher.

~~(h)~~(g) Fire extinguishers shall be at all times kept in a condition for immediate and effective use, and shall be so placed as to be readily accessible.

Section 2. Backfire Flame Control.

(a) *Applicability.* - This section applies to every gasoline engine installed in a motorboat or motor vessel after April 25, 1940, except outboard motors.

(b) Installations made before November 19, 1952, need not meet the detailed requirements of this section and may be continued in use as long as they are serviceable and in good condition. Replacements shall meet the applicable requirements of this section.

(c) Installations consisting of backfire flame arrestors or engine air and fuel induction systems bearing basic Approval Nos. 162.015 or 162.041 or engine air and fuel induction systems bearing basic Approval Nos. 162.015 or 162.042, may be continued in use as long as they are serviceable and in good condition. New installations or replacements shall meet the applicable requirements of this

section.

(d) No person may use a vessel to which this section applies unless each engine is provided with an acceptable means of backfire flame control. The following are acceptable means of backfire flame control:

(1) A backfire flame arrester complying with Society of Automotive Engineers (SAE) Standard J-1928 or Underwriters Laboratories (UL) Standard 1111 and marked accordingly. The flame arrester shall be suitably secured to the air intake with a flame tight connection;

(2) An engine air and fuel induction system which provides adequate protection from propagation of backfire flame to the atmosphere equivalent to that provided by an approved backfire flame arrester. A gasoline engine utilizing an air and fuel induction system, and operated without an approved backfire flame arrester, shall either include a reed valve assembly or be installed in accordance with SAE Standard J-1928; and

(3) An arrangement of the carburetor or engine air induction system that will disperse any flames caused by engine backfire. The flames must be dispersed to the atmosphere outside the vessel in such a manner that the flames will not endanger the vessel, persons on board, or nearby vessels and structures. Flame dispersion may be achieved by attachments to the carburetor or location of the engine air induction system. All attachments shall be of metallic construction with flamtight connections and firmly secured to withstand vibration, shock, and engine backfire.

(e) No person may use a vessel to which this section applies unless the backfire flame arrester is serviceable and in good condition.

Section 3. Ventilation.

(a) *Applicability.* - This section applies to motorboats, motor vessels, and boats used on the waters of ~~the~~ this State and subject to this regulation.

(b) No person shall operate a motorboat or motor vessel, except an open boat, built after April 25, 1940, and before August 1, 1980, which uses fuel having a flashpoint of 110° F., or less, without every engine and fuel tank compartment being equipped with a natural ventilation system. A natural ventilation system consists of:

(1) At least two ventilator ducts, fitted with cowls or their equivalent, for the efficient removal of explosive or flammable gases from the bilges of every engine and fuel tank compartment;

(2) At least one exhaust duct installed so as to extend from the open atmosphere to the lower portion of the bilge and at least one intake duct that is installed to extend to a point at least midway to the bilge or at least below the level of the carburetor air intake; and

(3) The cowls shall be located and trimmed for maximum effectiveness and in such a manner so as to prevent displaced fumes from being recirculated.

(c) Boats built after July 31, 1978, shall be exempt from the requirements of subsection (a) of this section for fuel tank compartments that:

(1) Contain a permanently installed fuel tank if each electrical component is ignition protected in accordance with 33 CFR § 183.410(a); and

(2) Contain fuel tanks that vent to the outside of the motorboat or motor vessel.

(d) Boats built after July 31, 1980, or which are in compliance with the Coast Guard Ventilation Standard, a manufacturer requirement (33 CFR §§ 183.610 and 183.620), shall be exempt from the requirements of subsections (b) and (d) of this section.

(e) No person shall operate a boat after July 31, 1980, that has a gasoline engine for electrical generation, mechanical power or propulsion unless it is equipped with an operable ventilation system that meets the requirements of 33 CFR § 183.610(a), (b), (d), (e) and (f) and 183.6209(a).

(f) Boat owners shall maintain their boats' ventilation systems in good operating condition (regardless of the boat's date of manufacture).

Section 4. Whistles and Bells.

(a) A vessel of 12 meters (39.4 ft.) or more in length shall be equipped with a whistle and a bell. The whistle and bell shall comply with the specifications in Annex III to the Inland Navigation Rules (33 CFR Part 86). The bell may be replaced by other equipment having the same respective sound characteristics, provided that manual sounding of the prescribed signals shall always be possible.

(b) A vessel of less than 12 meters (39.4 ft.) in length shall be equipped with a whistle or horn, or some other sounding device capable of making an efficient sound signal.

Section 5. Visual Distress Signals.

(a) *Applicability.* - This section applies to all boats operated on the coastal waters of this State and those waters connected directly to them (i.e., bays, sounds, harbors, rivers, inlets, etc.) where any entrance exceeds 2 nautical miles between opposite shorelines to the first point where the largest distance between shorelines narrows to 2 miles.

(b) *Prohibition.* - Unless exempted by subsection (c) of this section, no person may use a boat to which this section applies unless visual distress signals, approved by the Commandant of the Coast Guard under 46 CFR Part 160 or certified by the manufacturer under 46 CFR Parts 160 and 161, in the number required, are on board. Devices suitable for day use and devices suitable for night use, or devices suitable for both day and night use, shall be carried.

(c) *Exemptions.* - The following boats shall be exempt from the carriage requirements of subsection (b) of this section between sunrise and sunset, but between sunset and sunrise, visual distress signals suitable for night use, in the number required, shall be on board:

(1) Boats less than 16 feet in length;

(2) Boats participating in organized events such as races, regattas, or marine parades;

(3) Open sailboats less than 26 feet in length not equipped with propulsion machinery; and

(4) Manually propelled boats.

(d) *Launchers.* - When a visual distress signal carried to meet the requirements of this section requires a launcher to activate, then a launcher approved by the Coast Guard under 46 CFR § 160.028 shall also be carried. Launchers manufactured before January 1, 1981, which do not have approval numbers are acceptable for use with meteor or parachute signals as long as they remain in serviceable condition.

(e) *Visual distress signals accepted.* - Any of the following signals when carried in the number required, can be used to meet the requirements of this section:

(1) An electric distress light meeting the standards of 46 CFR § 161.013. One is required to meet the night only requirement;

(2) An orange flag meeting the standards of 46 CFR § 160.072. One is required to meet the day only requirement;

Pyrotechnics meeting the standards noted in the following table:

APPROVAL No. UNDER 46 CFR	DEVICE DESCRIPTION	MEETS REQUIREMENTS FOR	NO. REQUIRE D
§ 160.021	Hand-Held Red Flares	Day and Night	3
§ 160.022	Floating Orange Smoke	Day Only	3
§ 160.024	Parachute Red Flare ¹	Day and Night	3
§ 160.036	Hand-Held Rocket-Propelled Parachute Red Flare	Day and Night	3
§ 160.037	Hand-Held Orange Smoke	Day Only	3
§ 160.057	Floating Orange Smoke	Day Only	3
§ 160.066	Red Aerial Pyrotechnic Flare ¹	Day and Night	3

- 1 Must have manufacture date of October 1980 or later.
2. These signals require use in combination with a suitable launching device.
3. These devices may be either meteor or parachute assisted type. Some of these signals may require use in combination with suitable launching device.

(f) Any combination of signal devices selected from the types noted in paragraphs (e)(1), (2) and (3) of this section, when carried in the number required, may be used to meet both day and night requirements. ~~(Examples: the combination of two hand-held red flares, and one parachute~~

~~red flare meets both day and night requirements; and three hand-held orange smoke with one electric distress light meet both day and night requirements.)~~ (The following illustrates the variety and combination of devices which can be carried to meet both day and night requirements: three hand-held red flares; one hand-held red flare and two parachute flares; or three hand-held orange smoke signals with one electric distress light.)

(g) *Stowage, serviceability, approval and marking.* - No person may use a boat unless the visual distress signals required by this section are:

- (1) Readily accessible;
- (2) In serviceable condition and the service life of the signal, if indicated by a date marked on the signal, has not expired;
- (3) Legibly marked with the approval number or certification statement as specified in 46 CFR Parts 160 and 161; and
- (4) In sufficient quantity as required by the Coast Guard.

(h) *Prohibited use.* - No person in a boat shall display a visual distress signal on waters to which this section applies under any circumstance except a situation where assistance is needed because of immediate or potential danger to the persons on board.

PART C - Minimum Required Equipment for Recreational-Type Vessels.

Section 1. Personal Flotation Devices.

(a) Except as provided in Section 2 of this part, no person may use a recreational vessel unless at least one PFD of the following types is on board for each person:

- (1) Type I PFD;
- (2) Type II PFD; or
- (3) Type III PFD.

(b) No person may use a recreational vessel 16 feet or more in length unless one Type IV PFD is on board in addition to the total number of PFD's required in subsection (a) of this section.

(c) A Type V PFD may be carried in lieu of any PFD required under subsections (a) and (b) of this section, provided:

- (1) The approval label on the Type V PFD indicates that the device is approved:
 - (a) For the activity in which the vessel is being used; or
 - (b) As a substitute for a PFD of the Type required in the vessel in use;
- (2) The PFD is used in accordance with any requirements on the approval label; and
- (3) The PFD is used in accordance with

requirements in its owner's manual, if the approval label makes reference to such a manual.

(d) A Type V hybrid PFD may satisfy the carriage requirements provided it is worn except when the boat is not underway or when the user is below deck.

Section 2. Exceptions.

(a) Canoes and kayaks 16 feet in length and over are exempted from the requirements for carriage of the additional Type IV PFD required under Section 1(b) of this part.

(b) Racing shells, rowing sculls, racing canoes and racing kayaks are exempted from the requirements for carriage of any Type PFD required under Section 1 of this part.

(c) Sailboards are exempted from the requirements for carriage of any Type PFD required under Section 1 of this part.

Section 3. Stowage, Condition, and Marking of PFDs.

(a) No person may use a recreational vessel unless each Type I, II, or III PFD required by Section 1(a) of this part, or equivalent Type allowed by Section 1(c) of this part, is readily accessible.

(b) No person may use a recreational vessel unless each Type IV PFD required by Section 1(c) 1(b) of this part, or equivalent Type allowed by Section 1(c) of this part, is immediately available.

(c) No person may use a recreational vessel unless each PFD required by Section 2(c) of this part or allowed by Section 1(b) of this part is:

- (1) In serviceable condition, as defined by 33 CFR § 175.23;
- (2) Of an appropriate size and fit for the intended wearer, as marked on the approval label; and
- (3) Legibly marked with its Coast Guard approval number, as specified in 46 CFR Part 160.

Section 4. Fire-Extinguishing Equipment Required.

(a) Motorboats less than 26 feet in length with no fixed fire extinguishing system installed in machinery spaces shall carry at least one Type B-I approved hand portable fire extinguisher. When an approved fixed fire extinguishing system is installed in machinery spaces, a portable extinguisher is not required. If the construction of the motorboat does not permit the entrapment of explosive or flammable gases or vapors, no fire extinguisher is required.

(b) Motorboats 26 feet to less than 40 feet in length shall carry at least two Type B-I approved hand portable fire extinguishers or at least one Type B-II approved portable fire extinguisher. When an approved fixed fire extinguishing system is installed, one less Type B-I extinguisher is required.

(c) Motorboats 40 feet to not more than 65 feet in length shall carry at least three Type B-I approved hand portable fire extinguishers or at least one Type B-I and one Type B-II approved portable fire extinguisher. When an approved fixed fire extinguishing system is installed, one less Type B-I extinguisher is required.

(d) Motorboats 65 feet and over used for recreational purposes shall carry fire extinguishing equipment as prescribed under Section 3(b) of Part D of this regulation.

(e) Motorboats are required to carry fire extinguishers if any one of the following conditions exist:

- (1) Inboard engines;
- (2) Closed compartments and compartments under seats wherein portable fuel tanks may be stored;
- (3) Double bottoms not sealed to the hull or which are not completely filled with flotation material;
- (4) Closed living spaces;
- (5) Closed stowage compartments in which combustible or flammable materials are stowed; or
- (6) Permanently installed fuel tanks. (Fuel tanks secured so they cannot be moved in case of fire or other emergency are considered permanently installed.)

(f) Motorboats contracted for prior to November 19, 1952, shall meet the applicable provisions of this section insofar as the number and general type of equipment is concerned. Existing items of equipment and installations previously approved but not meeting the applicable requirements for type approval may be continued in service so long as they are in good condition. All new installations and replacements shall meet the requirements of this section.

PART D - Life-Saving Equipment for Commercial Vessels not Documented.

Section 1. Applicability.

This part applies to each vessel to which this regulation applies except:

- (1) Vessels used for non-commercial use;
- (2) Vessels leased, rented, or chartered to another for the latter's non-commercial use; or
- (3) Commercial vessels propelled by sail not carrying passengers for hire; or
- (4) Commercial barges not carrying passengers for hire.

Section 2. Life Preservers and Other Life-Saving Equipment Required.

(a) No person may operate a vessel to which Section 1 of this part applies unless it meets the requirements of this section.

(b) Each vessel not carrying passengers for hire, less than 40 feet in length, shall have at least one life preserver (Type I PFD), buoyant vest (Type II PFD), or marine buoyant device intended to be worn (Type III PFD), of a suitable size for each person on board. Kapok and fibrous

glass life preservers which do not have plastic-covered pad inserts as required by 46 CFR §§ 160.062 and 160.005 are not acceptable as equipment required by this subsection.

(c) Each vessel carrying passengers for hire and each vessel 40 feet in length or longer not carrying passengers for hire shall have at least one life preserver (Type I PFD) of a suitable size for each person on board. Kapok and fibrous glass life preservers which do not have plastic-covered pad inserts as required by 46 CFR §§ 160.062 and 160.005 are not acceptable as equipment required by this subsection.

(d) In addition to the equipment required by subsection (b) or (c) of this section, each vessel 26 feet in length or longer shall have at least one Coast Guard approved ring life buoy.

(e) Each vessel not carrying passengers for hire may substitute an exposure suit (or immersion suit) for a life preserver, buoyant vest, or marine buoyant device required under subsection (b) or (c) of this section. Each exposure suit carried in accordance with this paragraph shall be Coast Guard approved.

(f) On each vessel, regardless of length and regardless of whether carrying passengers for hire, a commercial hybrid PFD may be substituted for a life preserver, buoyant vest, or marine buoyant device required under subsection (b) or (c) of this section if it is:

- (1) In the case of a Type V commercial hybrid PFD, worn when the vessel is underway and the intended wearer is not within an enclosed space;
- (2) Used in accordance with the conditions marked on the PFD and in the owner's manual; and
- (3) Labeled for use on uninspected commercial vessels.

(g) The life-saving equipment required by this section shall be legibly marked.

(h) The life-saving equipment designed to be worn required in subsections (b), (c), and (e) of this section shall be readily accessible.

(i) The life-saving equipment designed to be thrown required by subsection (d) of this section shall be immediately available.

(j) The life-saving equipment required by this section shall be in serviceable condition.

Section 3. Fire-Extinguishing Equipment Required.

(a) Motorboats.

(1) Motorboats less than 26 feet in length shall abide by Section 4(a) of Part C of this regulation.

(2) Motorboats 26 feet in length to less than 40 feet in length shall abide by Section 4(b) of Part C of this regulation.

(3) Motorboats 40 feet in length to less than 65 feet in length shall abide by Section 4(c) of Part C of this regulation.

(b) Motor Vessels.

(1) Motor vessels less than 50 gross tonnage shall carry one Type B-II approved hand portable fire extinguisher.

(2) Motor vessels 50 and not over 100 gross tonnage shall carry two Type B-II approved hand portable fire extinguishers.

(3) Motor vessels 100 and not over 500 gross tonnage shall carry three Type B-II approved hand portable fire extinguishers.

(4) Motor vessels 500 but not over 1,000 gross tonnage shall carry six Type B-II approved hand portable fire extinguishers.

(5) Motor vessels over 1,000 gross tonnage shall carry eight Type B-II approved hand portable fire extinguishers.

(c) In addition to the hand portable fire extinguishers required by subsection (b) of this section, the following fire-extinguishing equipment shall be fitted in the machinery space:

(1) One Type B-II hand portable fire extinguisher shall be carried for each 1,000 B. H. P. of the main engines or fraction thereof. However, not more than six such extinguishers need be carried.

(2) On motor vessels over 300 gross tons, either one Type B-III semiportable fire-extinguishing system shall be fitted, or alternatively, a fixed fire-extinguishing system shall be fitted in the machinery space.

(d) Barges carrying passengers.

(1) Every barge 65 feet in length or less while carrying passengers when towed or pushed by a motorboat, motor vessel or steam vessel shall be fitted with hand portable fire extinguishers as required by this Section 4 of Part C of this regulation, depending upon the length of the barge.

(2) Every barge over 65 feet in length while carrying passengers when towed or pushed by a motorboat, motor vessel or steam vessel shall be fitted with hand portable fire extinguishers as required by this section, depending upon the gross tonnage of the barge.

Section 2. Obedience to orders by enforcement officers.

~~It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.~~

BR-10. BOAT RAMPS AND PARKING LOTS ADMINISTERED BY DIVISION.

Section 1. Applicability.

This regulation applies to boat ramps, parking lots, and seawalls or other mooring facilities administered by the Division.

Section 2. Boat Ramps and Mooring Facilities.

(a) Whoever uses a boat ramp, seawall, or other mooring facility shall do so on a first-come, first-serve basis.

(b) No person shall leave a vessel unattended at any seawall or other mooring facility. Disabled vessels shall clear the area as soon as possible.

(c) No person shall use any seawall or other mooring facility except for vessels loading and unloading and as a holding area for vessels waiting to use boat ramps.

(d) No person shall moor or conduct repairs to a vessel in any area which interferes with vessel traffic at a boat ramp. Ramp space shall be kept clear at all times for usage of vessels being launched or recovered.

(e) Vessels left abandoned at any seawall or other mooring facility or found adrift shall be removed at the owner's expense. Vessels left unattended at any seawall or other mooring facility in excess of 48 hours without contacting the Division or a Fish and Wildlife Agent shall be deemed abandoned.

Section 3. Parking Lots.

(a) No person shall park a vehicle or boat trailer in an undesignated parking space.

(b) No person shall park, stop, or stand a vehicle or boat trailer in front of a boat ramp except in designated areas.

(c) No person shall park a vehicle or boat trailer in such a manner as to impede traffic.

(d) No person shall camp overnight in a parking lot.

(e) No person shall abandon a vehicle or boat trailer in a parking lot. If a vehicle or boat trailer is abandoned, it will be removed at the owner's expense. Vehicles or boat trailers left unattended in a parking lot for in excess of 48 hours without contacting the Division or a Fish and Wildlife Agent shall be deemed abandoned.

(f) Operators of emergency vehicles shall have priority over all other vehicles. Vessel operators shall clear passage for emergency vehicles on their approach or when directed by an enforcement officer.

Section 4. Obedience to Orders by Enforcement Officers.

~~It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.~~

BR-11. NAVIGATION LIGHTS.

Section 1. Applicability.

(a) Except for vessels used by enforcement officers for law enforcement purposes, this regulation applies to all vessels used on the waters of this State.

(b) Vessels over 20 meters (65.6 ft.) in length and vessels listed below shall display lights and exhibit shapes in accordance with the International or Inland Navigation Rules and Annexes (Commandant Instruction M16672.2C):

- (1) Vessels towing, pushing, or being towed or pushed;
- (2) Vessels engaged in fishing;
- (3) Vessels not under command;
- (4) Vessels restricted in their ability to maneuver;
- (5) Pilot vessels; or
- (6) Air-cushion vessels.

Section 2. Visibility of lights.

(*) The lights required by this section shall have an intensity so as to be visible at the following ranges:

- (1) In a vessel of 12 meters (39.4 ft.) or more in length but less than 50 meters (164 ft.) in length:
- (a) a masthead light, 5 miles; except that where the length of the vessel is less than 20 meters (65.6 ft.), 3 miles;
- (b) a sidelight, 2 miles;
- (c) a sternlight, 2 miles;
- (d) a towing light, 2 miles;
- (e) a white, red, green or yellow all-round light, 2 miles; and
- (f) a special flashing light, 2 miles.
- (2) In a vessel of less than 12 meters (39.4 ft.) in length:
- (a) a masthead light, 2 miles;
- (b) a sidelight, 1 mile;
- (c) a sternlight, 2 miles;
- (d) a towing light, 2 miles;
- (e) a white, red, green or yellow all-round light, 2 miles; and
- (f) a special flashing light, 2 miles.

Section 3. Prohibition.

(a) No person may use a vessel to which this regulation applies without carrying and exhibiting the lights required in Section 4 of this regulation and of the intensity required in Section 2 of this regulation:

- (1) When underway or at anchor;
- (2) In all weathers from sunset to sunrise; and
- (3) During times of restricted visibility.

(b) No person may use a vessel to which this regulation applies which exhibits other lights which may be mistaken for those required in Section 4 of this regulation during such time as navigation lights are required.

(c) No person may use a vessel to which this regulation applies unless it carries and exhibits the light or day shapes required in the International or Inland Navigational Rules and Annexes (Commandant Instruction M16672.2C) for vessels used under special circumstances defined therein.

Section 4. Navigation Lights Required.

(a) Power-driven vessels underway in international and inland waters shall exhibit:

- (1) A masthead light forward;
- (2) A second masthead light abaft of and higher than the forward one; except that in inland waters a vessel of

less than 50 meters (164 ft.) in length shall not be obliged to exhibit such light but may do so;

- (3) Sidelights; and
- (4) A sternlight.

(b) Power-driven vessels underway in international waters:

(1) Power-driven vessels of less than 12 meters (39.4 ft.) in length may in lieu of the lights prescribed in subsection (a) of this section exhibit an all-round white light and sidelights;

(2) Power-driven vessels of less than 7 meters (23 ft.) in length whose maximum speed does not exceed 7 knots may in lieu of the lights prescribed in subsection (a) of this section exhibit an all-round white light and shall, if practicable, also exhibit sidelights; and

(3) The masthead light or all-round white light on a power-driven vessel of less than 12 meters (39.4 ft.) in length may be displaced from the fore and aft centerline of the vessel if centerline fitting is not practicable, provided that the sidelights are combined in one lantern which shall be carried on the fore and aft centerline of the vessel or located as nearly as practicable in the same fore and aft line as the masthead light or the all-round white light.

(c) Power-driven vessels underway in inland waters shall exhibit the same light for vessels in subsection (a) of this section except:

(1) A vessel of less than 12 meters (39.4 ft.) in length may, in lieu of the lights prescribed in subsection (a) of this section, exhibit an all-round white light and sidelights.

(2) A vessel of less than 20 meters (65.6 ft.) in length need not exhibit the masthead light forward of amidships but shall exhibit it as far forward as practicable.

(d) Sailing vessels underway and vessels under oars in international and inland waters:

- (1) A sailing vessel underway shall exhibit:
- (a) Sidelights; and
- (b) A sternlight;

(2) In a sailing vessel of less than 20 meters (65.6 ft.) in length, the lights prescribed in paragraph (d)(1) of this section may be combined in one lantern carried at or near the top of the mast where it can best be seen.

(3) A sailing vessel underway may, in addition to the lights prescribed in paragraph (d)(1) of this section, exhibit at or near the top of the mast, where they can best be seen, two all-round lights in a vertical line, the upper being red and the lower being green, but these lights shall not be exhibited in conjunction with the combined lantern permitted in paragraph (d)(2) of this section.

(4) A sailing vessel of less than 7 meters (23 ft.) in length shall, if practicable, exhibit the lights prescribed in paragraph (d)(1) or (2) of this section, but if she does not, she shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient

time to prevent collision.

(5) A vessel under oars may exhibit the lights prescribed in this section for sailing vessels, but if she does not, she shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.

(6) A vessel proceeding under sail when also being propelled by machinery shall exhibit forward where it can best be seen a conical shape, apex downward. When upon inland waters, a vessel of less than 12 meters (39.4 ft.) in length is not required to exhibit this shape.

(e) Anchored vessels:

(1) International and Inland. - Vessels at permanent moorings are not required to display an anchor light.

(2) International and Inland. - A vessel of less than 50 meters (164 ft.) in length at anchor shall exhibit an all-round white light where it can best be seen or:

(a) In the fore part, an all-round white light or one ball; and

(b) At or near the stern and at a lower level than the light prescribed in subparagraph (2)(a) of this subsection, an all-round white light.

(3) Inland. - A vessel of less than 7 meters (23 ft.) in length, when at anchor, not in or near a narrow channel, fairway, anchorage, or where other vessels normally navigate, shall not be required to exhibit the lights or shapes prescribed in paragraph (d)(2) of this section.

Section 5. Obedience to Orders by Enforcement Officers.

~~It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.~~

BR-12. ANCHORING AND OBSTRUCTING NAVIGATION.

Section 1. Applicability.

This regulation applies to all vessels or other objects used or placed on the waters of this State.

Section 2. Anchoring.

(a) No person shall anchor a vessel or other object in a navigable channel or allow any equipment from an anchored vessel to extend into the channel and subsequently interfere with passage of any other vessel.

(b) No person shall anchor a vessel in such a manner as to obstruct or otherwise obscure navigation aids.

(c) No person shall anchor a vessel or allow any equipment from an anchored vessel to obstruct or otherwise interfere with passage or any other vessel near:

- (1) A boat launching facility;
(2) A marina entrance;

(3) The entrance to any canal or waterway;

(4) A permanent mooring facility; or

(5) A vessel docking facility.

(d) No person shall place any item or equipment in a navigable channel so as to obstruct or otherwise impede or interfere with the passage of a vessel.

Section 3. Obedience to Orders by Enforcement Officers.

~~It shall be a violation of this regulation for a person to willfully fail or refuse to comply with any lawful order or direction of an enforcement officer invested by law with authority to enforce this regulation.~~

APPENDIX A

ISSUING AUTHORITIES

(a) The state is the issuing authority and reporting authority in:

Table with 4 columns: State Name, Abbreviation, State Name, Abbreviation. Lists states from Alabama to Wyoming.

(b) The Coast Guard is the issuing authority and reporting authority in:

Alaska (AK)

The abbreviations following the names of the states listed in the paragraphs (a) and (b) are the two capital letters

that must be used in the number format to denote the state of principal use.

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code,
Section 209(a) (26 **Del.C.** 209(a))

APPENDIX B

BEFORE THE PUBLIC SERVICE COMMISSION OF
THE STATE OF DELAWARE

ONE YEAR CYCLE

COLOR	YEAR ISSUED	YEAR EXPIRES
Blue	1997	1997
Orange	1998	1998
Green	1999	1999
Red	2000	2000
Blue	2001	2001
Orange	2002	2002

IN THE MATTER OF THE SALE, RESALE, AND OTHER PROVISIONS OF INTRASTATE TELECOMMUNICATIONS SERVICES (OPENED MAY 1, 1984; REOPENED NOVEMBER 17, 1998) | **PSC REGULATION DOCKET NO. 10**

TWO YEAR CYCLE

COLOR	YEAR ISSUED	YEAR EXPIRES
Red	1996	1997
Blue	1997	1998
Orange	1998	1999
Green	1999	2000
Red	2000	2001
Blue	2001	2002

IN THE MATTER OF THE DEVELOPMENT OF REGULATIONS FOR THE FACILITATION OF COMPETITIVE ENTRY INTO THE TELECOM-MUNICATIONS LOCAL EXCHANGE SERVICE MARKET (OPENED NOVEMBER 21, 1995; REOPENED NOVEMBER 17, 1998) | **PSC REGULATION DOCKET NO. 45**

THREE YEAR CYCLE

ORDER NO. 4949

COLOR	YEAR ISSUED	YEAR EXPIRES
Green	1995	1997
Red	1996	1998
Blue	1997	1999
Orange	1998	2000
Green	1999	2001
Red	2000	2002

AND NOW, to-wit, this 17th day of November, 1998;

WHEREAS, in PSC Order No. 3283 (June 18, 1991) entered *In The Matter of the Sale, Resale and Other Provisions of Interstate Telecommunications Services*, PSC Regulation Docket No. 10, the Commission issued its "Rules For The Provision of Competitive Intrastate Telecommunications Services" to govern telecommunications carriers offering intrastate telecommunications services for public use within the State; and

WHEREAS, by Order No. 4468 (April 8, 1997) issued *In The Matter of the Development of Regulations for the Facilitation of Competitive Entry Into the Telecommunications Local Exchange Service Market*, PSC Regulation Docket No. 45, the Commission issued "Interim Rules Governing Competition In The Market For Local Telecommunications Services" to govern competitive local exchange telecommunications services within the State; and

has proposed amendment of those Rules to lessen regulatory burdens on telecommunications carriers, as well as on the Commission; to reflect the changing regulatory environment; to harmonize, where appropriate, the provisions of the Docket 10 and Docket 45 Rules; and to conform, where practicable, the requirements of these Rules with other regulatory provisions; and

WHEREAS, the Commission is authorized by 26 Del. C. § 209 to fix just and reasonable standards, classifications, regulations, practices, measurements, or services to be furnished, imposed, observed, and followed thereafter by any public utility; and

WHEREAS, the Commission deems it appropriate to consider amendment of the Docket 10 and Docket 45 Rules as proposed by its Staff, pursuant to the procedures for amendment of agency regulations set forth by 29 Del. C. §§ 10113-10119.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Commission proceedings captioned *In The Matter of the Sale, Resale and Other Provisions of Interstate Telecommunications Services*, PSC Regulation Docket No. 10 and *In The Matter of the Development of Regulations for the Facilitation of Competitive Entry Into the Telecommunications Local Exchange Service Market*, PSC Regulation Docket No. 45, are hereby re-opened to consider amendment of the Rules promulgated therein. These proceedings shall be consolidated and conducted as a single proceeding for this purpose.

2. That Robert P. Haynes is designated as the Hearing Examiner for this proceeding pursuant to the terms of 26 Del. C. § 502 and 29 Del. C. § 10116, to organize, classify, and summarize all materials and other testimony filed in this proceeding, and to make findings and recommendations to the Commission concerning the proposed amendments on the basis of the materials and information submitted. Hearing Examiner Haynes is specifically authorized to solicit additional comments and to conduct, upon due notice, such public hearings as may be required to develop further materials and evidence. Barbara MacDonald, Esquire, is designated as Staff Counsel for this matter.

3. That the Commission seeks public comment and input concerning the content of the proposed amendments to the Docket 10 and Docket 45 Rules, and for this purpose and to comply with the requirements of 29 Del. C. §§ 1133 and 10115, the Commission hereby issues the Notices of Proposed Rule Amendment attached hereto as Exhibits "A" and "B" for publication, respectively, in the Register of Regulations and in two (2) newspapers of general circulation in the State.

4. That the Commission Secretary shall file the Notice of Proposed Rule Amendment, together with copies of the existing text of the Docket 10 and Docket 45 Rules and the

proposed amendments thereto, with the Registrar of Regulations for publication in the Register of Regulations, as required by 29 Del. C. § 10115, on December 1, 1998. In addition, the Commission Secretary shall, contemporaneous with such filing, cause a copy of the Notice attached as Exhibit "A" and the existing Docket 10 and Docket 45 Rules and the proposed amendments thereto to be sent by United States Mail to: (1) all prior participants in PSC Regulation Dockets 10 and 45; (2) all persons who have made timely requests for advance notice of such proceedings; and (3) the Division of the Public Advocate.

5. That the Commission Secretary shall cause the publication of the attached Notice of Proposed Rule Amendment attached hereto as Exhibit "B" to be made in The News Journal and the Delaware State News newspapers on the following dates, in two column format, outlined in black:

December 1, 1998 (for The News Journal)

December 2, 1998 (for the Delaware State News)

6. That the telecommunications service providers regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 Del. C. § 114.

7. That the Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper by Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman
Vice Chairman
Commissioner
Commissioner
Commissioner

ATTEST:

Secretary

BEFORE THE PUBLIC SERVICE COMMISSION OF
THE STATE OF DELAWARE

IN THE MATTER OF THE	
SALE, RESALE,	
AND OTHER PROVISIONS	
OF INTRASTATE	
TELECOMMUNICATIONS	
SERVICES	PSC REGULATION
(OPENED MAY 1, 1984;	DOCKET
REOPENED	NO. 10
NOVEMBER 17, 1998)	

IN THE MATTER OF THE	
DEVELOPMENT OF	
REGULATIONS FOR THE	

FACILITATION OF COMPETITIVE ENTRY INTO THE TELECOM- MUNICATIONS LOCAL EXCHANGE SERVICE MARKET (OPENED NOVEMBER 21, 1995;REOPENED NOVEMBER 17, 1998)	 PSC REGULATION DOCKET NO. 45
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NOTICE OF PROPOSED RULE AMENDMENT

The Delaware Public Service Commission (the "PSC") proposes to formulate and adopt amendments to its existing "Rules for the Provision of Competitive Intrastate Telecommunications Services first adopted *In The Matter of The Sale, Resale and Other Provisions Of Intrastate Telecommunications Services*," PSC Regulation Docket No. 10 ("the Docket 10 Rules") and to its existing "Interim Rules Governing Competition in the Market for Local Telecommunications Services" first adopted *In The Matter of The Development of Regulations For The Facilitation of Competitive Entry Into The Telecommunications Local Exchange Service Market*, PSC Regulation Docket No. 45 (the "Docket 45 Rules"). The proposed amendments are intended to reflect changes in the regulatory environment since the Rules' adoption; to harmonize the provisions of the Docket 10 Rules and Docket 45 Rules, where appropriate; and to conform the provisions of these Rules with other regulatory provisions, where practicable. The rule amendments will, overall, lessen the regulatory burdens and costs, both to regulated carriers and the PSC.

Significant proposed changes with respect to the Docket 10 Rules include allowing carriers to file price lists in place of tariffs; eliminating the requirement that tariffs be accompanied by cost studies; allowing changes to existing tariff rates to be implemented upon three days notice, rather than on fourteen or five days notice; adding a new rule to govern Primary Interexchange Carriers' ("PIC") changes consistent with the Federal Communications Commission's PIC change rules; and adding a new rule governing enforcement.

Significant proposed amendments with regard to the Docket 45 Rules include eliminating the requirement that competitive local exchange carriers file cost data with rate changes unless specifically requested to do so by the Commission Staff, and revising the rules governing customer selection of a local exchange carrier to minimize the possibility of unauthorized changes in carrier.

The PSC derives its legal authority to make and amend regulations governing the conduct of public utilities from 26 Del. C. §§ 201 and 209. In addition, under 26 Del. C. § 703, the PSC is authorized to modify its regulation of

telecommunications services where such modifications will, among other things, promote efficiency in public and private resource allocations and encourage economic development. The process under which the PSC acts to make and amend regulations is set forth by 29 Del. C. §§ 10111 through 10119.

The text of both the present Docket 10 Rules and the proposed amendments and changes thereto, are attached hereto as Attachment 1. In that attachment, regular type denotes the presently existing text of the rules. Underlined text indicates the text of proposed additions or changes. Struck-through text indicates present text proposed to be deleted. The text of both the present Docket 45 rules and the proposed amendments and changes thereto are attached as Attachment 2. In that attachment, regular type denotes the presently existing text of the rules. Underlined text indicates the text of proposed additions or changes. Struck-through text indicates present text proposed to be deleted. The text of the existing and proposed Regulations Docket 10 and Regulation Docket 45 Rules, along with summaries of the proposed changes, may be inspected at the Commission's office, 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904 during the Commission's normal business hours, Monday to Friday, 8:00 AM to 4:30 PM. Copies are available at a fee of \$0.25 per page. The existing and proposed rules may also be inspected and copied at the Commission's website - <http://www.state.de.us/govern/agencies/pubservc/delpsc.htm>

The PSC solicits written comments, compilations of data, briefs, or other written materials addressing the proposed amendments. Twelve (12) copies of such written materials shall be filed with the Commission at its office at the above address on or before January 8, 1999. In addition, any comments should include proposed text of any further or alternate amendments to the Docket 10 Rules or Docket 45 Rules supported by the party submitting comments. After the filing of such comments, the Commission's designated Hearing Examiner in this proceeding may solicit additional comments or further proposed amendments on the basis of the materials and information submitted. The Hearing Examiner shall conduct a public hearing upon the proposed amendments and all comments and materials received on February 8, 1999, commencing at 10:00 AM at the Commission's Dover office.

Any person who wishes to otherwise participate in this proceeding should notify the Commission in writing on or before January 8, 1999. Copies of comments filed and copies of any proposed amendments will be available for public inspection at the Commission's Dover office. Only persons who file comments or request to participate will be provided notice of further proceedings.

Telecommunications service providers subject to the jurisdiction of the PSC are notified that they may be charged for the costs of this proceeding under 26 Del. C. §114.

Individuals with disabilities who wish to participate in these proceedings may contact the Commission to discuss auxiliary aids or services needed to facilitate such participation. Contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The Commission's toll free number is 800-282-8574.

DELAWARE PSC RULES FOR THE PROVISION OF
COMPETITIVE INTRASTATE
TELECOMMUNICATIONS SERVICES

Applicability: Any person (Cearrier) offering intrastate telecommunications services for public use within the State of Delaware (originating and terminating within the State, without regard to how the person decides to route the traffic) is subject to the regulation of the Public Service Commission (hereafter, "Commission") of the State of Delaware.

Persons subject to these regulations (i.e., Cearriers offering service for public use) include resellers of **WATS** and other bulk telecommunications services and facilities-based carriers. Persons providing telephone service through customer owned, coin operated (or pay) telephones (**COCOTS**) are governed by the Commission Rules in Regulation Docket No. 12 regarding (**COCOTS**) as the same may from time to time be amended. The Commission reserves the right to exempt any person otherwise subject to these Rules from the operation of any portion of such rules for good cause shown after notice and hearing. To the extent that existing tariffs or price lists of intrastate telecommunications service providers are ~~The Diamond State Telephone Company as of the effective date of these Rules establish rules and regulations inconsistent with these Rules, then, and in that event, PSC Regulation Docket No. 10 Rules the tariff shall control.~~

Rule 1 -Definitions

a. "**COCOT**" means Customer Owned, Coin Operated (i.e., pay) Telephone.

b. "Telecommunications Service" or "Telephone Service" means the transmittal of information, by means of electronic or electromagnetic, including light, transmission with or without benefit of any closed transmission medium, including all instrumentalities ancillary thereto, equipment, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) used to provide such transmission including directory, information and operator service. "Telephone Service" does not include ~~however:~~

1. the rent, sale, or lease, or exchange for other value received, of customer premises equipment. ~~except for customer premises equipment owned or provided by a telecommunications carrier certificated prior to the effective date of these Regulations and only then to the extent that the regulation of its provision is not Federally preempted.~~

2. telephone or telecommunications answering services, paging services and physical pickup and delivery incidental to the provision of information transmitted through electronic or electromagnetic media, including light transmission.

3. Community antenna television service or Cable Television Service to the extent that such service is utilized solely for the one-way distribution of such entertainment or informational services with no more than incidental subscriber interaction required for selection of such ~~entertainment~~ services.

c. "REGULATED TELECOMMUNICATIONS CARRIERS" or "Carriers" - means persons who provide telephone service for public use within the State of Delaware. For purposes of regulation by the Delaware Public Service Commission the term "Regulated Telecommunications Carrier" or "Carrier" specifically does not include:

1. telephone service that is provided by or owned and operated by any political subdivision, public or private institution of higher education or municipal corporation of this State or operated by their lessees or operating agents for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation.

2. ~~a company which provides~~ telecommunications services provided by a company solely to itself and its affiliates or members or between points in the same building, or between closely located buildings which are affiliated through substantial common ownership and does not offer such services to the available general public.

3. ~~providers of~~ telephone service provided by either primarily cellular technology or by domestic public land mobile radio service.

d. "INTRASTATE" means telecommunications services that originate and terminate within the State of Delaware, without regard to how the call is switched or routed.

Rule 2 -Certification Requirement

All persons (Cearriers) wishing to provide public intrastate telecommunications services within the State of Delaware are required to file with the Commission an original and ten (10) copies of an Application for Certificate of Public Convenience and Necessity. Such application shall contain all the information and exhibits, hereinafter required and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial and operational ability to adequately service the public interest and that the public convenience and necessity requires or will require the operation of such business.

Rule 3 -Notice.

Notice of the filing of such an application shall be given at

the time ~~determined by the Commission Staff of the filing, to each certificated telephone company (excluding each holder of a COCOT Certificate), the Public Advocate, and to such other entities as may be required by the Commission.~~ Each applicant shall publish notice of the filing of the application in two (2) newspapers having general circulation throughout the State in a form to be prescribed by the Commission.

Rule 4 - License Requirement.

Each applicant for a Certificate shall demonstrate that it is legally authorized and qualified to do business in the State of Delaware, including that it has having received authority to do business issued by the Secretary of State all licenses required by the Division of Revenue of the State of Delaware and by local authorities within the area of proposed operation within the State.

Rule 5-Traffic.

Persons (~~Cearriers~~) seeking to provide intrastate telecommunications service within the State of Delaware shall be required in their filings to set forth an effective plan for identifying and billing intrastate versus interstate traffic, and shall pay the appropriate Local Exchange Company for access at its prevailing access charge rates. If adequate means of categorizing traffic as interstate versus intrastate are not or cannot be developed, then, for purposes of determining the access charge to be paid to the local exchange company for such undetermined traffic, the traffic shall be deemed to be of the jurisdiction having the higher access charges and billed at the higher access charges.

Rule 6 - Additional Requirements.

Applicants shall be required to present substantial evidence supporting their financial, operational and technical ability to render service within the State of Delaware. Such evidence shall include, but is not limited to:

a. Certified financial statements current within twelve (12) months of the filing. Publicly traded Applicants must file their most recent annual report to shareholders and SEC Form 10-K. Other indicia of financial capability may also be filed.

b. Brief narrative description of Applicant's proposed business in Delaware and its operations in other states. Identifications of states in which Applicant presently is providing service, and for which service applications are pending.

c. Upon written request of the Commission Staff, the ~~Three~~ year construction, maintenance, engineering and financial plans for all services intended to be provided within the State of Delaware with a technical description of the equipment which will be used to provide such services.

d. Relevant operational experience of each principal officer responsible for Delaware operations.

e. Specific description of Applicant's engineering and

technical expertise showing Applicant's qualification to provide the intended service including the names, addresses and qualifications of the officers, directors and technical or engineering personnel who will be operating and/or maintaining the equipment to be used to provide such service.

f. Upon written request of the Commission Staff, the ~~Description~~ and map of the Applicant's owned, leased, and optioned facilities existing and planned to exist within the State of Delaware in the next three years. Also, map showing points of presence within the State of Delaware. All such descriptions and maps shall at all times be kept current and are to be updated as changes are known to the Applicant during the processing for the application and thereafter if the application is approved.

g. If ~~the Applicant does not~~ requires deposits, advance payments, prepayments, financial guarantees or the like from customers and charges only for service after it has been provided, then a ~~no~~ bond shall be required. ~~Otherwise,~~ Applicant shall file a bond with a corporate surety licensed to do business in Delaware guaranteeing the repayment of all customer deposits and advances upon the termination of service. The Bond need not be filed with the application but no certificate will be issued to an Applicant and no Applicant may commence business until Applicant files such Bond with the Commission. The amount of the Bond will be the greater of (1) 150% of the projected balance of deposits and advances at the end of three years of operations or (2) \$50,000. If at any time the actual amount of deposits and advances held by the holder of a Certificate issued after the effective date of this regulation exceeds the amount projected, the amount of the Bond with surety shall be increased to comply with the requirement in the preceding sentence. Continuation of the Bonding requirement after the first three years will be at the discretion of the Commission which upon application may dispense with the Bond requirement for good cause shown.

h. Applicants, with total assets less than \$250,000, must post a \$10,000 performance bond with Delaware surety and renew such bonds annually until their assets exceed \$250,000.

h-i. Copies of the Applicant's authority to do business in Delaware State Business License issued by Delaware's Secretary of State, Delaware Division of Revenue.

Rule 7 - Tariffs and Cost Studies.

Each application for a Certificate of Public Convenience and Necessity shall include proposed initial tariffs or price lists, rules, regulations, terms and conditions of service specifically adapted for the State of Delaware. Carriers filing rates for new services or changing rates for existing services should provide a statement to the Commission that such rates generate sufficient revenues to cover the incremental cost of offering such service. Carriers do not

~~need to provide cost data showing that rates are generating sufficient revenue to cover the incremental cost of offering a service unless specifically requested to do so upon written request by the Commission Staff. Initial tariffs shall be accompanied by cost studies or other supporting data establishing the reasonableness and sufficiency of the proposed rates and charges. Other supporting data filed in lieu of a cost study must clearly establish the economic basis for management's decision to enter the Delaware market for each of the proposed services. Copies of Applicant's tariffs or price lists, and terms and conditions of service in other jurisdictions must be provided to the Commission upon request. Applicant's tariffs must include specific policies for customer deposits and advances, for prompt reconciliation of customer billing problems and complaints, and for timely correction of service problems. Applicants Applications must provide and keep current the name, address and telephone number of Applicant's Delaware Resident Agent.~~

Rule 8 - New Options or Offerings

~~a. Competition exists -~~ Persons (Carrier) seeking to introduce a service option or offering under this section shall file information sufficient to establish the existence of actual competition for the services and customer categories to which the tariff or price list applies.

After initial certification, a person (Carrier) may introduce new options or offerings ten (10) days after making a tariff or price list filing with the Commission. A change to an existing tariff or price list can be implemented upon ~~fourteen (14) three (3) days notice. for price increases and five (5) days notice for price decreases.~~ The tariff or price list filing shall be accompanied by cost support as required in Rule 7 ~~cost studies or other supporting data establishing the reasonableness and sufficiency of the proposed rates and charges. Other supporting data filed in lieu of a cost study must clearly establish the economic basis for management's decision to propose the option, offering or tariff change.~~

~~b. Competition does not exist After initial certification, a person (carrier) may introduce new options or offerings, or change an existing tariff, 60 days after making a tariff filing with the Commission. The tariff filing shall be accompanied by cost studies or other supporting data establishing the reasonableness and sufficiency of the proposed rates and charges. Other supporting data filed in lieu of a cost study must clearly establish the economic basis for management's decision to propose the option, offering or tariff change. New options, offerings or tariff changes may be suspended in appropriate cases but normally will be allowed to take effect upon 60 days notice; however, the Commission may for good cause shown waive this requirement and allow the tariffs to go into effect upon shorter notice.~~

Rule 9 - Abandonment or Discontinuation of Service.

No person (Carrier) shall abandon or discontinue service, or any part thereof, established within the State of Delaware without prior Commission approval and without having previously made provision, approved by the Commission, for payment of all relevant outstanding liabilities (deposits) to customers within the State of Delaware.

Rule 10 - Reports to be provided to the Commission.

All persons (Carriers) certificated to provide Intrastate telephone service for public use after the effective date of these Rules shall provide such information concerning Delaware operations to the Public Service Commission as the Commission may from time to time request.

a. The accounting system to be used is the Uniform System of Accounts of the Federal Communications Commission or other uniform system of accounts previously approved in writing by the Chief Technical Services Accountant of the Commission.

b. All reports required by these Rules to be submitted to the Commission shall be attested to by an officer or manager of the carrier, under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in charge of the Carrier's operation.

c. All periodic reports required by this Commission must be received on or before the following due dates unless otherwise specified herein, or unless good cause is demonstrated by the carrier:

1. Annual reports: one hundred twenty (120) days after the end of the reported period.

2. Special and additional reports: as may be prescribed by the Commission unless good cause to the contrary is demonstrated.

d. The annual report shall include standard financial reports (balance sheet, statement of operations, supporting schedules, etc.). This report shall also include (i) the same after-the-fact information that management is provided concerning the measurement of performance provided in Delaware, (ii) the information used to determine the Delaware Income Tax liability, and (iii) financial and operating information for the smallest management unit that includes Delaware. Additional information to be provided includes:

1. Intrastate revenues (net of uncollectibles) by service category;

2. Intrastate access and billing and collection cost by service category;

3. Total number of customers by service category;

4. Total intrastate minutes of use by service category;

5. Total intrastate number of calls by service category;

6. A description of service offered;
7. A description of each complaint received by service category (in the form of a single Complaints Log); and,
8. Verification of deposits, customer advances, the bond requirement and the bond with surety.

NOTE:All reports filed pursuant to the requirement of this section may be deemed to be non-public records within the contemplation of the exemption from public record status accorded by 29 Del. C. § 10002 (d)(2) for trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature. Such reports to receive confidential treatment must be clearly and conspicuously marked on the title page as containing proprietary information. Each page with the report containing information deemed by the Company to be proprietary in nature shall be so marked.

Rule 11 - Discrimination Prohibited.

No person (Carrier) shall unreasonably discriminate among persons requesting a tariffed service within the State of Delaware. The Commission directs that the operating rule shall be service pursuant to tariff or price list. If, in specific instances, a Carrier wishes to provide service pursuant to contract as a response to direct competition, that Carrier is required to demonstrate affirmatively that (i) the request is in response to actual rather than potential competition and (ii) that the proposed contract structure and rates are at least equal to incremental cost.

Any finding of unreasonable discrimination shall be grounds for suspension or revocation of the Certificate of Public Convenience and Necessity granted by the Commission as well as the imposition of monetary and other penalties pursuant to 26 Del. C. Sections 217, 218.

Rule 12 - Suspension or Revocation of Certificate.

Excessive subscriber complaints against a person (Carrier) shall be a basis for suspension or revocation of a carrier's Certificate of Public Convenience and Necessity if, after hearing, the Commission determines such complaints to be meritorious. In all proceedings, the Commission shall give to the person (Carrier) notice of the allegations made against it and afford the Carrier with an opportunity to be heard concerning those allegations, prior to the suspension or revocation of the Carrier's Certificate of Public Convenience and Necessity or other formal action. The burden of establishing the adequate provision of service is upon the utility.

Rule 13- Blockage.

Persons (Carriers) who intentionally or otherwise carry intrastate telecommunications traffic for sale or resale within

the State of Delaware on facilities or equipment available to the public are required:

- a. To file for a Certificate of Public Convenience and Necessity under these Rules, unless already certified by the Commission; or
- b. To immediately block such intrastate traffic so that certification is no longer required.

Rule 14 - Service Quality.

All persons subject to these Rules shall provide telephone service in accordance with such Telephone Service Quality Regulations as the Commission has adopted in PSC Regulation Docket No. 20, Order No.3232. An Applicant seeking to be exempted from any portion of those Rules should file an appropriate application for exemption with the Commission, pursuant to Rule 1.2.3 of the rules adopted by the Commission in Order No. 3232 (PSC Regulation Docket No. 20).

Upon a Commission determination that a specific service of a person (Carrier) meets the requirements of Rule 8.a establishing the existence of actual competition, then the shortened notice requirements in Rule 8.a shall apply to that specific service of that person (Carrier) and the 60-day notice requirement of Rule 3.5.1.G, as adopted in the Commission's Order No. 3232 (Docket No. 20) shall no longer apply to it. ~~pending future Commission action.~~

Rule 15 - PIC Changes -

No Carrier shall submit to a LEC a primary interexchange carrier (PIC) change order generated by telemarketing unless the order has first been confirmed in accordance with the following procedures:

a. The Carrier has obtained the customer's written authorization in a form that meets the requirements of Rule 16 of these Rules; or

b. The Carrier has obtained the customer's electronic authorization, placed from the telephone number(s) on which the PIC is to be changed, to submit the order that confirms the information described in paragraph (a) of this Rule to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC change, including automatically recording the originating ANI; or

c. An appropriately qualified and independent third party operating in a location physically separate from telemarketing representative has obtained the customer's oral authorization to submit the PIC change order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number); or

d. Within three business days of the customer's request for a PIC change, the Carrier must send each new customer an information package by first class mail

containing at least the following information concerning the requested change:

1. The information is being sent to confirm a telemarketing order placed by the customer within the previous week;
2. The name of the customer's current Carrier;
3. The name of the newly requested Carrier;
4. A description of any terms, conditions, or changes that will be incurred;
5. The name of the person ordering the change;
6. The name, address, and telephone number of both the customer and the soliciting Carrier;
7. A postpaid postcard which the customer can use to deny, cancel or confirm a service order;
8. A clear statement that if the customer does not return the postcard the customer's long-distance service will be switched within 14 days after the date the information package was mailed to [name of soliciting carrier];
9. The name, address, and telephone number of a contact point at the Commission for consumer complaints; and
10. Carriers must wait 14 days after the form is mailed to customers before submitting their PIC change orders to LECs. If customers have canceled their orders during the waiting period, Carriers, of course, cannot submit the customer's orders to LECs.

Rule 16 - Letter of agency form and content

- a. A Carrier shall obtain any necessary written authorization form a subscriber for a primary interexchange change by using a letter of agency as specified in this section. Any letter that does not conform with this section is invalid.
- b. The letter of agency shall be a separable document (an easily separate document containing only the authorizing language described in paragraph (e) of this section whose sole purpose is to authorize an carrier to initiate a primary interexchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary interexchange carrier change.
- c. The letter of agency shall not be combined with inducements of any kind on the same document.
- d. Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary interexchange carrier change by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.
- e. At a minimum, the letter of agency must be printed

with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

1. The subscriber's billing name and address and each telephone number to be covered by the primary interexchange order;
2. The decision to change the primary interexchange carrier from the current interexchange carrier to the prospective interexchange carrier;
3. That the subscriber designates the interexchange carrier to act as the subscriber's agent for the primary interexchange carrier charge.
4. A subscriber can select a different primary interexchange carrier for intrastate, intraLATA or international calling. The letter of agency must contain separate statements regarding those choices. Any Carrier designated as a primary interexchange carrier can be both a subscriber's interstate or interLATA primary interexchange carrier and a subscriber's intrastate or intraLATA primary interexchange carrier; and
5. That the subscriber understands that any primary interexchange carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's primary interexchange carrier.
- f. Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current interexchange carrier.
- g. If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.-

Rule 17- Enforcement

- a. Commission Oversight: Nothing in these Rules shall be deemed to limit the authority granted the Commission under the Telecommunications Regulatory Authorization Act of 1992, 26 Del. C. §§ 701-703.
- b. Violation and Penalties: Failure of a Carrier to comply with any provision of these Rules may result in the suspension of revocation of its CPCN, and/or of the imposition of monetary or other penalties as authorized by 26 Del. C. § 217, 218.
- c. Proceedings: Upon application by any person affected, including the Office of the Public Advocate or another Carrier or upon its own motion, the Commission may conduct a proceeding to determine whether a Carrier has violated any provision of the Rules. Such proceeding shall be conducted according to the requirements of 29 Del. C. c. 101, the Delaware Administrative Procedures Act.
- d. For the purpose of determining whether it is necessary or advisable to commence a proceeding described by Rule 17(c) above, the Commission or its Staff may, at any time, investigate whether a Carrier is in compliance with

these Rules. Upon request, the Carrier shall provide to the Commission or its Staff sufficient information to demonstrate its compliance with the Rules, including such data as shall demonstrate that the Carrier's services are provided at rates that generate sufficient revenue to cover the incremental cost of offering that service.

e. Subscriber Complaints as Ground for Proceeding or Investigation: The Commission may hold a proceeding to determine whether to suspend or revoke the certificate of, or otherwise penalize, any Carrier for reason of subscriber complaints. The Commission may investigate any subscriber complaints received.

f. Exemption: If unreasonable hardship results to a Carrier from the application of the Rules hereof, or if unreasonable difficulty is involved in compliance, the Carrier may make application to the Commission for temporary or permanent exception from such Rule or Rules. The Carrier shall submit with such application a full and complete statement of its reasons for such application.

g. Proprietary Information: Under Delaware's Freedom of Information Act, 29 Del. C. ch. 100 ("FOE"), all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 Del. C. §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary", or "confidential" or other words of similar effect. Prior to such release, the Commission shall provide the entity which submitted the information with reasonable notice and an opportunity to show why the information should not be released.

**INTERIM RULES GOVERNING COMPETITION IN THE
MARKET FOR LOCAL TELECOMMUNICATIONS
SERVICES PSC REGULATION DOCKET NO. 45**

**CERTIFICATION AND REGULATION OF
COMPETITIVE LOCAL EXCHANGE CARRIERS**

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**DELAWARE PUBLIC SERVICE COMMISSION
REVISED INTERIM RULES**

Governing Competition in the Market for Local Telecommunications Services PSC Regulation Docket No. 45

**CERTIFICATION AND REGULATION OF
COMPETITIVE LOCAL EXCHANGE CARRIERS**

Section 1:Definitions

(1) The Act - means the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56.

(2) COCOT - customer owned, coin operated (i.e., pay) telephone.

(3) CPCN - Certificate of Public Convenience and Necessity.

(4) Commission - the Delaware Public Service Commission.

(5) Competitive Local Exchange Carrier (CLEC) - a telecommunications services provider, other than the incumbent local exchange carrier, offering and/or providing local telecommunications exchange services, pursuant to a Certificate of Public Convenience and Necessity that is issued pursuant to this Order.

(6) Incumbent Local Exchange Carrier (ILEC) - telecommunications services provider that is the incumbent and historical wireline provider of local telecommunications services within a local service territory as of the effective date of these Regulations, and any intrastate regulated affiliate or successor to such entity which is engaged in the provisioning of local telecommunications services; the ILEC in Delaware is Bell Atlantic-Delaware until further action by the Commission.

(7) Interconnection - the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic.

(8) Facilities-based Carrier - a local exchange carrier which directly owns, controls, operates, or manages plant and equipment through which it provides local exchange service to consumers within the local exchange portion of the public switched network.

(9) Intrastate Telecommunications Services - telecommunications services that originate and terminate within the State of Delaware, without regard to how the call is switched or routed.

(10) Local Exchange Carrier or Carrier (LEC) - an entity offering and/or providing local telecommunications exchange services (i.e. CLECs and ILECs)and ILECs); includes both facilities-based and non-facilities-based providers. Providers of telephone service by either COCOTS, call aggregating, cellular technology or by

domestic public land mobile radio service shall not be considered local exchange carriers for purposes of these Rules.

(11) Local Telecommunications Exchange Service - Local telecommunications exchange service includes non-toll, intrastate telecommunications services provided over a local exchange carrier's network, including but not limited to exchange access services, private line services, basic local services, and public pay phone services. Local telecommunications exchange service, however, does not include:

a. telephone service that is provided by or owned by any political subdivision, public or private institution of higher education, or municipal and operated by any political subdivision, public or private institution of higher education, or municipal corporation of this State, or operated by their lessees or operating agents for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation.

b. telecommunications services provided by a company solely to itself or its affiliates, or between points in the same building or between closely located buildings which are affiliated through solely to itself or its affiliates, or between points in the same building or between closely located buildings which are affiliated through substantial common ownership. and where such services do not include access to the public switched network.

c. the rent, sale, or lease, or exchange for other value received, of customer premises equipment except for customer premises equipment owned or provided by a telecommunications carrier certificated prior to the effective date of these regulations and only then to the extent that the regulation of its provision is not Federally preempted except for customer premises equipment owned or provided by a telecommunications carrier certificated prior .

d. telephone or telecommunications answering services, paging services and physical pickup and delivery incidental to the provision of information transmitted through electronic or delivery incidental to the provision of information transmitted through electronic or electromagnetic media, including light transmission.

e. community antenna television service or Cable Television Service to the extent that such service is utilized solely for the one-way distribution of such entertainment services with no more than incidental subscriber interaction required for selection of such entertainment service.

f. COCOTs and call aggregators.

(12) Resale - the sale to an end user of any telecommunications service purchased from another carrier.

(13) Rules - These ~~Interim~~ PSC Regulation Docket No. 45 Rules Governing Competition In The Market For Local Telecommunications Services.

(14) Telecommunications - the transmission, between or among points specified by the user, of information of a user's

choosing, without change in the form or content of the information as sent and received.

(15) Telecommunications - the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Section 2: Application of Rules to ILEC

(1) The ILEC will remain subject to the Telecommunications Technology Act (TTIA), 26 Del. C. Sub.Ch.VII-A, during the term of its initial election thereunder. (2) The ILEC shall have carrier of last resort obligations in its service territory until a final decision is reached regarding universal service issues.

Section 3: Certification of Competitive Local Exchange Carriers

(1) Certification Requirement. All entities wishing to provide local telecommunications exchanges services within the State of Delaware are required to file with the Commission an original and ~~twelve (12)~~ ten (10) copies of an Application for Certificate of Public Convenience and Necessity. Such application shall contain all the information and exhibits, hereinafter required and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial, managerial and operational ability to adequately service the public interest and that the public convenience and necessity requires or will require the operation of such business.

(2) Notice. Notice of the filing of such an application shall be given by the Applicant at the time of filing to the Public Advocate, and to such other entities as may be required by the Commission. Each applicant shall publish notice of the filing of the application in two (2) newspapers having general circulation throughout the State in a form to be prescribed by the Commission.

(3) License Requirement. Each applicant for a Certificate shall demonstrate that it is legally authorized and qualified to do business in the State of Delaware, ~~including having received all licenses required by the Division of Revenue of the State of Delaware and by local authorities within the area of proposed operation within the State.~~

(4) Additional Requirements. Each applicant shall be required to present substantial evidence supporting their financial, operational, managerial and technical ability to render service within the State of Delaware. Such evidence shall include, but is not limited to:

a. Certified financial statements current within twelve (12) months of the filing. Publicly traded Applicants must file their most recent annual report to shareholders and SEC Form 10-K. Other indicia of financial capability may also be filed.

b. Brief narrative description of Applicant's proposed

business in Delaware and its operations in other states. Identifications of states in which Applicant presently is providing service, and for which service applications are pending.

c. One-year construction, maintenance, engineering and financial plans for all services intended to be provided within the State of Delaware with a technical description of the equipment which will be used to provide such services. The plan will be filed within six (6) months of the date on which final certification is granted. All such plans will be considered proprietary.

d. Relevant operational experience of each principal officer responsible for Delaware operations.

e. Specific description of Applicant's engineering and technical expertise showing Applicant's qualification to provide the intended service including the names, addresses and qualifications of the officers, directors and technical or engineering personnel who will be operating and/or maintaining the equipment to be used to provide such service.

f. Description and map of the Applicant's owned, leased, and optioned facilities existing within the State of Delaware. Also, map showing points of presence or location where Applicant is serving customers within the State of Delaware. All such descriptions and maps shall be updated annually.

g. If the applicant does not require deposits, advance payments, prepayments, financial guarantees or the like from customers and charges only for service after it has been provided, then no bond shall be required. Otherwise, applicant shall file a bond with a corporate surety licensed to do business in Delaware guaranteeing the repayment of all customer deposits and advances upon the termination of service. The Bond need not be filed with the application but no certificate will be issued to an Applicant and no Applicant may commence business until Applicant files such Bond with the Commission. The amount of the Bond will be the greater of (1) 150 percent of the projected balance of deposits and advances at the end of three (3) years of operations; or (2) \$50,000. If at any time the actual amount of deposits and advances held by the holders of a Certificate issued after the effective date of this regulation exceeds the amount projected, the amount of the Bond with surety shall be increased to comply with the requirement in the preceding sentence. Continuation of the Bonding requirement after the first three (3) years will be at the discretion of the Commission which, upon application, may dispense with the Bond requirement for good cause shown.

h. All new applicants seeking CPCNs for authority to become facilities-based CLECs shall demonstrate in their applications that they possess a minimum of \$100,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs.

i. All new applicants seeking CPCNs for authority to

become non-facilities-based CLECs shall demonstrate in their applications that they possess a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs.

j. Applicants for CPCNs as CLECs who have profitable interstate operations or operations in other states may meet the minimum financial requirement by submitting an audited balance sheet and income statement demonstrating sufficient cash flow to meet the above requirement.

k. Demonstration of cash or cash equivalent can be satisfied by the following:

1. Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;

2. Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;

3. Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

4. Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

5. Line of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

6. Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;

7. Guarantee, issued by a corporation, copartnership, or other person or association, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

8. Guarantee, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interests in the applicant, irrevocable for a period of at least twelve (12) months beyond the certification of the applicant by the Commission.

(5) Tariffs. Each application for a Certificate of Public Convenience and Necessity shall include proposed initial tariffs, rules, regulations, terms and conditions of service specifically adopted for the State of Delaware. Copies of Applicant's tariffs, and terms and conditions of service in other jurisdictions must be provided to the Commission upon request. Applicant's tariffs must include specific policies of customer deposits and advances, for prompt reconciliation of customer billing problems and complaints, and for timely correction of service problems.

Applicants must provide and keep current the name, address and telephone number of Applicant's Delaware Resident Agent.

Section 4: Post-Certification Requirements of CLECs

(1) New Options or Offerings. A CLEC may introduce new options or offerings, or change an existing tariff, by filing a supplemental or revised tariff with the Commission. A CLEC intending to offer a new telecommunications service shall provide the Commission with notice of its intention to do so no less than twenty (20) days before the proposed implementation date. The Commission may extend the proposed implementation date for any new service for good cause shown; provided, however, that notwithstanding such extension, the CLEC may offer its new service as described in its original filing unless the Commission shall have, by final Order entered within ninety (90) days of such original filing determined that the proposed new service as described is not in compliance with these Rules. A CLEC filing notice of the offering of a new service pursuant to this Rule shall serve a copy of such notice on of the offering of a new service pursuant to this Rule shall serve a copy of such notice on all interexchange telecommunications carriers and service providers who have requested it as well as the Office of the Public Advocate.

(2) Abandonment or Discontinuation of Service. A CLEC may abandon or discontinue a service or any part thereof, established within the State of Delaware after having provided the Commission and its customers subscribing to such service with thirty (30) days' written notice. Such notice shall also contain proposed provision for payment of all relevant outstanding liabilities (deposits and advance payments), if any, to customers within the State of Delaware. If the Commission takes no action within the thirty (30) day notice period, then the abandonment or discontinuation shall be deemed approved. Prior to the expiration of the thirty (30) day notice period, the Commission may act to continue the provision of service for up to an additional sixty (60) days.

(3) Reports to be provided to the Commission. All CLECs certificated to provide local telecommunications exchange service for public use after the effective date of these Rules shall provide such information concerning Delaware operations to the Public Service Commission as the Commission may from time to time request. Information provided pursuant to this paragraph and designated "proprietary" or "confidential" in accordance with Section 5, paragraph 5(7) of these Rules shall be afforded proprietary treatment subject to the provisions of the Rules, Commission regulations and Delaware law.

a. The accounting system to be used shall be in accordance with Generally Accepted Accounting Principles or any uniform system of accounts approved in writing by the Chief of Technical Services of the Commission.

b. All reports required by these rules to be submitted to the Commission shall be attested to by an officer or manager of the CLEC, under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in charge of the CLEC's operation.

c. All periodic reports required by this Commission must be received on or before the following due dates unless otherwise specified herein, or unless good cause is demonstrated by the CLEC:

1. Annual reports: one hundred twenty (120) days after the end of the reported period.

2. Special and additional reports: as may be prescribed by the Commission unless good cause to the contrary is demonstrated.

d. The annual report shall include standard financial reports (balance sheet, statement of operations, supporting schedules, etc.). This report shall also include (i) the same after-the-fact information that management is provided concerning the measurement of performance provided in Delaware, (ii) the information used to determine the Delaware Income Tax liability, and (iii) financial and operating information for the smallest management unit that includes Delaware. Additional information to be provided includes:

1. Intrastate revenues (net of uncollectibles) by service category;

2. Intrastate access and billing and collection cost by service category;

3. Total number of customers by service category;

4. Total local minutes of use by service category;

5. Total local number of calls by service category;

6. A description of service offered;

7. A description of each complaint received by service category (in the form of a single Complaints log); and,

8. Verification of deposits, customer advances, the bond requirement and the bond with surety.

(4) Discrimination Prohibited. No CLEC carrier shall unreasonably discriminate among persons requesting a tariffed service within the State of Delaware.

(5) Blockage. CLECs cannot interconnect or resell to carriers who are not authorized to provide service in the State of Delaware.

(6) Pricing Standard. All CLECs shall provide local end user services at rates that generate sufficient revenue to cover the incremental cost of offering such service.

a. CLECs filing rates for new services or changing rates for existing services should provide a statement to the Commission that such rates generate sufficient revenue to cover the incremental cost of offering such service.

b. CLECs do not need to provide cost data showing that rates are generating sufficient revenue to cover the incremental cost of offering a service unless specifically

requested to do so upon written request by the Commission staff.

(7) Universal Service Fund. The Commission may, upon completion of an appropriate proceeding, require CLECs and other telecommunications carriers to contribute to a Universal Service Fund.

(8) Services to be Provided. CLECs shall offer access to the public switched network and at a minimum, the following telecommunication services to its customers:

- Dial tone line services
- Local usage services
- Access to all available long distance carriers
- TouchTone service
- White pages listing
- Access to 911 enhanced emergency system
- Local directory assistance service
- Access to telecommunications relay service

(9) Written Authorization Forms Required. A CLEC must obtain a customer's written authorization in order to change his or her local exchange service provider. Such written authorizations must be separate from inducements such as prizes and contests. The written authorization forms provided by the CLEC must be limited strictly to authorizing a change in local service and it must be clearly identified as an authorization form for such change.

If a consumer's CLEC service is changed, within ten working (10) days of when service has been changed the customer must be notified of the changes in writing or by independent third-party verification of the change. Furthermore, the customer shall have the opportunity to cancel the LEC change request without charge if requested by the customer within fifteen working (15) days of initiating a CLEC change request. If the customer cancels the LEC change within fifteen working days, the costs of the cancellation would be borne by the LEC who's service the customer was canceling.

(10) Negotiation and Mediation Guidelines. All CLECs must abide by the Commission's Guidelines for Negotiations, Mediation, Arbitration and Approval of Agreements between Local Exchange Telecommunications Carriers (Order No. 4245).

(11) Resale Prohibitions.

(a) Cross-Class Selling. A CLEC that makes a service available only to residential customers or a limited class of residential customers may prohibit the purchaser from offering such services to classes of customers that are not eligible for such services from the providing CLEC.

(b) Other. With respect to any restrictions on resale not permitted under this paragraph, a CLEC may impose a restriction only if the Commission determines that the restriction is reasonable and nondiscriminatory.

(12) Previous Regulation Dockets. CLECs shall be

subject to all previously established rules relating to telecommunications service providers in Delaware, except where such rules are inconsistent with these Rules, and/or the Act. As consistent with the provisions of existing rules and regulations, CLECs may petition the Commission to waive any provision in such rules previously established and regulations, as may be permitted by those rules or regulations.

(13) Customer Complaint Investigations. CLECs shall cooperate with Commission investigations of customer complaints.

Section 5: Enforcement

(1) Commission Oversight: Nothing in these Rules shall be deemed to limit the authority granted the Commission under the Telecommunications Regulatory Authorization Act of 1992, 26 Del. C. §§701-703.

(2) Violation and Penalties: Failure of a CLEC to comply with any provision of these Rules may result in the suspension or revocation of its CPCN, and/or of the imposition of monetary or other penalties as authorized by 26 Del. C. § 217, 218.

(3) Proceedings: Upon application by any person affected, including the Office of the Public Advocate or another carrier, or upon its own motion, the Commission may conduct a proceeding to determine whether a CLEC has violated any provision of the Rules. Such proceedings shall be conducted according to the requirements of 29 Del. C. c. 101, the Delaware Administrative Procedures Act.

(4) Investigations: For the purpose of determining whether it is necessary or advisable to commence a proceeding described by Rule 5(3) above, the Commission or its Staff may, at any time, investigate whether a CLEC is in compliance with the Rules. Upon request, the CLEC shall provide to the Commission or its Staff sufficient information to demonstrate its compliance with the Rules, including such data as shall demonstrate that the CLEC's services are provided at rates that generate sufficient revenue to cover the incremental cost of offering that service.

(5) Subscriber Complaints as Ground for Proceeding or Investigation: The Commission may hold a proceeding to determine whether to suspend or revoke the certificate of, or otherwise penalize, any CLEC for reason of subscriber complaints. The Commission may investigate any subscriber complaints received.

(6) Exemption: If unreasonable hardship results to a CLEC from the application of any of the Rules contained in Section 3 (Certification of Competitive Local Exchange Carriers) and Section 4 (Post Certification Requirements of CLECs) hereof, or if unreasonable difficulty is involved in compliance, the CLEC may make application to the Commission for temporary or permanent exemption from such Rule or Rules. The CLEC shall submit with such application a full and complete statement of its reasons for

such application.

(7) Proprietary Information: Under Delaware's Freedom of Information Act, 29 Del. C. ch. 100 ("FOE"), all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 Del. C. §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall preemptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity which submitted the information with reasonable notice and an opportunity to show why the information should not be released.

~~(8) Re-evaluation of Rules after 18 Months: The Commission will re-evaluate these Rules and the need for any revisions thereto approximately eighteen (18) months from the date of approval by the Commission of said Rules.~~

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

REGULATORY IMPLEMENTING ORDER

**POLICY FOR ESTABLISHING A SCHOOL DISTRICT
PLANNING PROCESS**

I. SUMMARY OF THE EVIDENCE AND
INFORMATION SUBMITTED

The Secretary seeks the approval of the State Board of Education to amend the regulation, Policy for Establishing a School District Planning Process, L.9.a., b. and c. on pages A-41 and A-42 in the Handbook for K-12 Education. The regulation, established ten years ago, mandated that every school district develop a five year strategic plan and submit it to the Department of Education for approval and then submit progress reports to the Department for review thereafter. The existing regulation also required that the local district's strategic plan include a list of defined components. The amended regulation would still require that the districts maintain a multi-year strategic planning process but would not specify the components of the process, or the number of years and would not require pre-approval and review by the Department of Education.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on September 15, 1998, in the form hereto attached as Exhibit A. The notice invited written comments and none were

received from the newspaper advertisements.

II. FINDINGS OF FACT

The Secretary finds that it is necessary to amend this regulation because although each district must have a strategic planning process the local school districts should be permitted to select their own planning process and carry it through without specific direction from the Department of Education.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is necessary to amend this regulation. Therefore, pursuant to 14 Del. C., Sec. 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and the amended regulation shall be cited in the document entitled Regulations of the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Sec. 122, in open session at the said Board's regularly scheduled meeting on November 19, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 19th day of November, 1998.

DEPARTMENT OF EDUCATION

Dr. Iris T. Metts, Secretary of Education

Approved this 19th day of November, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President
Nancy A. Doorey
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

EXHIBIT B**L.9. POLICY FOR ESTABLISHING A SCHOOL DISTRICT PLANNING PROCESS****a. Preface**

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

As part of its leadership role the State Board of Education, through a planning process, has developed long range goals to guide public education. The Board desires that each district complement this action by developing and installing a planning process that considers the forces of change, builds consensus in the district and focuses resources on attaining both the state and local goals. Further, the Board believes that through an articulated state and local planning partnership, with commonly held goals, public education in Delaware will be positioned to confront change

in a proactive manner. Therefore, the following policy is proposed:

b. Policy

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

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

e. Strategic Planning Process

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

Strategies for:

- (1) Developing wide community involvement and consensus building in the school district
 - (2) Developing a mission statement for the district
 - (3) Documenting the district's history, strengths and shortcomings
 - (4) Recognizing the unique aspects and/or limitations of the school district
 - (5) Addressing the national and state goals for education
 - (6) Developing five year goals for the district
 - (7) Translating the district goals into action at the school level
 - (8) Budgeting the plan
 - (9) Developing accountability procedures and indicators of progress
 - (10) Updating the plan annually
- (State Board Approved September 1990)

Strategic Planning Regulation

Each school district shall maintain a multi-year strategic planning process to serve as the foundation for all other required plans and grant applications and for the purpose of assuring and monitoring continuous program improvement and student achievement.

**DEPARTMENT OF HEALTH &
SOCIAL SERVICES**
DIVISION OF PUBLIC HEALTH
**OFFICE OF HEALTH FACILITIES LICENSING
AND CERTIFICATION**
Statutory Authority: 16 Delaware Code,
Section 9110 (16 Del.C. 9110)

November 16, 1998
Gregg C. Sylvester, MD
Secretary

SUMMARY OF EVIDENCE

STATE OF DELAWARE RULES AND REGULATIONS
GOVERNING THE APPLICATION AND OPERATION
OF MANAGED CARE ORGANIZATIONS

IN THE MATTER OF:

**REVISION OF STATE OF DELAWARE
RULES AND REGULATIONS GOVERNING
THE APPLICATION AND OPERATION OF
MANAGED CARE ORGANIZATIONS**

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to amend existing Rules and Regulations Governing The Application And Operation of Health Maintenance Organizations and renamed the Rules and Regulations Governing The Application and Operation of Managed Care Organizations. The DHSS's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 16 Delaware Code Chapter 91.

On July 1, 1998, the DHSS published in the Delaware Register of Regulations Volume 2 Issue 1 (page 42) its notice of proposed regulation changes, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by August 3, 1998, or be presented at public hearings on July 28 or July 30, 1998, at which time the Department would review information, factual evidence and public comment to the said proposed changes to the regulations.

Oral and written comments were received and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the attached copy should be made in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed Rules And Regulations Governing The Application and Operation of Managed Care Organizations are adopted and shall become effective February 1, 1999, after publication of the final regulation in the Delaware Register.

Public hearings were held on July 28, 1998 at the Jesse Cooper Building, Dover, Delaware and on July 30, 1998 at the Department of Health and Social Services (DHSS) Herman Hallway Campus, New Castle, Delaware before Cheryl Moore, Hearing Officer, to discuss the proposed DHSS Rules and Regulations Governing the Application and Operation of Managed Care Organizations. The announcements regarding the hearings were advertised in the Delaware State News, The News Journal and the Delaware Registry of Regulations in accordance with Delaware law. Ellen T. Reap made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Comments were provided by MCO attorneys representing the MCOs, Department of Insurance, physicians, health care associations and private citizens. A thorough review of all comments was conducted by Health Facilities Licensing and Certification staff, DPH leadership, the Deputy Attorney General and DHSS administration. In general, comments fell into four areas of concern. Those concerns and the DHSS (Agency) response are as follows:

- Disagreement regarding the requirement that the MCO Medical Director be a licensed Delaware physician;

Agency Response: DHSS recommends maintaining this requirement. It was the recommendation of the HR#94 Committee on Public Oversight of Managed Care Costs, Quality and Care to require the MCO Medical Directors be a licensed Delaware physician. In addition, this recommendation is unanimously supported by the Delaware Board of Medical Practitioners who state, "...Medicare Directors of MCOs operating in Delaware and making decisions about Delaware patients must hold a registration to practice medicine in Delaware." DHSS supports their position that if the MCO is using the clinical judgment of a physician (as Medical Director) to limit payment for health services, that physician should be a Delaware licensed physician.

- Concern over dual regulation of the MCO industry by both DHSS and the Department of Insurance;

Agency Response: The Agency recommends maintaining

these regulations as submitted. The HR#94 Committee supported the regulations as written. While some duplication of reporting may exist between DHSS and the Department of Insurance, these reports are either required by Delaware Code or are already required by the current Health Maintenance Organization regulations. However, DHSS recognizes industry concern over the cost of duplicative and excess paperwork to the industry and ultimately the consumer. In response to these concerns, DHSS will explore the development of a joint Delaware Health and Social Services/Department of Insurance application and annual reporting process.

- Requests to eliminate the Stage 3 grievance appeal process or replace it with an alternative procedure;

Agency Response: DHSS recommends maintaining the Stage 3 grievance appeal process as written. The Stage 3 appeal process provides enrollees with an unbiased review of their appeal and avoids costly litigation. It is the Agency's position that enrollees have the right to an unbiased review of their appeal. The HR#94 Committee supported this need as well. The alternative procedure recommended by one of the commentees was not presented in sufficient detail so as to be usable. Regardless, in the Agency's opinion, it presented two major obstacles to a fair grievance process by mandating the incurred cost of the denied service eligible for a State 3 appeal be \$1,000 or more and requiring the enrollee to pay \$100 upon filing the appeal.

- Comments that similar contract provisions exist in both the DHSS proposed regulations and the Department of Insurance Regulations.

Agency Response: The Agency recommends maintaining these regulations as written. DHSS acknowledges that similar "contract provision" language exists in both these and Department of Insurance regulations. DHSS added this language at the request of the Department of Insurance because the Delaware Code does not provide the Department of Insurance with sufficient statutory authority to regulate contracts.

There were two minor changes made to the draft regulations presented at the July public hearings. The changes were reviewed and approved by both the Deputy Attorney General and the Cabinet Secretary of DHSS. Neither considered the changes to be substantive in nature.

The changes are:

1. Section 69.401.D.1. – Changes were made in the 5th and 6th lines of the paragraph. The words "...pediatrics, obstetrics, and gynecology..." were changed to read

"...pediatrics, obstetrics—gynecology...".

2. Section 69.604.E. – A period was inserted in the third line after the word "enrollees" and the remainder of the sentence deleted.

The public comment period was open from July 1, 1998 to August 3, 1998.

Verifying documents are attached to the Hearing Officer's record. The regulations have been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

**RULES AND REGULATIONS GOVERNING THE
APPLICATION AND OPERATION OF MANAGED
CARE ORGANIZATIONS**

Adopted by the Department of Health and Social Services on November 16, 1998, effective February 1, 1999.

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

PART ONE

LEGAL AUTHORITY AND DEFINITIONS

SECTION 69.0 LEGAL AUTHORITY

These regulations are adopted under Part VIII, Title 16, Delaware Code, Chapter 91, pursuant to delegation of authority from the Secretary of the Department of Health and Social Services to the Director of the Division of Public Health effective March 15, 1983 and revised July 1, 1989.

SECTION 69.1 DEFINITIONS

69.101 "Administrator/Chief Executive Officer" means the individual employed to manage and direct the activities of the MCO.

69.102 "Basic health services" means a range of services, including at least the following:

- A. Physician services including consultant and referral services by a physician licensed by the State of Delaware.
- B. At least three hundred sixty-five (365) days of inpatient hospital services.
- C. Medically necessary emergency health services.
- D. Initial diagnosis and acute medical treatment (at least one (1) time) and responsibility for making initial behavioral health referrals.
- E. Diagnostic laboratory services.
- F. Diagnostic and therapeutic radiological services.
- G. Preventive health services including at least the provision of physical examinations, papanicolaou smears, immunizations, mammograms and childrens' eye examinations (through age 17), conducted to determine the

need for vision correction performed at a frequency determined to be appropriate medical practice. Other preventive services may be provided by the MCO as contained in the Health Care Contract.

H. Health education services including education in the appropriate use of health services and education in the contribution each enrollee can make to the maintenance of the enrollee's own health. This information shall be understandable and not misleading.

I. Emergency out-of-area coverage.

69.103 "Certificate of Authority" means the authorization by the Department of Health and Social Services to operate the MCO and this certificate shall be deemed to be a license to operate such an Organization.

69.104 "Certified Managed Care Organization" (MCO) means a managed care organization which has been issued a Certificate of Authority under 16 Del. C. and either a Certificate of Authority from the Insurance Department under the relevant provisions of Title 18 or a statement from the Insurance Department that the Insurance Department Certificate of Authority is not required.

69.105 "Commissioner" means the Insurance Commissioner of Delaware.

69.106 "Department" means the Delaware Department of Health and Social Services.

69.107 "Emergency Care" means health care items or services furnished or required to evaluate or treat an emergency medical condition.

69.108 "Emergency Medical Condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

- (i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;
- (ii) serious impairment to bodily functions; or
- (iii) serious dysfunction of any bodily organ or part.

69.109 "Enrollee" means an individual and/or family who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into with the MCO, under which the MCO assumes the responsibility to provide to such person(s) basic health services and such supplemental health services as are enumerated in the Health Care Contract.

69.110 "Geographical area" refers to the stated primary geographical area served by a MCO. The primary area served shall be a radius of not more than twenty (20) miles nor more than thirty (30) minutes driving time from a primary care office operated or contracted by the MCO.

69.111 "Health care contract" refers to any agreement between a MCO and an enrollee or group plan which sets forth the services to be supplied to the enrollee in exchange for payments made by the enrollee or group plan.

69.112 "Health care professional" means individuals engaged in the delivery of health services as licensed or certified by the State of Delaware.

69.113 "Health care services" means any services included in the furnishing to any individual of medical or dental care, or hospitalization or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury or physical disability.

69.114 "Independent Practice Association" (IPA) means an arrangement in which health care professionals provide their services through the association in accordance with a mutually accepted compensation arrangement while retaining their private practices.

69.115 "Insurance Department" means the Delaware Insurance Department.

69.116 "Insurance Department Certificate of Authority" means the authorization by the Insurance Commissioner that the MCO has met the relevant provisions of Title 18 of the Delaware Code.

69.117 "Intermediary" means a person authorized to negotiate and execute provider contracts with MCOs on behalf of health care providers or on behalf of a network.

69.118 "Level 1 Trauma Center" means a regional resource trauma center that has the capability of providing leadership and comprehensive, definitive care for every aspect of injury from prevention through rehabilitation.

69.119 "Level 2 Trauma Center" means a regional trauma center with the capability to provide initial care for all trauma patients. Most patients would continue to be cared for in this center; there may be some complex cases which would require transfer for the depth of services of a regional Level 1 or specialty center.

69.120 "Managed Care Organization" (MCO) means a

public or private organization organized under the laws of any state, which:

A. provides or otherwise makes available to enrolled participants health care services, including at least the basic health services defined in 69.102;

B. is primarily compensated (except for co-payment) for the provision of basic health care services to the enrolled participants on a predetermined periodic rate basis; and

C. provides physician services directly through physicians who are either employees or partners of such organization, or through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

9.121 "Network" means the participating providers delivering services to enrollees in a managed care plan.

69.122 "Office" means any facility where enrollees receive primary care or other health services.

69.123 "Out of area coverage" refers to health care services provided outside the organization's geographic service areas with appropriate limitations and guidelines acceptable to the Department and the Commissioner. At a minimum, such coverage must include emergency care.

69.124 "Participating provider" means a provider who, under a contract with the Organization or with its contractor or subcontractor, has agreed to provide health care services to enrollees with an expectation of receiving payment, other than coinsurance, co-payments or deductibles, directly or indirectly from the Organization.

69.125 "Premium" refers to payment(s) called for in the Health Care Contract which must be:

A. paid or arranged for by, or on behalf of, the enrollee before health care services are rendered by the Organization;

B. paid on a periodic basis without regard to the date on which health services are rendered; and

C. with respect to an individual enrollee are fixed without regard to frequency, extent or cost of health services actually furnished.

69.126 "Primary Care Physician" (PCP) means a participating health care physician chosen by the enrollee and designated by the Organization to supervise, coordinate, or provide initial care or continuing care to an enrollee, and who may be required by the Organization to initiate a referral for specialty care and maintain supervision of health care services rendered to the enrollee.

69.127 "Provider" means a health care professional or facility.

69.128 "Staff model MCO" means a MCO in which physicians are employed directly by the MCO or in which the MCO directly operates facilities which provide health care services to enrollees.

69.129 "Supplemental payment" refers to any payment not incorporated in premium which is required to be paid to the MCO or providers under contract to the MCO by the enrollee.

69.130 "Supplementary health services" means any health services other than basic health services which may be provided by a MCO to its enrollees and/or for which the enrollee may contract such as:

- A. Long term care;
- B. Vision care not included in basic health services;
- C. Dental services;
- D. Behavioral health services;
- E. Long term physical medicine or rehabilitative services;
- F. Pharmacy services;
- G. Infertility services; and
- H. Other services, such as occupational therapy, nutritional, home health, homemaker, hospice and family planning services.

69.131 "Tertiary services" means health care services provided for the intensive treatment of critically ill patients who require extraordinary care on a concentrated basis in special diagnostic categories (e.g. burns, cardiovascular, neonatal, pediatric, oncology, transplants, etc.).

PART TWO

SECTION 69.2 APPLICATION AND CERTIFICATE OF AUTHORITY

69.201 No person shall establish or operate a MCO in the State of Delaware or enter this State for purposes of enrolling persons in a MCO without obtaining a "Certificate of Authority" under Chapter 91 of Title 16 of the Delaware Code. A foreign corporation shall not be eligible to apply for such certificate unless it has first qualified to do business in the State of Delaware as a foreign corporation pursuant to 8 Del. C., §371.

69.202 Each application for a Certificate of Authority shall be made in writing to the Department of Health and Social Services, shall be certified by an officer or authorized representative of the applicant, shall be in a form prescribed by the Department (Appendix A) and shall set forth or be accompanied by the following:

- A. Organizational Information
 - 1. Brief history and description of current status

of applicant, including an organization chart;

2. A copy of the basic organizational documents such as the certificate of incorporation, articles of association, partnership agreement, trust agreement or other appropriate documents and amendments thereto;

3. A list of the names, addresses and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant. Include all enrollees of the Board of Directors or other governing board, the principal officers in the case of a corporation, and the partners or enrollees in the case of a partnership or association; and

4. A list of positions, names and resumes for all management personnel.

B. Health Services Delivery

1. A description of the plan of operation of the MCO. Include the following items:

a) a listing of basic health services and supplemental health services (as defined at 69.102 and 69.130 respectively) with utilization projections; and

b) the arrangements for delivery of all covered health services (including details as to whether outpatient services are provided directly or through referrals/purchase agreements with outside fee-for-service providers); a description of service sites or facilities (specifying days and hours of operation in the case of outpatient facilities); and all special policies or provisions designed to improve accessibility of services.

2. Copies of all executed contracts, agreements or arrangements between the MCO and providers, including individual physicians, IPAs, group practices, hospitals, laboratory services, nursing homes, home health agencies, and other providers. In addition, copies of executed contracts or letters of agreement between an IPA or medical group and its member or non-member physicians and other health professionals;

3. A list of participating physicians by specialty and by geographic area as well as a list of other health care personnel providing services. Each physician included on the list must be identified as accepting or not accepting new patients and if there are any limitations on that physician's accepting any enrollees as patients. Staffing ratios shall be prepared for each geographic area in which the MCO proposes to operate. Staffing ratios are the number of physicians or providers by specialty per enrollee;

4. For staff model MCOs, a list of facilities that show the capacity, square footage, and the legal arrangements for use of the facility (leases, subleases, contract of sale, etc.). Provide copies of leases, contracts of sale, or other legal agreements relating to the facilities to be operated by the MCO;

5. All of the applicant's utilization review and utilization management, utilization control, quality assurance mechanisms, policies, manuals, guidelines, and

materials including information on committee structures and criteria;

6. The arrangements for assuring continuity of care for all services provided to enrollees. Include comments on policies related to the primary care physician's responsibilities for coordination and oversight of the enrollee's overall health care and the impact of the medical record keeping system on continuity of care;

7. Procedures utilized by the applicant for determining and ensuring network adequacy;

8. Procedures utilized by the applicant for the credentialing of providers;

9. Procedures for addressing enrollee grievances;

10. Any materials or procedures utilized by the applicant for measuring or assessing the satisfaction of enrollees; and

11. Procedures for monitoring enrollee access to participating providers including but not limited to:

- a) appointment scheduling guidelines;
- b) standards for office wait times; and
- c) standards for provider response to urgent and emergent issues during and after business hours.

C. Enrollment and Marketing

1. A description of the target population, including projections of enrollment levels on a quarterly basis for at least the first three (3) years of operation and the key assumptions underlying these projections;

2. A description of the geographic area to be served, with a map showing service area boundaries, locations of the MCO's participating providers, PCPs, institutional and ambulatory care facilities, and travel times from various points in the service area to the nearest ambulatory and institutional services;

3. Identification of all information to be released to enrollees or prospective enrollees;

4. A description of the proposed marketing techniques and sample copies of any advertising or promotional materials to be used within Delaware or to which Delaware citizens would be exposed;

5. Enrollee handbooks proposed for use. A finalized enrollee handbook shall also be submitted upon completion; and

6. Procedures for notifying enrollees of plan changes.

D. Financial

1. A financial statement for the most recent fiscal year certified by a Certified Public Accountant (CPA);

2. Financial projections for a minimum of three (3) years. If deficits are anticipated, the projections should cover the period up to and including the year in which break-even is expected. Include projections of revenue and expenses; a projected balance sheet; a pro forma cash flow statement; and a pro forma statement of changes in financial position. Indicate the assumptions on which statements are

based, including inflation and utilization assumptions;

3. Sources of financing (private and governmental) and, where appropriate, written assurances of the availability of financing;

4. A description of all reinsurance arrangements or risk sharing arrangements with providers; and

5. The proposed premiums for all classes of enrollee, co-payments, and the rating plan or rating rules used by the applicant.

69.203 Within sixty (60) days after receipt of a complete application for issuance of Certificate of Authority the Department shall determine whether the applicant, with respect to health care services to be furnished, has:

A. demonstrated the ability to provide such health services in a manner assuring availability, accessibility and continuity of services;

B. arrangements for an ongoing health care quality assurance program;

C. the capability to comply with all applicable rules and regulations promulgated by the Department;

D. the capability to provide or arrange for the provision to its enrollees of basic health care services on a prepaid basis through insurance or otherwise, except to the extent of reasonable requirements of co-payments; and

E. for staff model MCOs, the staff and facilities to directly provide at least half of the outpatient medical care costs of its anticipated enrollees on a prepaid basis.

69.204 The Department shall issue a Certificate of Authority to any person filing an application under this section upon demonstration of compliance with these rules and regulations if:

A. The application contains all the information required under 69.202 of this Part;

B. The Department has not made a negative determination pursuant to 69.203 of this Part; and

C. Payment of the application fees prescribed in 16 Del. C. Chapter 91, has been made.

69.205 If within 60 days after a complete application for a Certificate of Authority has been filed, the Department has not issued such certificate, the Department shall immediately notify the applicant, in writing, of the reasons why such certificate has not been issued and the applicant shall be entitled to request a hearing on the application. The hearing shall be held within 60 days of receipt of written request therefor. Proceedings in regard to such hearing shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, Chapter 101 of Title 29, and in accordance with applicable rules and regulations of the Department (63 Del. Laws, c.382, §1;66 Del. Laws, c. 124, §7.).

69.206 No Certificate of Authority shall be issued without a Certificate of Authority from the Insurance Department under the relevant provisions of Title 18 or a statement from the Insurance Department that the Insurance Department Certificate of Authority is not required.

If a deposit is required, it shall be continuously maintained in trust. In case of a deficiency of deposit, the Insurance Commissioner shall transmit notice thereof to both the MCO and the Department. In case the deficiency is not cured within the allowed time, the Commissioner shall give notice thereof to the Department and the Department shall revoke its Certificate of Authority to the MCO.

PART THREE

SECTION 69.3 GENERAL REQUIREMENTS

69.301 Every MCO operating in this State shall file with the Department every manual which it proposes to use. Every filing shall indicate the effective date thereof.

69.302 Annual reports shall be filed with the Department by any MCO on or before June 1 covering the preceding fiscal year. Such reports shall include a financial statement of the MCO, its balance sheet and receipts and disbursements for the preceding fiscal year, and any changes in the information originally submitted or required under 69.2, 69.404 E., 69.405 B. and 69.705.

69.303 Contract Provisions

A. Every contract between a MCO and a participating provider shall contain the following language:

1. "Provider agrees that in no event, including but not limited to nonpayment by the MCO or intermediary, insolvency of the MCO or intermediary, or breach of this agreement, shall the provider bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against an enrollee or a person (other than the MCO or intermediary) acting on behalf of the enrollee for services provided pursuant to this agreement. This agreement does not prohibit the provider from collecting coinsurance, deductibles or co-payments, as specifically provided in the evidence of coverage, or fees for uncovered services delivered on a fee-for-service basis to enrollees."

2. "In the event of a MCO or intermediary insolvency or other cessation of operations, covered services to enrollees will continue through the period for which a premium has been paid to the MCO on behalf of the enrollee or until the enrollee's discharge from an inpatient facility, whichever time is greater. Covered benefits to enrollees confined in an inpatient facility on the date of insolvency or other cessation of operations will continue until their continued confinement in an inpatient facility is no longer

medically necessary."

3. The contract provisions that satisfy the requirements of Subsections 1. and 2. above shall be construed in favor of the enrollee, shall survive the termination of the contract regardless of the reason for termination, including the insolvency of the MCO, and shall supersede any oral or written contrary agreement between a provider and an enrollee or the representative of an enrollee if the contrary agreement is inconsistent with the hold harmless and continuation of covered services provisions required by Subsections 1. and 2. above.

4. Every contract between a MCO and a participating provider shall state that in no event shall a participating provider collect or attempt to collect from an enrollee any money owed to the provider by the MCO.

69.304 Amendments or Revisions of Contracts

Any significant amendment to or revision relating to the text or subtext of an approved provider contract shall be submitted to and approved by the Department prior to the execution of an amended or revised contract with the providers of a MCO.

69.305 The MCO shall establish a policy governing termination of providers. The policy shall include at least:

A. Written notification to each enrollee six (6) weeks prior to the termination or withdrawal from the MCO's provider network of an enrollee's primary care physician except in cases where termination was due to unsafe health care practice; and

B. Except in cases where termination was due to unsafe health care practices that compromise the health or safety of enrollees, assurance of continued coverage of services at the contract price by a terminated provider for up to 120 calendar days in cases where it is medically necessary for the enrollee to continue treatment with the terminated provider. In cases of the pregnancy of an enrollee, medical necessity shall be deemed to have been demonstrated and coverage shall continue to completion of postpartum care.

69.306 The Medical Director and physicians designated to act on his behalf shall be Delaware licensed physicians.

69.307 Prohibited Practices

A. No MCO or representative may cause or permit the use of advertising or solicitation which is untrue or misleading.

B. No MCO may cancel or refuse to renew the enrollment of an enrollee solely on the basis of his/her health. This does not prevent the MCO from canceling the enrollment of an enrollee if misstatements of his/her health were made at the time of enrollment, or prevent the MCO from canceling or refusing to renew enrollment for reasons other than an enrollee's health including without limitation,

nonpayment of premiums or fraud by the enrollee.

C. A MCO contract shall contain no provision or nondisclosure clause prohibiting physicians or other health care providers from giving patients information regarding diagnoses, prognoses and treatment options.

D. A MCO shall not deny, exclude or limit benefits for a covered individual for losses due to a preexisting condition where such were incurred more than twelve (12) months following the date of enrollment in such plan or, if earlier, the first day of the waiting period for such enrollment.

E. A MCO shall not impose any preexisting condition exclusion relating to pregnancy or in the case of a child who is adopted or placed for adoption before attaining eighteen (18) years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence shall not apply to coverage before the date of such adoption or placement for adoption.

F. A MCO shall not offer incentives to a provider to provide less than medically necessary services to an enrollee.

G. A MCO shall not penalize a provider because the provider, in good faith, reports to state authorities any act or practice by the MCO that jeopardizes patient health or welfare.

H. A contract between a MCO and a provider shall not contain definitions or other provisions that conflict with the definitions or provisions contained in these regulations.

69.308 A MCO shall establish a mechanism by which the participating provider will be notified on an ongoing basis of the specific covered health services for which the provider will be responsible, including any limitations or conditions on services.

69.309 A MCO shall notify participating providers of the providers' responsibilities with respect to the MCO's applicable administrative policies and programs, including but not limited to payment terms, utilization review, quality assessment and improvement programs, credentialing, grievance procedures, data reporting requirements, confidentiality requirements and any applicable federal or state programs.

69.310 The rights and responsibilities under a contract between a MCO and a participating provider shall not be assigned or delegated by the provider without the prior written consent of the MCO.

69.311 A MCO is responsible for ensuring that a participating provider furnishes covered benefits to all enrollees without regard to the enrollee's enrollment in the plan as a private purchaser of the plan or as a participant in publicly financed programs of health care services. This

requirement does not apply to circumstances when the provider should not render services due to limitations arising from lack of training, experience, skill or licensing restrictions.

69.312 A MCO shall notify the participating providers of their obligations, if any, to collect applicable coinsurance, copayments or deductibles from enrollees pursuant to the evidence of coverage, or of the providers' obligations, if any, to notify enrollees of their personal financial obligations for non-covered services.

69.313 A MCO shall establish procedures for resolution of administrative, payment or other disputes between providers and the MCO.

69.314 Notice of Changes in MCO Operations

The MCO shall notify the Department of Health and Social Services, in writing, on an ongoing basis, of any substantial changes in organization, bylaws, governing board, provider contracts or agreements, marketing materials, grievance procedures, enrollee handbooks, utilization management program, and any change of inpatient acute care hospitals. The Department shall be notified on at least a quarterly basis of changes in the provider network.

69.315 Changes in Ownership Interests

Certificates of Authority shall not be assignable or transferable in whole or in part. Accordingly, the holder of record of any Certificate of Authority to operate in Delaware, as a condition thereof, shall comply with all of the following requirements regarding changes in ownership interests. For the purposes of this section, changes in ownership interests shall refer to changes in the ownership of the holder of record of any Certificate of Authority and/or changes in ownership of any individual, corporation or other entity which, through the ownership of voting securities, by contract or by any other means, has the authority to or does in fact direct or cause the direction of the management and/or the policies of the MCO which is the subject of the Certificate of Authority at issue.

69.316 Examinations

A. The Department may make examinations concerning the quality of health care services of any MCO. The Department may make such examination as it deems necessary for the protection of the interests of the enrollees of the MCO, but not less frequently than every three (3) years;

B. Every MCO shall submit its books and records relating to health care services to such examinations. In the course of such examinations, the Department may administer oaths to and examine the officers and agents of

the MCO and of any health care providers with which it has contracts, agreements or other arrangements. The MCO shall require a provider to make health records available to the Department employees involved in assessing the quality of care or investigating the grievances or complaints of enrollees, and to comply with the applicable laws related to the confidentiality of medical or health records; and

C. The reasonable expenses of examinations under this section shall be assessed against the MCO being examined and remitted to the Department.

69.317 Suspension or Revocation of Certificate of Authority.

A. The Department may revoke or suspend a Certificate of Authority issued to a MCO pursuant to 16 Del. C. Chapter 91, or may place the MCO on probation for such period as it determines, or may publicly censure a MCO if it determines, after a hearing, that:

1. The MCO is operating in a manner which deviates substantially, in a manner detrimental to its enrollees, from the plan of operation described by it in securing its Certificate of Authority;

2. The MCO does not have in effect arrangements to provide the quantity and quality of health care services required by its enrollees;

3. The MCO is no longer in compliance with the requirements of 16 Del. C. §9104(b); or

4. The continued operation of the MCO would be detrimental to the health or well-being of its enrollees needing services.

B. Proceedings in regard to any hearing held pursuant to this section shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, 29 Del. C. §101, and any applicable rules and regulations of the Department. Any decision rendered following a hearing shall set forth the findings of fact and conclusions of the Department as to any violations of this Chapter, and shall also set forth the reasons for the Department's choice of any sanction to be imposed. The Department's choice of sanction shall not be disturbed upon appeal, except for abuse of discretion.

C. Suspension of a Certificate of Authority pursuant to this section shall not prevent the MCO from continuing to serve all its enrollees as of the date the Department issues a decision imposing suspension, nor shall it preclude thereafter adding as enrollees newborn children or other newly acquired dependents of existing enrollees. Unless otherwise determined by the Department and set forth in its decision, a suspension shall, during the period when it is in effect, preclude all other new enrollments and also all advertising or solicitation on behalf of the MCO other than communication, approved by the Department, which are intended to give information as to the effect of the suspension.

D. In the event that the Department decides to revoke the Certificate of Authority of a MCO the decision so providing shall specify the time and manner in which its business shall be concluded. If the Department determines it is appropriate, it may refer the matter of conservation or liquidation to the Insurance Commissioner, who shall then proceed in accordance with 18 Del. C., Chapter 59. In any case, after the Department has issued a decision revoking a Certificate of Authority, unless stayed in connection with an appeal, the MCO shall not conduct any further business except as expressly permitted in the Department's decision and it shall engage only in such activities as are directed by the Department or are required to assist its enrollees in securing continued health care coverage.

E. The Department may require a corrective action plan from a MCO when the Department determines that the MCO is not in compliance with any of the regulations contained herein.

69.318 Fees

Every MCO shall pay the following fees:

A. For filing an application for a Certificate of Authority - three hundred and seventy-five dollars (\$375.00).

B. For filing an annual report - two hundred and fifty dollars (\$250.00).

69.319 Confidentiality of Health Information

Any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any health care provider by any MCO shall be held in confidence and shall not be disclosed to any person except upon the express consent of the enrollee or applicant, or his physician, or pursuant to statute or court order for the production of evidence or the discovery thereof, or in the event of claim or litigation between such person and the MCO wherein such data or information is pertinent or as may be required by the Department in the course of their examinations in accordance with 69.316. The communication of such data or information from a health care provider to a MCO shall not prevent such data or information from being deemed confidential for purposes of the Delaware Uniform Rules of Evidence.

69.320 The MCO is responsible for meeting each requirement of these regulations. If the MCO chooses to utilize contract support or to contract functions under these regulations, the MCO retains responsibility for ensuring that the requirements of this regulation are met.

69.321 Specific standards may be waived by the Department provided that each of the following conditions are met:

A. Strict enforcement of the standard would result in

unreasonable hardship on the MCO.

B. A waiver must not adversely affect the health, safety, welfare, or rights of any enrollee of the MCO.

C. The request for a waiver must be made to the Department, in writing, by the MCO with substantial detail justifying the request.

D. Prior to filing a request for a waiver, the MCO shall provide written notice of the request to each enrollee. Prior to filing a request for a waiver, the MCO shall also provide written notice of the request to the Department. The notice shall state that the enrollee has the right to object to the waiver request in writing to the Department.

Upon filing the request for a waiver, the MCO shall submit to the Department a copy of the notice and a sworn affidavit outlining the method by which the requirement was met. The MCO shall maintain proof of the method by which the requirement was met by the MCO for the duration of the waiver and make such proof available upon the request of the Department.

E. A waiver granted by the Department is not transferable to another MCO in the event of a change of ownership.

F. A waiver shall be granted for the term of the license.

PART FOUR

SECTION 69.4 QUALITY ASSURANCE AND OPERATIONS

69.401 Health Care Professional Credentialing

A. General Responsibilities, a MCO shall:

1. Establish written policies and procedures for credentialing verification of all health care professionals with whom the MCO contracts and apply these standards consistently;

2. Verify the credentials of a health care professional before entering into a contract with that health care professional. The medical director of the MCO or other designated health care professional shall have responsibility for, and shall participate in, health care professional credentialing verification;

3. Establish a credentialing verification committee consisting of licensed physicians and other health care professionals to review credentialing verification information and supporting documents and make decisions regarding credentialing verification;

4. Make available for review by the applying health care professional upon written request all application and credentialing verification policies and procedures;

5. Retain all records and documents relating to a health care professionals credentialing verification process for not less than four (4) years; and

6. Keep confidential all information obtained in

the credentialing verification process, except as otherwise provided by law.

B. Nothing in these regulations shall be construed to require a MCO to select a provider as a participating provider solely because the provider meets the MCO's credentialing verification standards, or to prevent the MCO from utilizing separate or additional criteria in selecting the health care professionals with whom it contracts.

C. Selection standards for participating providers shall be developed for primary care professionals and each health care professional discipline. The standards shall be used in determining the selection of health care professionals by the MCO, its intermediaries and any provider networks with which it contracts. The standards shall meet the requirements of 69.401 A. and 69.401 D. Selection criteria shall not be established in a manner:

1. That would allow a MCO to avoid high-risk populations by excluding providers because they are located in geographic areas that contain populations or providers presenting a risk of higher than average claims, losses or health services utilization; or

2. That would exclude providers because they treat or specialize in treating populations presenting a risk of higher than average claims, losses or health services utilization.

D. Qualifications of primary care providers

1. Physicians qualified to function as primary care providers include: licensed physicians who have successfully completed a residency program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association in family practice, internal medicine, general practice, pediatrics, obstetrics, ~~and~~ --] gynecology] or who are diplomats of one of the above certifying boards approved by the American Board of Medical Specialties or one of the certifying boards of the American Osteopathic Association.

E. Verification Responsibilities, a MCO shall:

1. Obtain primary verification of at least the following information about the applicant:

a) Current license, certification, or registration to render health care in Delaware and history of same;

b) Current level of professional liability coverage, if applicable;

c) Status of hospital privileges, if applicable;

d) Specialty board certification status, if applicable; and

e) Current Drug Enforcement Agency (DEA) registration certificate, if applicable.

2. Obtain, subject to either primary or secondary verification:

a) The health care professional's record from the National Practitioner Data Bank; and

b) The health care professional's malpractice

history.

3. Not less than every three (3) years obtain primary verification of a participating health care professional's:

- a) Current license or certification to render health care in Delaware;
- b) Current level of professional liability coverage, if applicable;
- c) Status of hospital privileges, if applicable;
- d) Current DEA registration certificate, if applicable; and
- e) Specialty board certification status, if applicable.

4. Require all participating providers to notify the MCO of changes in the status of any of the items listed in this section at any time and identify for participating providers the individual to whom they should report changes in the status of an item listed in this section.

F. Health Care Professionals Right to Review Credentialing Verification Information

1. A MCO shall provide a health care professional the opportunity to review and correct information submitted in support of that health care professional's credentialing verification application as set forth below.

a) Each health care professional who is subject to the credentialing verification process shall have the right to review all information, including the source of that information, obtained by the MCO to satisfy the requirements of this section during the MCO's credentialing process.

b) A MCO shall notify a health care professional of any information obtained during the MCO's credentialing verification process that does not meet the MCO's credentialing verification standards or that varies substantially from the information provided to the MCO by the health care professional, except that the MCO shall not be required to reveal the source of information if the information is not obtained to meet this requirement, or if disclosure is prohibited by law.

c) A health care professional shall have the right to correct any erroneous information. The MCO shall have a formal process by which a health care professional may submit supplemental or corrected information to the MCO's credentialing verification committee and request a reconsideration of the health professional's credentialing verification application if the health care professional feels that the MCO's credentialing verification committee has received information that is incorrect or misleading. Supplemental information shall be subject to confirmation by the MCO.

69.402 Provider Network Adequacy

A. Primary, Specialty and Ancillary Providers

1. The MCO shall maintain an adequate network of primary care providers, specialists, and other ancillary health care resources to serve the enrolled population at all times. The MCO shall develop and submit annually to the Department policies and procedures for measuring and assessing the adequacy of the network. At a minimum, the network of providers shall include:

a) A sufficient number of licensed primary care providers under contract with the MCO to provide basic health care services. All enrollees must have immediate telephone access seven (7) days a week, 24 hours a day, to their primary care provider or his/her authorized on-call back-up provider;

b) A sufficient number of licensed medical specialists available to MCO enrollees to provide medically-necessary specialty care. The MCO must have a policy assuring reasonable access to frequently used specialists within each service area; and

c) A sufficient number of other health professional staff including but not limited to licensed nurses and other professionals available to MCO enrollees to provide basic health care services. The MCO shall cover nonparticipating providers at no extra cost to the enrollee if a plan has an insufficient number of providers within reasonable geographic distances and appointment times to meet the medical needs of the enrollee.

B. Facility and Ancillary Health Care Services

1. The MCO shall maintain contracts or other arrangements acceptable to the Department with institutional providers which have the capability to meet the medical needs of enrollees and are geographically accessible. The network of providers shall include:

a) At least one licensed acute care hospital including at least licensed medical-surgical, pediatric, obstetrical, and critical care services in any service area no greater than 30 miles or 40 minutes driving time from 90% of enrollees within the service area.

b) Surgical facilities including acute care hospitals for major surgery, and for minor surgical procedures, hospitals, licensed ambulatory surgical facilities, and/or physicians surgical practices available in each service area no greater than 30 miles or 40 minutes driving time from 90% of enrollees within the service area.

c) The MCO shall have a policy assuring access, as evidenced by contract or other agreement acceptable to the Department, to the following specialized services, as determined to be medically necessary. Such services shall be reasonably accessible and shall include:

(1) At least one hospital providing regional perinatal services;

(2) A hospital offering pediatric intensive care services;

(3) A hospital offering neonatal intensive care services;

- (4) Therapeutic radiation provider;
- (5) Magnetic resonance imaging center;
- (6) Diagnostic radiology provider, including X-ray, ultrasound, and CAT scan;
- (7) Emergency mental health service;
- (8) Diagnostic cardiac catheterization services in a hospital;
- (9) Specialty pediatric outpatient centers for conditions including sickle cell, hemophilia, cleft lip and palate, and congenital anomalies;
- (10) Clinical Laboratory certified under CLIA; and
- (11) Certified renal dialysis provider.

d) The MCO shall make acceptable service arrangements with the provider and enrollee if the appropriate level of service is not available at no extra cost to the enrollee. These services will not be limited to the State of Delaware. These services could include but are not limited to tertiary services, burn units and transplant services.

2. If offered by the plan, the MCO shall have a policy assuring access, as evidenced by contract or other agreement acceptable to the Department, to the following specialized services, as determined to be medically necessary. Such services shall be reasonably accessible and may include:

- a) A licensed long term care facility with skilled nursing beds;
- b) Residential substance abuse treatment center;
- c) Inpatient psychiatric services for adults and children;
- d) Short term care facility for involuntary psychiatric admissions;
- e) Outpatient therapy providers for mental health and substance abuse conditions;
- f) Home health agency licensed by the Department;
- g) Hospice program licensed by the Department; and
- h) Pharmacy services.

3. The MCO shall make acceptable service arrangements with the provider and enrollee if the appropriate level of service is not available in the service area at no extra cost to the enrollee.

C. Emergency and Urgent Care Services

1. The MCO shall establish written policies and procedures governing the provision of emergency and urgent care which shall be distributed to each enrollee at the time of initial enrollment and after any revisions are made. These policies shall be easily understood by a lay person.

2. Enrollees shall have access to emergency care (as defined at 69.107) 24 hours per day, seven (7) days per week. The MCO shall cover emergency care necessary to

screen and stabilize an enrollee and shall not require prior authorization of such services if a prudent lay person acting reasonably would have believed that an emergency medical condition (as defined at 69.108) existed.

3. Emergency and urgent care services shall include but are not limited to:

- a) Medical and psychiatric care, which shall be available 24 hours a day, seven (7) days a week;
- b) Trauma services at any designated Level I or II trauma center as medically necessary. Such coverage shall continue at least until the enrollee is medically stable, no longer requires critical care, and can be safely transferred to another facility, in the judgment of the attending physician. If the MCO requests transfer to a hospital participating in the MCO network, the patient must be stabilized and the transfer effected in accordance with federal regulations at 42 CFR 489.20 and 42 CFR 489.24;
- c) Out of area health care for urgent or emergency conditions where the enrollee cannot reasonably access in-network services;
- d) Hospital services for emergency care; and
- e) Upon arrival in a hospital, a medical screening examination, as required under federal law, as necessary to determine whether an emergency medical condition exists.

D. All enrollees shall be provided with an up-to-date and comprehensive list of the provider network upon enrollment and upon request and an update on provider changes at least quarterly.

69.403 Utilization Management

A. Utilization Management Functions

1. The MCO shall establish and implement a comprehensive utilization management program to monitor access to and appropriate utilization of health care and services. The program shall be under the direction of a designated physician and shall be based on a written plan that is reviewed at least annually. The plan shall identify at least:

- a) Scope of utilization management activities;
- b) Procedures to evaluate clinical necessity, access, appropriateness, and efficiency of services;
- c) Mechanisms to detect under utilization;
- d) Clinical review criteria and protocols used in decision-making;
- e) Mechanisms to ensure consistent application of review criteria and uniform decisions;
- f) System for providers and enrollees to appeal utilization management determinations in accordance with the procedures set forth; and
- g) A mechanism to evaluate enrollee and provider satisfaction with the complaint and appeals systems set forth. Such evaluation shall be coordinated with the

performance monitoring activities conducted pursuant to the continuous quality improvement program set forth.

2. Utilization management determinations shall be based on written clinical criteria and protocols reviewed and approved by practicing physicians and other licensed health care providers within the network. These criteria and protocols shall be periodically reviewed and updated, and shall, with the exception of internal or proprietary quantitative thresholds for utilization management, be readily available, upon request, to affected providers and enrollees. All materials including internal or proprietary materials for utilization management shall be available to the Department upon request.

3. Compensation to persons providing utilization review services for a MCO shall not contain incentives, direct or indirect, for these persons to make inappropriate review decisions. Compensation to any such persons may not be based, directly or indirectly, on the quantity or type of adverse determinations rendered.

B. Utilization Management Staff Availability

1. At a minimum, appropriately qualified staff shall be immediately available by telephone, during routine provider work hours, to render utilization management determinations for providers.

2. The MCO shall provide enrollees with a toll free telephone number by which to contact customer service staff on at least a five (5) day, 40 hours a week basis.

3. The MCO shall supply providers with a toll free telephone number by which to contact utilization management staff on at least a five (5) day, 40 hours a week basis.

4. The MCO must have policies and procedures addressing response to inquiries concerning emergency or urgent care when a PCP or his/her authorized on call back up provider is unavailable.

C. Utilization Management Determinations

1. All determinations to authorize services shall be rendered by appropriately qualified staff.

2. All determinations to deny or limit an admission, service, procedure or extension of stay shall be rendered by a physician. The physician shall be under the clinical direction of the medical director responsible for medical services provided to the MCO's Delaware enrollees. Such determinations shall be made in accordance with clinical and medical criteria and standards and shall take into account the individualized needs of the enrollee for whom the service, admission, procedure is requested.

3. All determinations shall be made on a timely basis as required by the exigencies of the situation.

4. A MCO may not retroactively deny reimbursement for a covered service provided to an enrollee by a provider who relied upon the written or verbal authorization of the MCO or its agents prior to providing the service to the enrollee, except in cases where the MCO can

show that there was material misrepresentation, fraud or the patient was found not to have coverage.

5. An enrollee must receive upon request a written notice of all determinations to deny coverage or authorization for services required and the basis for the denial.

69.404 Grievance/Appeal Procedure

A. Enrollees Rights in Grievance/Appeal Procedure

1. All MCO enrollees, or any provider acting on behalf of an enrollee with the enrollee's consent, may appeal any utilization management determination resulting in a denial, termination, or other limitation of covered health care services. All enrollees and providers shall be provided with a written explanation of the appeal process upon enrollment, upon request and each time the methods and procedures are substantially changed and at least annually. The appeal process shall consist of an informal internal review by the MCO (Stage 1 appeal), a formal internal review by the MCO (Stage 2 appeal), and a formal external review (Stage 3 appeal) by an independent utilization review organization.

2. No enrollee who exercises the right to an appeal shall be subject to disenrollment, contract termination or otherwise penalized by the MCO solely on the basis of filing any such appeal.

3. At any stage of the appeal process, at the request of an enrollee, the MCO shall appoint a member of its staff who has no direct involvement in the case to represent the enrollee. An enrollee appealing a determination shall be specifically notified of the enrollee's right to have a staff member appointed to assist the enrollee.

4. The MCO shall maintain written records to document all appeals received (a "grievance register"). For each grievance the register shall contain, at a minimum, the following information:

- a) A general description of the reason for the grievance;
- b) Date received;
- c) Date of each review;
- d) Resolution at each level of appeal;
- e) Date of resolution at each level; and
- f) Name of the enrollee for whom the grievance was filed.

B. Informal Internal Utilization Management Appeal Process (Stage 1)

Each MCO shall establish and maintain an informal internal appeal process (Stage 1) whereby any enrollee or any provider acting on behalf of an enrollee with the enrollee's consent, who is dissatisfied with any MCO utilization management determination, shall have the opportunity to discuss and appeal that determination with the MCO's medical director and/or the physician designee who rendered the determination. All such Stage 1 appeals shall be concluded as soon as possible in accordance with the

medical exigencies of the case. In no event shall appeals involving an imminent, emergent or serious threat to the health of the enrollee exceed 72 hours. All other Stage 1 appeals shall be concluded within five (5) business days. If the appeal is not resolved to the satisfaction of the enrollee at this level, the MCO shall provide the enrollee and/or the provider with a written explanation of his/her right to proceed to a Stage 2 appeal.

C. Formal Internal Utilization Management Appeal Process (Stage 2)

1. Each MCO shall establish and maintain a formal internal appeal process (Stage 2 appeal) whereby any enrollee or any provider acting on behalf of an enrollee with the enrollee's consent, who is dissatisfied with the results of the Stage 1 appeal, shall have the opportunity to pursue his/her appeal before a panel of physicians and/or other health care professionals selected by the MCO who have not been involved in the utilization management determination at issue. An enrollee has the right to:

- a) Attend the Stage 2 appeal;
- b) Present his or her case to the review panel;
- c) Submit supporting material both before and at the review meeting;
- d) Ask questions of any representative of the MCO participating on the panel; and
- e) Be assisted or represented by a person of his or her choice.

2. Upon the request of an enrollee, a MCO shall provide to the enrollee all relevant information that is not confidential or privileged.

3. The enrollee's right to a fair review shall not be made conditional on the enrollee's appearance at the review.

4. The formal internal utilization management appeal panel shall have available consultant practitioners who are trained or who practice in the same specialty as would typically manage the case at issue or such other licensed health care professional as may be mutually agreed upon by the parties. In no event, however, shall the consulting practitioner or professional have been involved in the utilization management determination at issue. The consulting practitioner or professional shall participate in the panel's review of the case if requested by the enrollee and/or provider.

5. All such Stage 2 appeals must be acknowledged by the MCO, in writing, to the enrollee or provider filing the appeal within fourteen (14) calendar days of receipt.

6. All such Stage 2 appeals shall be concluded as soon as possible after receipt by the MCO in accordance with the medical exigencies of the case. In no event shall appeals involving an imminent, emergent or serious threat to the health of the enrollee exceed 72 hours. Except as set forth in paragraph (7) below, all other Stage 2 appeals shall be concluded within thirty (30) calendar days of receipt.

7. The MCO may extend the review for up to an additional thirty (30) calendar days where it can demonstrate reasonable cause for the delay beyond its control and where it provides a written progress report and explanation for the delay to the enrollee and/or provider within the original thirty (30) calendar day review period. In no event, however, may the review period applicable to appeals from determinations regarding urgent or emergent care be so extended.

8. The review panel shall issue a written decision to the enrollee. The decision shall include:

- a) The names and titles of the members of the review panel;
- b) A statement of the review panel's understanding of the nature of the grievance and all pertinent facts;
- c) The rationale for the review panel's decision;
- d) Reference to evidence or documentation considered by the review panel in making that decision;
- e) In cases involving an adverse determination, the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination; and
- f) A written notification of his/her right to proceed to an external (Stage 3) appeal.

9. In the event that the MCO fails to comply with any of the deadlines for completion of the internal utilization management determination appeals set forth or in the event that the MCO for any reason expressly waives its rights to an internal review of any appeal, then the enrollee and/or provider shall be relieved of his/her obligation to complete the MCO internal review process and may, at his/her option, proceed directly to the external appeals process.

D. External Utilization Appeal Process (Stage 3)

1. Each MCO shall establish and maintain a formal external review process (Stage 3) whereby any enrollee or any provider acting on behalf of an enrollee with the enrollee's consent, who is dissatisfied with the results of the Stage 2 appeal, shall have the opportunity to pursue his/her appeal before an independent utilization review organization.

2. The review panel shall schedule and hold a review meeting within forty-five (45) calendar days of receiving a request from an enrollee for a Stage 3 appeal. The review meeting shall be held during regular business hours at a location reasonably accessible to the enrollee. In cases where a face-to-face meeting is not practical for geographic reasons, a MCO shall offer the enrollee the opportunity to communicate with the review panel, at the MCO's expense, by conference call, video conferencing, or other appropriate technology. The enrollee shall be notified, in writing, at least fifteen (15) calendar days in advance of the review date. The MCO shall not unreasonably deny a

request for postponement of the review made by an enrollee.

3. Upon the request of an enrollee, a MCO shall provide to the enrollee all relevant information that is not confidential or privileged.

4. An enrollee has the right to:

- a) Attend the Stage 3 review;
- b) Present his or her case to the review panel;
- c) Submit supporting material both before and at the review meeting;
- d) Ask questions of any representative of the MCO participating on the panel; and
- e) Be assisted or represented by a person of his or her choice.

5. The enrollee's right to a fair review shall not be made conditional on the enrollee's appearance at the review.

6. The review panel shall issue a written decision to the enrollee within five (5) business days of completing the review meeting. The decision shall include:

- a) The names and titles of the members of the review panel;
- b) A statement of the review panel's understanding of the nature of the grievance and all pertinent facts;
- c) The rationale for the review panel's decision;
- d) Reference to evidence or documentation considered by the review panel in making that decision; and
- e) In cases involving an adverse determination, the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination.

E. The MCO shall include in its annual reports to the Department a description of the total number of grievances handled, the number of grievances handled at each level of appeal, a compilation of the causes underlying the appeals, and the resolution of the appeals.

69.405 Quality Assessment and Improvement

A. Continuous Quality Improvement

1. Under the direction of the Medical Director or his/her designated physician, the MCO shall have a system-wide continuous quality improvement program to monitor the quality and appropriateness of care and services provided to enrollees. This program shall be based on a written plan which is reviewed at least semi-annually and revised as necessary. The plan shall describe at least:

- a) The scope and purpose of the program;
- b) The organizational structure of quality improvement activities;
- c) Duties and responsibilities of the medical director and/or designated physician responsible for continuous quality improvement activities;
- d) Contractual arrangements, where appropriate, for delegation of quality improvement

activities;

- e) Confidentiality policies and procedures;
- f) Specification of standards of care, criteria and procedures for the assessment of the quality of services provided and the adequacy and appropriateness of health care resources utilized;
- g) A system of ongoing evaluation activities, including individual case reviews as well as pattern analysis;
- h) A system of focused evaluation activities, particularly for frequently performed and/or highly specialized procedures;
- i) A system of monitoring enrollee satisfaction and network provider's response and feedback on MCO operations;
- j) A system for verification of provider's credentials, recertification, performance reviews and obtaining information about any disciplinary action against the provider available from the Delaware Board of Medical Practice or any other state licensing board applicable to the provider;
- k) The procedures for conducting peer review activities which shall include providers within the same discipline and area of clinical practice; and
- l) A system for evaluation of the effectiveness of the continuous quality improvement program.

2. There shall be a multidisciplinary continuous quality improvement committee responsible for the implementation and operations of the program. The structure of the committee shall include representation from the medical, nursing and administrative staff, with substantial involvement of the medical director of the MCO.

3. The MCO shall assure that participating providers have the opportunity to participate in developing, implementing and evaluating the quality improvement system.

4. The MCO shall provide enrollees the opportunity to comment on the quality improvement process.

5. The program shall monitor the availability, accessibility, continuity and quality of care on an ongoing basis. Indicators of quality care for evaluating the health care services provided by all participating providers shall be identified and established and shall include at least:

- a) A mechanism for monitoring enrollee appointment and triage procedures including wait times to get an appointment and wait times in the office;
- b) A mechanism for monitoring enrollee continuity of care and discharge planning for both inpatient and outpatient services;
- c) A mechanism for monitoring the appropriateness of specific diagnostic and therapeutic procedures as selected by the continuous quality improvement program;
- d) A mechanism for evaluating all providers

of care that is supplemental to each provider's quality improvement system;

e) A mechanism for monitoring network adequacy and accessibility to assure the network services the needs of their diverse enrolled population; and

f) A system to monitor provider and enrollee access to utilization management services including at least waiting times to respond to telephone requests for service authorization, enrollee urgent care inquiries, and other services required.

6. The MCO shall develop a performance and outcome measurement system for monitoring and evaluating the quality of care provided to MCO enrollees. The performance and outcome measures shall include population-based and patient-centered indicators of quality of care, appropriateness, access, utilization, and satisfaction. Data for these performance measures shall include but not be limited to the following:

a) Indicator data collected by MCOs from chart reviews and administrative data bases;

b) Enrollee satisfaction surveys;

c) Provider surveys;

d) Annual reports submitted by MCOs to the Department; and

e) Computerized health care encounter data.

7. The MCO shall follow-up on findings from the program to assure that effective corrective actions have been taken, including at least policy revisions, procedural changes and implementation of educational activities for enrollees and providers.

8. Continuous quality improvement activities shall be coordinated with other performance monitoring activities including utilization management and monitoring of enrollee and provider complaints.

9. The MCO shall maintain documentation of the quality improvement program in a confidential manner. This documentation shall be available to the Department and shall include:

a) Minutes of quality improvement committee meetings; and

b) Records of evaluation activities, performance measures, quality indicators and corrective plans and their results or outcomes.

B. External Quality Audit

1. Each MCO shall submit, as a part of its annual report due June 1, evidence of its most recent external quality audit that has been conducted. External quality audits must be completed no less frequently than once every three (3) years. Such audit shall be performed by an independent quality review organization approved by the Department.

2. The report must describe in detail the MCOs conformance to performance standards and the rules within these regulations. The report shall also describe in detail any

corrective actions proposed and/or undertaken by the MCO.

C. Reporting and Disclosure Requirements

1. The Board of Directors of the MCO shall be kept apprised of continuous quality improvement activities and be provided at least annually with regular written reports from the program delineating quality improvements, performance measures used and their results, and demonstrated improvements in clinical and service quality.

2. A MCO shall document and communicate information about its quality assessment program and its quality improvement program, and shall:

a) Include a summary of its quality assessment and quality improvement programs in marketing materials;

b) Include a description of its quality assessment and quality improvement programs and a statement of enrollee rights and responsibilities with respect to those programs in the materials or handbook provided to enrollees; and

c) Make available annually to providers and enrollees findings from its quality assessment and quality improvement programs and information about its progress in meeting internal goals and external standards, where available. The reports shall include a description of the methods used to assess each specific area and an explanation of how any assumptions affect the findings.

3. MCOs shall submit such performance and outcome data as the Department may request.

PART FIVE

SECTION 69.5 ENROLLEE RIGHTS AND RESPONSIBILITIES

69.501 The MCO shall establish and implement written policies and procedures regarding the rights of enrollees and the implementation of these rights.

69.502 In the case of nonpayment by the MCO to a provider for a covered service in accordance with the enrollee's health care contract, the provider may not bill the enrollee. This does not prohibit the provider from collecting coinsurance, deductibles or co-payments as determined by the MCO. This does not prohibit the provider and enrollee from agreeing to continue services solely at the expense of the enrollee, as long as the provider clearly informs the enrollee that the MCO will not cover these services.

69.503 The MCO shall permit enrollees to choose their own primary care physician from a list of health care professionals within the plan. This list shall be updated as health care professionals are added or removed and shall include:

A. a sufficient number of primary care physicians who

are accepting new enrollees; and

B. a sufficient number of primary care physicians that reflects a diversity that is adequate to meet the diversity needs of the enrolled populations varied characteristics including age, gender, language, race and health status.

69.504 The MCO shall provide each enrollee with an enrollee's benefit handbook which includes a complete statement of the enrollee's rights, a description of all complaint and grievance procedures, a clear and complete summary of the evidence of coverage, and notification of their personal financial obligations for non-covered services. The statement of the enrollee's rights shall include at least the right:

A. To available and accessible services when medically necessary, including availability of care 24 hours a day, seven (7) days a week for urgent or emergency conditions;

B. To be treated with courtesy and consideration, and with respect for the enrollee's dignity and need for privacy;

C. To be provided with information concerning the MCO's policies and procedures regarding products, services, providers, grievance/appeal procedures and other information about the organization and the care provided;

D. To choose a primary care provider within the limits of the covered benefits and plan network, including the right to refuse care of specific practitioners;

E. To receive from the enrollee's physician(s) or provider, in terms that the enrollee understands, an explanation of his/her complete medical condition, recommended treatment, risk(s) of the treatment, expected results and reasonable medical alternatives. If the enrollee is not capable of understanding the information, the explanation shall be provided to his/her next of kin or guardian and documented in the enrollee's medical record;

F. To formulate advance directives;

G. To all the rights afforded by law or regulation as a patient in a licensed health care facility, including the right to refuse medication and treatment after possible consequences of this decision have been explained in language the enrollee understands;

H. To prompt notification, as required in these rules, of termination or changes in benefits, services or provider network;

I. To file a complaint or appeal with the MCO and to receive an answer to those complaints within a reasonable period of time; and

J. To file a complaint with the Department or the Commissioner.

69.505 The MCO shall establish and implement written policies and procedures regarding the responsibilities of enrollees. A complete statement of these responsibilities shall be included in the enrollee's benefit handbook.

69.506 The MCO shall disclose to each new enrollee, and any enrollee upon request, in a format and language understandable to a lay person, the following minimum information:

A. Benefits covered and limitations;

B. Out of pocket costs to the enrollee;

C. Lists of participating providers;

D. Policies on the use of primary care physicians, referrals, use of out of network providers, and out of area services;

E. Written explanation of the appeals process;

F. A description of and findings from the quality assurance and improvement programs;

G. The patterns of utilization of services; and

H. For staff model MCOs, the location and hours of its inpatient and outpatient health services.

69.507 The MCO shall provide culturally competent services to the greatest extent possible.

PART SIX

SECTION 69.6 REQUIREMENTS FOR STAFF MODEL MCOs

In addition to all other requirements of these regulations, staff model MCOs shall meet the requirements of this section.

69.601 Environmental Health and Safety

A. Office premises and other structures operated by the MCO must have appropriate safeguards for patients.

B. All buildings shall conform to all State and medical codes and all regulations applicable to services being offered. These codes shall include but are not limited to:

1. State Plumbing Code.

2. Waste Disposal Regulations.

3. Public Water Supply Regulations.

4. Food Service Requirements.

5. Radiation Control Regulations.

6. Hazardous Waste Regulations.

7. Air and Water Pollution Regulations.

8. Hand washing facilities shall be installed in accordance with applicable State and local regulations and conveniently located.

9. Toilet facilities shall meet appropriate State and local regulations.

10. State Fire Code requirements.

C. The buildings must be architecturally accessible to handicapped individuals and comply with the Americans with Disabilities Act.

D. Measures must be taken to insure that facilities are guarded against insects and rodents.

E. Housekeeping

1. A housekeeping procedures manual shall be

written and followed. Special emphasis shall be given to procedures applying to infectious diseases or suspect areas.

2. All premises shall be kept neat, clean, free of litter and rubbish.

3. Walls and ceilings shall be maintained free of cracks and falling plaster and shall be cleaned and painted regularly.

4. Floors shall be cleaned regularly and in such a manner that it will minimize the spread of pathogenic organisms in the atmosphere; dry dusting and sweeping shall be prohibited.

5. Suitable equipment and supplies shall be provided for cleaning all surfaces.

6. Solutions, cleaning compounds and hazardous substances shall be properly labeled and stored in safe places.

69.602 Emergency Utilities or Facilities

A. The MCO shall be equipped to handle emergencies due to equipment failures. Emergency electrical service for lighting and power for equipment essential to life safety shall be provided in accordance with hospital regulations where appropriate. (Minimum Requirements for Construction of Hospital and Health Care Facilities, Section 7.32H.)

B. In facilities which provide hospital services, the emergency electrical system shall be so controlled that the auxiliary power is brought to full voltage and frequency and be connected within ten (10) seconds.

C. Emergency utilities for MCOs and contract providers must be supplied according to procedures performed on the premises.

69.603 Construction

A. New construction or substantial modifications on an existing facility shall conform to applicable State, county and local codes, including the National Fire Protection Association Publication No. 101 - Life Safety Code, latest edition adopted by the State Fire Prevention Board.

B. Radiation requirements of the Authority on Radiation Protection shall be met.

C. Facility plans or modifications shall be submitted to the Department for review and approval prior to any work being begun.

69.604 Personnel

A. The office shall be staffed by appropriately trained personnel. Appropriate manuals shall be developed to serve as guidelines and set standards for patient care provided by nonprofessional personnel.

B. Offices with five (5) or more physicians shall have at least one (1) full time registered nurse (RN).

C. Nonprofessional personnel shall have appropriate in-service education on clinical operations and procedures. The in-service training program must be conducted at least

annually.

D. Primary physician. There shall be at least one (1) full time or full time equivalent physician available on contract. There shall be at least one (1) F.T.E. primary physician for every 1,000 enrollees.

E. Medical Specialties. There shall be either full time or part-time physicians, other appropriate professional specialists, or written agreements adequate to ensure access to all needed services for enrollees. ~~[for consultation in internal medicine, pediatrics, general surgery, oral surgery, ENT, obstetrics and gynecology, orthopedic surgery, ophthalmology, pharmacy, radiology, physical therapy, psychiatry, nutrition and other reasonable services.]~~

69.605 Equipment

Each office operated by the MCO must have the necessary equipment and instruments to provide the required services. Equipment and instruments for services, when covered by written contract with medical specialists or other providers outside of the office, need not be present in the MCO's office. Where emergency services are provided in the office, equipment such as a defibrillator, laryngoscope and other similar equipment must be present.

69.606 Specialized Services

A. The MCO shall provide special services necessary for diagnosis and treatment such as ultra sound. Where it is not feasible to provide these services in the office, there shall be a written agreement for these services in a nearby location except for isolated rural areas where arrangements for these services shall be subject to review and approval by the Department.

1. The MCO's radiology services shall be supervised and conducted by a qualified radiologist, either full time or part-time; or, when radiology services are supervised and conducted by a physician who is not a qualified radiologist, the MCO shall provide for regular consultation by a qualified radiologist, who is under contract with the MCO and is responsible for reviewing all X-rays and procedures. The number of qualified radiological technologists employed shall be sufficient to meet the MCO's requirements. If the MCO operates a radiology service and provides emergency services, at least one (1) qualified technologist shall be on duty or on call at all times.

2. Pharmaceutical services, when provided by the MCO, must be under the direct supervision of a registered pharmacist who is responsible to the administrative staff for developing, coordinating and supervising all pharmaceutical services; or, in the case of dispensing of pharmaceuticals by a physician, such dispensing shall not violate the requirements of State law. MCOs with a licensed pharmacy shall have a Pharmacy and Therapeutics Committee. Pharmaceutical services may be provided on the premises of

the MCO or by contract with an independent licensed provider. The contract shall be available for inspection by the Department at all times.

3. When the MCO provides its own emergency services, facilities must be provided to ensure prompt diagnosis and emergency treatment including adequate Emergency Room space, separate from major surgical suites. In Emergency Room facilities provided for or arranged for by the MCO there shall be as a minimum: adequate oxygen, suction, CPR, diagnostic equipment, as well as standard emergency drugs, parenteral fluids, blood or plasma substitutes and surgical supplies. Radiology facilities, clinical laboratory facilities and current toxicology including antidotes shall be available at all times.

4. Personnel shall be trained and approved by an appropriate professional organization in the operation and procedures of emergency equipment.

69.607 Central Sterilizing and Supply

Autoclaves or other acceptable sterilization equipment shall be provided of a type capable of meeting the needs of the MCO and of a recognized type with approved controls and safety features. Bacteriological culture tests shall be conducted at least monthly. The maintenance program of the sterilization system shall be under the supervision of competent trained personnel.

PART SEVEN

SECTION 69.7 ADMINISTRATIVE REQUIREMENTS

69.701 Administration

The MCO shall designate an appropriate person or persons to handle the administrative functions of the MCO. These functions shall include the following responsibilities: interpretation, implementation and application of policies and programs established by the MCO's governing authority; establishment of safe, effective and efficient administrative management; control and operation of the services provided; authority to monitor or supervise the operation and in accordance with acceptable medical standards; and such other duties, responsibilities and tasks as the governing body or other designated authority may empower such individual(s).

69.702 Qualifications

Persons appointed to administrative positions in the MCO shall have the necessary current training and experience in the field of health care as appropriate to carry out the functions of their job descriptions.

69.703 Medical Privileges

Participating physicians shall have hospital privileges commensurate with their contractual obligations. Physicians

must be licensed in Delaware.

69.704 Medical Records

The MCO must maintain or provide for the maintenance of a medical records system which meets the accepted standards of the health care industry and the regulations of the Department.

A. These records shall include the following information: name, identification number, age, sex, residence, employment, patient history, physical examination, laboratory data, diagnosis, treatment prescribed and drugs administered.

B. The medical record should also contain an abstract summary of any inpatient hospital care or referred treatment.

C. Regulatory agencies shall have access to medical records for purposes of monitoring and review of MCO practices.

D. Enrollees' records shall be filed for five (5) years following active status before being destroyed.

69.705 Reporting Requirements and Statistics

The MCO shall submit reports as required by these regulations.

A. The MCO shall disclose to its enrollees the following information:

1. the patterns of utilization of its services based on the information in 69.405 A 6.; and
2. the location and hours of its inpatient and outpatient health services.

B. The following information is required to be submitted to the Department on an annual basis:

1. Physician visits per enrollee per year.
2. Hospital admissions per year and per 1,000 enrollees per year.
3. Hospital days per year and per 1,000 enrollees per year.
4. Average length of stay per hospital confinement.
5. Outside consultations per year and per 1,000 enrollees per year.
6. Emergency Room visits per year and per 1,000 enrollees per year.
7. Laboratory procedures per year and per 1,000 enrollees per year.
8. X-ray procedures per year and per 1,000 enrollees per year.
9. Total number of enrollees at the end of the year.
10. Total number of enrollees enrolled during the year.
11. Total number of enrollees terminated during the year.
12. Cost of operation.
13. Current provider directory including PCPs,

specialists, facilities and ancillary health care services.

14. A statistical summary evaluating the network adequacy and accessibility to the enrolled population.

15. Annual grievance/appeal report including total number of appeals, number of appeals at each grievance level, reason for appeals and resolution of appeals.

C. The following administrative reports are required by the Department whenever there is a change:

1. Full name of the Chief Executive Officer.
2. Full name of the Medical Director.
3. Address(es) of the office(s) in operation.
4. Name(s) of the hospital(s) used by the MCO

Appendix A

A. IDENTIFYING INFORMATION

1. Name of applicant: _____
Address _____

Telephone: _____

2. Chief Executive Officer: _____

3. Type of MCO: (Check one)

Staff Group Practice

Individual Practice Association

Other _____

4. Anticipated date of operation: _____

5. Area of operation, i.e., county or statewide: _____

B. Statement of Certification and Acknowledgment:

I certify that the statements made in this application are accurate, complete, and current to the best of my knowledge and belief. I understand that this application does not relieve me of any responsibility under Part VIII, Title 16, Chapter 93 of the Delaware Code (Certificate of Need).

Signature of Chief Executive Officer Title Date

C. Fee Schedule Checks should be made payable to: State of Delaware

Application Fee: \$375.00

Filing of Annual Report:\$250.00

D. Please return this application to:

Health Facilities Licensing & Certification

3 Mill Road, Suite 308

Wilmington, DE 19806

**DEPARTMENT OF HEALTH &
SOCIAL SERVICES**

DIVISION OF SOCIAL SERVICES

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

IN THE MATTER OF: |
REVISION OF THE REGULATIONS |
OF THE A BETTER CHANCE |

NATURE OF THE PROCEEDINGS:

The Delaware Health and Social Services / Division of Social Services / *A Better Chance* Program is proposing to implement a policy change to the Division of Social Services' Manual Sections 3008. This change arises from the philosophical belief that increasing the welfare grant should not be a reward for unmarried teens having babies. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 increases Federal funds to states that reduce their illegitimacy rates.

On July 1, 1998, the DHSS published in the Delaware Register of Regulations pages 65-66, its notice of proposed regulation changes, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by August 15, 1998, at which time the Department would review information, factual evidence and public comment to the said proposed changes to the regulations. It was determined that there were oral comments received. All oral comments have been considered by DHSS, but no changes have been made to the original proposal.

FINDINGS OF FACT:

The Department finds that the proposed change, as set forth in the attached copy should be made in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed regulation of the *A Better Chance* are adopted and shall become effective ten days after publication of the final regulation in the Delaware Register.

October 27, 1998

GREGG C. SYLVESTER, MD

SECRETARY

3008 Eligibility of Certain Minors**A. Babies Born to Teen Parents**

This policy applies to both applicants and recipients not covered by family cap rules.

Babies born after December 31, 1998 to a teenage parent are not eligible for cash assistance (ABC and GA) unless the parent is:

- married; or
- at least eighteen (18) years of age.

~~[Teen parents are not eligible unless they are:~~

- ~~• an eligible child under ABC rules;~~
- ~~• married; or~~
- ~~• at least eighteen (18) years of age.]~~

An emancipated minor is considered an adult and therefore, the baby would be eligible for cash assistance. If both parents live in the home, both parents must be at least eighteen (18) years of age or married for the baby to be eligible.

Babies not receiving cash assistance are eligible for all other DSS services and programs including food stamps, grant-related Medicaid, and Welfare Reform child care. In lieu of cash assistance, the Division may provide non-cash assistance services.

Determining financial eligibility and grant amounts for an assistance unit which contains a child(ren) affected by this provision:

The child(ren) is/are included when determining the assistance unit's need for assistance. The child(ren)'s income and resources are included when determining the assistance unit's income and resources. The child(ren) is/are not included when determining the payment standard for the assistance unit.

Exception:

This restriction will not apply when:

- the child is conceived as a result of incest or sexual assault; or
- the child does not reside with his/her parents.

Three Generation Households:

In a three (3) generation household, the grandparent could receive benefits for him/herself and for the teen parent but not for the child of the teen parent. This means that there is not grandparent deeming in these cases.

B. Family Cap

Required Individuals

No additional ABC cash benefits will be issued due to the birth of a child, if the birth occurs more than ten (10)

calendar months after:

- the date of application for ABC; or
- for active cases, the date of the first redetermination after October 1, 1995.

While no additional ABC cash benefits will be issued for the child(ren), the child(ren) will be considered an ABC recipient for all other purposes, including Medicaid coverage, Welfare Reform child care, other supportive services and food stamp benefits.

NOTE: Children born prior to the periods identified above who return or enter the household are not included in this restriction.

Exceptions

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

- to an additional child conceived 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 in a month the assistance unit (i.e., the entire family) was not receiving ABC. This does not apply in cases that close due to being sanctioned.

Determining financial eligibility and grant amounts for an assistance unit which contains child(ren) affected by the family cap provision.

- The child(ren) is/are included when determining the assistance unit's need for assistance. The child(ren)'s income and resources is/are included when determining the assistance unit's income and resources. The child(ren) is/are not included when determining the payment standard for the assistance unit.

DIVISION OF SOCIAL SERVICES

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

IN THE MATTER OF: |
REVISION OF THE REGULATIONS |
OF THE FOOD STAMP PROGRAM |

NATURE OF THE PROCEEDINGS:

The Delaware Health & Social Services ("Department") initiated proceedings to update the manual with regard to alien eligibility for food stamps. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

On September 1, 1998, the DHSS published in the

Delaware Register of Regulations (pages 359-360) its notice of proposed regulation changes, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by September 30, 1998, at which time the Department would review information, factual evidence and public comment to the said proposed changes to the regulations. It was determined that no written materials or suggestions had been received from any individual or the public.

FINDINGS OF FACT:

The Department finds that the proposed change, as set forth in the September 1998 Delaware Registry of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulation are adopted and shall become effective ten days after publication of the final regulation in the Delaware Register.

October 8, 1998
 GREGG C. SYLVESTER, MD
 SECRETARY

9007 Citizenship and Alien Status
 [273.4]

9007.1 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:

1. Persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands. Children born outside the United States are citizens if both parents are citizens;
2. Naturalized citizens;
3. ~~Aliens who are lawfully residing in any state and are:~~

The following aliens are eligible indefinitely:

- lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work (Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter.);
- military connection (veteran, active duty, spouse, and children) as defined below;

Aliens who are lawfully residing in any state and are:

- a) Veterans honorably discharged for reasons other than alienage, and who fulfill the minimum active-duty service requirements of 24 months or the period for which the person was called to active duty, including

military personnel who die during active duty service.

b) Individuals on active duty, other than active duty for training,

c) Spouses and/or any unmarried dependent children of #a or #b, and or the unmarried surviving spouse of an individual who is deceased if the marriage lasted for at least one year, or was married before the end of a 15-year time span following the end of the period of military service in which the injury or disease was incurred, or married for any period of time if a child was born of the marriage or was born before the marriage;

- lawfully in US on 8/22/96 and under 18 years of age;
- lawfully in US on 8/22/96 and disabled or blind;
- lawfully in US and 65 or older on 8/22/96.

~~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 unless they have or can be credited with 40 quarters of coverage.~~

~~5. 4. The following aliens are eligible to participate in the Food Stamp program with a five-year seven-year (7) time limit:~~

- refugees admitted under section 207 of the Act;
- asylees admitted and granted asylum under section 208 of the Act;
- aliens whose deportation has been withheld under section 241(b)(3) and 243 (h) of the Act.
- Cuban and Haitians admitted under section 501(e) of the Refugee Education Act of 1980; and
- Amerasians admitted under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998.

~~The five-year seven -year (7) time limit begins from the date they obtained their alien status.~~

~~6. 5. A battered spouse or battered child, or parent or child of a battered person with a petition pending under 203(a)(1)(A) or (B) or 244(a)(3) of INA. Eligible if a veteran or on active duty in U.S. armed forces or spouse or unmarried dependent child of veteran or person on active duty. ~~The nonabusive parent of a battered child and a child of a battered parent may be eligible.~~~~

~~6. The following aliens may be eligible even if they are not qualified aliens and may be eligible for an indefinite period of time:~~

- Certain Hmong or Highland Laotians, and spouse

and children. Many are admitted as refugees.

- American Indians born in Canada to which section 289 of INA applies, and members of Indian tribe as defined in section 4(e) of Indian Self-Determination and Education Assistance Act. (Cross-border Indians)

DIVISION OF SOCIAL SERVICES

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

REVISION OF THE REGULATIONS
OF THE MEDICAID/MEDICAL
ASSISTANCE PROGRAM

DSSM 14900, 14920.1, 16210, 16230.1.4,
16230.2, 16230.3, 18000-18800.4

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update Medicaid eligibility related to new policy for Delaware Healthy Children Program, revised policy on who is required to enroll in managed care, changed policy on earned income deductions for the adult expansion population, and clarified policy on child support unearned income deduction. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the October 1998 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 1, 1998, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 1998 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective December 10, 1998.

November 11, 1998

Gregg C. Sylvester, M.D.
Secretary

* Please note that no changes were made to the regulation as originally proposed and published in the October 1998 issue of the Register at page 485 (2:4 Del. R. 485). Therefore, the final regulation is not being republished. Please refer to the October 1998 issue of the Register or contact the Department of Health & Social Services.

DIVISION OF SOCIAL SERVICES

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

REVISION OF THE REGULATIONS
OF THE MEDICAID/MEDICAL
ASSISTANCE PROGRAM

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update Medicaid provider policies related to ambulatory surgical centers, practitioner, inpatient hospital, outpatient hospital services, and general policy. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the October 1998 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written comments were received relating to this proposed rule. However, discussions with managed care organizations (MCOs) and various provider groups resulted in a revision of the policy as follows:

Prescribed Pediatric Extended Care (PPEC) will continue to be covered directly by Medicaid rather than being included in the MCO basic benefit through 1999.

Preschool Developmental Diagnostic Nursery (PDDN) services will be covered directly by Medicaid.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 1998 Register of Regulations should be adopted as amended (see revision following Order).

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program as revised are adopted and shall be final effective December 10, 1998.

November 11, 1998
Gregg C. Sylvester, M.D.
Secretary

REVISED PROVIDER POLICY (all Medicaid eligibility and provider policy published in the October 1998 Delaware Register of Regulations are adopted as published except for the following sections found on pages 498 and 499 of the October 1998 Register of Regulations:

Ambulatory Surgical Center**Abortions**

The DMAP reimburses ASCs/FSSCs for abortion procedures for eligible Medicaid clients if ~~the procedure is covered by Medicare. Medicare covers the procedure.~~

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."

Effective November 13, 1997 Federal law enacted new Hyde Amendment requirements for federally-funded abortions. One of those requirements is that, in order for Medicaid to reimburse for an abortion, a physician must certify that a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed.

~~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 physician must attach the complete medical record to the HCFA 1500.~~

It is the responsibility of the ASC/FSSC to secure both a copies of the Abortion Justification Form ~~certification letter~~ and ~~the~~ complete medical record from the attending practitioner for their billing purposes. See Appendix C for a

copy of the Abortion Justification Form.

Practitioner Manual**Insurance Co-Payments**

DMAP 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. as well as other HMOs.~~ 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. There is frequently a co-pay amount incurred for all sick office visits, emergency room visits, specialist visits, etc.

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.)

Any person who is a member of an accessible managed care organization must use the services of the accessible managed care organization. Refer to the Accessible Managed Care Insurance Carriers section of the General Policy.

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."

Effective November 13, 1997 Federal law enacted new Hyde Amendment requirements for federally-funded abortions. One of those requirements is that, in order for Medicaid to reimburse for an abortion, a physician must certify that a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed.

~~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. complete an Abortion Justification Form (see Appendix J) that will detail the new Hyde Amendment requirement. In addition to the Abortion Justification Form, the physician must attach the complete medical record to the HCFA 1500.~~

It is the responsibility of the attending physician to supply ~~both~~ a copy of the ~~certification letter~~ Abortion Justification Form and the complete medical record to the hospital and the anesthesiologist for their billing purposes.

Inpatient Hospital Manual

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.

Effective November 13, 1997 Federal law enacted new Hyde Amendment requirements for federally-funded abortions. One of those requirements is that, in order for Medicaid to reimburse for an abortion, a physician must certify that a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed.

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. The hospital must obtain an Abortion Justification Form from the attending physician that will detail the above Hyde Admendment requirement. (see Appendix F for a copy of the Abortion Justification Form. In addition to the Abortion Justification Form 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~~ Abortion Justification Form and the complete medical record (including hospital record) from the attending practitioner for their billing purposes.

Outpatient Hospital Manual

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."

Effective November 13, 1997 Federal law enacted new Hyde Amendment requirements for federally-funded abortions. One of those requirements is that, in order for Medicaid to reimburse for an abortion, a physician must certify that a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed.

The outpatient hospital facility must obtain ~~a letter~~ an Abortion Justification Form from the attending physician that will detail the Hyde Amendment requirement (see Appendix J for a copy of the Abortion Justification Form) ~~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 ~~to the Abortion Justification Form~~ 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.

General Policy Manual

Prescribed Pediatric Extended Care

In circumstances where a child is exempt from managed care coverage the following policy will be applied.

The DMAP will cover Prescribed Pediatric Extended Care (PPEC) for medically and/or technology-dependent children who can be maintained in the community as an alternative to inpatient hospital or nursing home care when supported by PPEC. PPEC provides up to twelve hours of care daily (Monday through Friday) at the PPEC facility upon prescription from a child's primary physician, thus allowing a child to obtain necessary medical services and monitoring without institutionalization. PPEC services are authorized based on the level of nursing care and rehabilitative therapy needed. The prescribing practitioner may request prior authorization by sending a letter with the following information to Medicaid's Physician Consultant:

- Name of patient.
- Patient's Delaware Medical Assistance ID number.
- Date of birth.
- Detailed medical history that documents the need for PPEC services.
- Documentation that the child would require inpatient hospital or nursing home care in the absence of PPEC services.
- Estimated amount and duration of required services (the number of days per week and the number of weeks/months that the patient is expected to need these services).
- If home health services or private duty nurse services are ordered concurrently with PPEC, medical justification for the combination of

services is required.

- Name and address of the PPEC organization which will provide the care.

Qualified Medicare Beneficiaries (QMB)

~~Effective September 1, 1996, Medicaid will reimburse the full co-insurance and deductible for QMBs after Medicare's payment except for services provided in an institution for mental diseases (IMDs)/psychiatric facility for individuals aged 21 through 64 years.~~

For all other groups, inpatient psychiatric hospital/facility services for individuals age 21-65 are not covered.

A. DIAMOND STATE HEALTH PLAN

Who Must Enroll In The DSHP

Categorically Eligible

All categorically eligible beneficiaries MUST enroll in the DSHP except the following exempt groups:

- Medicaid recipients in long term care institutions, such as nursing homes, ICF/MRs and ICF/IMDs (limited to Medicaid eligible persons who are 65 years of age or older).
- Those who are eligible for home and community based services through the Medicaid Waivers for the Elderly and Disabled, AIDS/HIV, and Mental Retardation.
- Medicaid recipients who also have Medicare or CHAMPUS.
- Transient farm workers who reside in the State for less than three months a year.
- Illegally and legally residing non-qualified aliens.
- ~~Medicaid eligibles who have other accessible managed care insurance. An individual who is enrolled in a Delaware managed care organization but NOT through the DSHP is in an accessible managed care plan provided the MCO is licensed to do business in the insured's county of residence.~~

Covered services (refer to Medicaid Eligibility Groups and Covered Services, Categorically Eligible section of this General Policy) provided to these exempt individuals will be reimbursed on a "fee for service" basis.

Expanded Population

All expanded population beneficiaries MUST enroll in the DSHP. This population is not eligible for any services until the effective date of their MCO enrollment. This population is eligible for all services included in the MCO benefit package PLUS pharmacy, non-emergency transportation, private duty nursing services that exceed twenty-eight (28) hours per week that are authorized by Medicaid staff for persons under age twenty-one (21), dental

clinic services for recipients under age twenty-one (21), behavioral health services, and EPSDT/CSCRП services provided by enrolled school districts.

The following individuals/families may be eligible for Medicaid in Delaware as part of the expanded population if they meet certain requirements:

- Any uninsured adult age 19 or over who has family income at or below 100% of the federal poverty level.
- Any adult age 19 years and over who is receiving a General Assistance check.

~~{Coverage Under The MCO Benefits Package~~

~~Eligible MCO beneficiaries will receive two (2) insurance cards. One card will be issued by the MCO and valid for the services included in the MCO benefit package chosen by the beneficiary.~~

~~The services listed below are included when medically necessary in the MCO Benefit Package for both the categorically eligible and expanded population and should not be billed to the Medicaid program:~~

- **Physician;**
- **Inpatient and outpatient hospital — includes all pharmaceuticals and blood products;**
- **Independent laboratory;**
- **Home health;**
- **Emergency transportation;**
- **Medically necessary durable medical equipment/supplies;**
- **Podiatry;**
- **Optometry/optician;**
- **Rehabilitation agency;**
- **Ambulatory surgical center;**
- **Dialysis center;**
- **Family planning — These services can be directly accessed by Medicaid individuals without prior authorization through any Medicaid provider (who will bill the MCO and be paid on a fee-for-service basis);**
- **Nurse/midwife;**
- **Certified registered nurse practitioner;**
- **General medical clinic services — except environmental investigation for source for lead and Preschool Developmental Diagnostic Nursery;**
- **EPSDT screening clinic except Part H C Multidisciplinary Assessment;**
- **Methadone clinic;**
- **Hospice;**
- **Extended pregnancy;**
- **EPSDT group and individual services;**
- **EPSDT nutrition services, occupational, speech and physical therapies.**
- **Mental health and substance abuse services; for**

children, up to 30 outpatient units; for adults, up to 20 outpatient days and 30 inpatient days (an unused inpatient day can be exchanged for three (3) outpatient days or two (2) residential treatment days):

- Federally Qualified Health Center.
- Skilled nursing services in a nursing facility up to 30 day annual limit.
- Private duty nursing services
- Preschool Developmental Diagnostic Nursery (PDDN);
- Prescribed Pediatric Extended Care (PPEC) services for clients under the age of 21.

~~Some MCOs may include additional benefits, such as eye exams and eyeglasses for adults, which are not mandated by the DMAP to be part of the basic benefit.~~

~~Additional Services Are Covered Under The Medical Assistance Program~~

~~The second insurance card will be a Medical Assistance card that will be used for services not covered by the MCO benefits package but reimbursed by the Medical Assistance Program. These services are often referred to as "wrap around services". The categorically eligible and the expanded population receive a different package of "wrap around services".~~

Wrap Around Services that are Covered for the Categorically Eligible Medicaid Recipient

~~The services listed below are not included in the MCO Benefit Package but are covered for the categorically eligible Medicaid recipient using their Medical Assistance Card:~~

- ~~Pharmacy (only if dispensed by a pharmacy provider to a client or the client's representative for use in other than a hospital setting).~~
- ~~Extended behavioral health services authorized by the Division of Alcoholism, Drug Abuse, and Mental Health (DADAMH) for adults deemed severely and persistently ill (SPI).~~
- ~~Non-emergency transportation.~~
- ~~Day health and rehabilitation.~~
- ~~Private duty nurse services that exceed 28 hours per week that are authorized by Medicaid staff.~~
- ~~Environmental investigation for source of lead provided by DPH for recipients under age 21.~~
- ~~Preschool Developmental Diagnostic Nursery.~~
- ~~Part II C Multidisciplinary Assessment.~~
- ~~Dental clinic services for recipients under age 21.~~
- ~~Prescribed Pediatric Extended Care (PPEC) services for recipients under the age of 21 that are authorized by Medicaid staff.~~
- ~~EPSDT/CSCRIP services provided by enrolled~~

~~school districts:~~

- ~~Chronic renal disease program transportation services authorized by Medicaid staff.~~
- ~~Part II C developmental therapy and social work.~~
- ~~Behavioral health services for children authorized by the Department of Services for Children, Youth, and Their Families.]~~

Wrap Around Services that are Covered for the Expanded Population

The services listed below are not included in the MCO Benefit Package but are covered for the expanded population Medicaid recipient using their Medical Assistance Card:

- Pharmacy (only if dispensed by a pharmacy provider to the client or client's representative for use in other than a hospital setting).
- Extended behavioral health services authorized by the Division of Alcoholism, Drug Abuse, and Mental Health (DADAMH) for clients deemed seriously and persistently ill.
- Non-emergency transportation.
- Chronic renal disease program transportation services authorized by Medicaid staff.
- Private duty nurse services that exceed 28 hours per week that are authorized by Medicaid staff for persons under age 21 (effective 11/1/96).
- Dental clinic services for recipients under age 21 (effective 11/1/96).
- EPSDT/CSCRIP services provided by enrolled school districts.

Accessible Managed Care Insurance Carriers

The health service provider should notify the Medicaid TPL Unit at (302)577-4900 in the following two instances:

- If a client presents a DSHP card and also has MCO/HMO coverage through one of the insurance carriers on the table below with an accessibility as "Y" in the county which he reside (if the insurance carrier on the table below indicates a "N" in the county which the client resides, the insurance is not accessible), and
- If a client presents a DSHP card and MCO/HMO coverage but the insurance carrier is not listed on the table.

Effective 8/1/96 clients will be required to comply with the rules and procedures of their private accessible managed care insurance. The DMAP will no longer pay for medical services that have been denied by private accessible managed care insurance carriers for reasons related to the insured's failure to comply with the policy's procedures. Examples are claims denied by the private managed care

insurance because:

- There was no referral from the primary care physician.
- The medical provider was out of the network.
- There was no precertification or authorization.
- Emergency room service without referral for a non-emergency service.

Services that are not included in the accessible managed care insurer's plan but are covered by the DMAP will continue to be paid by the DMAP. be paid by the DSHP MCO that the client has selected

DEPARTMENT OF INSURANCE

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

In the Matter of:
The Amendment of Insurance
Department Regulation No. 37

PROPOSED ORDER AND RECOMMENDATION

On July 1, 1998, proposed revisions to Regulation 37 were published in the Register of Regulations in accordance with 29 Del C. chapters 11 and 101 and notices of the public hearing to consider such revisions were published in two local newspapers, see Exhibit " " attached hereto. Also in accordance with 29 Del C. chapters 11 and 101, a hearing was held on July 27, 1998 before the below-signed hearing officer. The record was held open until August 20, 1998, allowing for the submission of additional exhibits by interested parties. A list of attendees is attached hereto as Exhibit "9". Exhibit "10" documents the satisfaction of applicable notice requirements.

The following is the Hearing Officer's Proposed Order and Recommendation in the above captioned matter.

I. Summary of the Evidence

The evidence in this matter consists of the following:

1. The testimony of Ms. Kathy Bergold, Insurance Department Legal Representative who set forth the position of Department with regard to the proposed revisions of Reg. 37 attached hereto as Exhibit "5". Ms. Bergold's testimony was supplemented by her written report attached hereto as Exhibit "6".

2 The testimony of Mr. Robert Reeder of Delaware Defensive Driving, Inc. proposed several revisions to the Department's draft Reg. 37 concerning, most notably, the make-up of the Defensive Driving Course Credential Committee; perceived conflicts of interest; the course sponsor's duty to monitor courses taught by its instructors; minimum length of time of the initial course; the course sponsors duty to collect course evaluation forms; and the basic requirements of course instructors such as their experience and driving record. Additionally, Mr. Reeder submitted the results of a student survey attached hereto as Exhibit "1".

3. The testimony of Marcia Ann Novak, of Mastercraft Safety Consultants, Inc. in favor of reducing the minimum length of time for the initial course from 6 hours. Ms. Novak submitted Exhibit "6" consisting of a letter dated July 29 enclosing course guide books and a letter to the Department dated June 20, 1995.

HMO/MANAGED CARE TABLE RESOURCE NAME OF CODE INSURANCE	NCC	ACCESSIBILITY	
		KENT	SUSSEX
G13 Aetna Health Plan	Y	Y	Y
H13 Aetna Life Insurance	Y	Y	Y
FO3 BC/BS of DE	Y	Y	Y
F53 Cigna Health Plan	Y	Y	Y
C26 Cigna Health Plans	Y	Y	Y
C25 Cigna Health Plans	Y	Y	Y
C83 Cigna Health Plans of DE	Y	Y	Y
K24 Delaware Valley HMO	Y	N	N
246 Delaware Valley HMO	Y	N	N
375 Delmarva Health Plan	N	Y	Y
C02 Delmarva Health Plan	N	Y	Y
H71 Healthcare Delaware	Y	N	N
310 Healthcare Delaware	Y	N	N
E03 Healthcare of DE	Y	N	N
073 HMO of Delaware	Y	Y	Y
E75 HMO of Delaware	Y	Y	Y
818 MDIPA Optimum Choice	N	Y	Y
K54 Mid Atlantic	Y	N	N
835 Optimum Choice Preferred	N	Y	Y
F52 Optimum Choice, Inea	N	Y	Y
415 Principal Health Care DE	Y	Y	Y
G55 Principal Health Care DE	Y	Y	Y
994 Prudential Service Bureau	N	N	N
306 Total Health Plus	Y	Y	Y
340 U. S. Healthcare	Y	N	N
978 U. S. Healthcare	Y	N	N
E81 US Healthcare	Y	N	N
E98 Cigna Health Plans	Y	Y	Y
A07 Champus	Y	Y	Y
793 Keystone Healthplan East	N	N	N
F46 Keystone Healthplan East	N	N	N
E39 Keystone Healthplan East	N	N	N
E09 Keystone Healthplan East	N	N	N
930 Medical IPA Health Plan	N	N	N
998 Greater Atlantic	N	N	N

4. The testimony of Representative David H. Ennis urging the Department to shorten the minimum length of time for the initial course, expressed concerns over the make-up of the Defensive Driving Course Credential Committee, and questioned whether Insurance Department staff acting as instructors presented a conflict of interest for members of the Committee who also held positions with the Insurance Department. Representative Ennis supported his testimony with Exhibits "2" and "3" relating to the issue of the make-up of the Committee. Also entered into the record is Representative Ennis' letter dated May 26, 1998 marked and attached as Exhibit "7".

The above numbered paragraphs are intended to summarize briefly the evidence in the record and the testimony received at the hearing. They are not meant to serve as a thorough account of the testimony or otherwise fully set forth the extent of the record.

II. Findings of Fact and Conclusions of Law

Based on the evidence received in this matter, I find that:

A. The Insurance Department's proposed Regulation 37 establishes needed standards for certifying defensive driving programs and course sponsors.

B. The minimum length of time for an initial defensive driving course should consist of six hours of instruction as recommended by the Department. Additionally, I find that the Department established that a national standard exists regarding the appropriate number of hours of instruction for an initial defensive driving course and that the proposal under consideration satisfies that standard. It is apparent that little or no objective data exists establishing exactly how many hours of instruction is most appropriate for a defensive driving course. I find no evidence to suggest there is anything unique about this jurisdiction that mitigates in favor of deviating from the national standard.

C. The Insurance Department's proposed Regulation 37 establishes needed standards concerning the certification and de-certification of Defensive driving instructors.

D. I find on the issue of whether Department staff should be disqualified from acting as defensive driving course instructors, that the more well-reasoned approach is for the Defensive Driving Credential Committee to observe practices to avoid conflicts of interest (in whatever form they may arise) on a case-by-case basis with the guidance of counsel.

E. Several non-substantive revisions should be made to the Department's proposed draft that are reflected in the "marked up" version of the draft attached hereto as Exhibit "8"

III. Recommendation

For the above reasons it is recommended that Insurance Department Regulation No. 37 be amended in the form attached hereto as Exhibit "8".

SO RECOMMENDED, this 10th day of November, 1998.

Fred A. Townsend III
Hearing Officer

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF DELAWARE

In the Matter of:	
The Amendment of Insurance	
Department Regulation No. 37	

ORDER

COMES NOW, the Insurance Commissioner of the State of Delaware, pursuant to 18 Del. C. section 314 and 29 Del. C. section 10119, and Orders that Insurance Department Regulation No. 37 be amended in conformance with the Proposed Order and Recommendation of the Hearing Officer as follows:

WHEREAS, I have considered the Proposed Order and Recommendation submitted by the Hearing Officer, as well as the entire record of this matter; and

WHEREAS, I adopt the Proposed Order and Recommendation and incorporate the summary of evidence, the proposed findings of fact, and the recommendation of the Hearing Officer by this reference.

NOW THEREFORE, I Order that Regulation No. 37 be amended as referenced herein and reflected in the Proposed Order and Recommendation and its attachments, effective on January 1, 1999.

SO ORDERED this 13th day of November, 1998.

DONNA LEE WILLIAMS
Insurance Commissioner
State of Delaware

REGULATION NO. 37 DEFENSIVE DRIVING COURSE DISCOUNT (AUTOMOBILES AND MOTORCYCLES)

Adopted: April 20, 1982; effective April 20, 1982

Amendment #1: August 29, 1988

Amendment #2: July 19, 1990

Amendment #3: June 23, 1995

[Amendment #4: January 1, 1999]

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SECTION I PURPOSE

The purpose of this Regulation is to provide a discount applicable to total premiums for persons who voluntarily attend and complete a Defensive Driving Course and to provide criteria for Defensive Driving Courses, Sponsors and Instructors.

SECTION II AUTHORITY

This Regulation is adopted pursuant to 18 Del. C. Section 314, and 18 Del. C. Section 2503 and promulgated in accordance with the procedures specified in the Administrative Procedures Act, 29 Del. C. Chapter 101.

SECTION III MINIMUM REQUIREMENTS

A Defensive Driving Course Discount shall be applied to the total premiums for bodily injury liability coverage, property damage liability coverage, and personal injury protection coverage provided:

(1) The automobile or motorcycle is individually owned or jointly owned by husband and wife or by members of the same household and is classified and rated as a private passenger automobile or motorcycle; and

(2) The driver who customarily operates the automobile or motorcycle has a certificate certifying voluntary attendance and successful completion within the last 36 months from the date of application of a motor vehicle accident prevention course or motorcycle rider course, as appropriate, which is approved by the Insurance Commissioner.

SECTION IV APPLICATION

(a) A 10% discount shall be applied with respect to the applicable premium(s) for each automobiles or motorcycle insured under a policy if all operators named on the policy as insureds complete the course. If fewer than all the operators

covered as principal or occasional drivers complete the course, then the discount shall be a fraction of 10%. The fraction shall be the number of operators completing the course, divided by the total number operators. The discount shall begin at the inception date of the policy or the first renewal date following application by the insured and shall terminate at the policy expiration date subsequent to the expiration of three years since completion of the course.

(b) An insured who has received a defensive driving discount as outlined in (a) (above) may take a refresher defensive driving course within the ninety days prior to the three year expiration date thereof or anytime thereafter and within two years thereof to receive a 15% discount for an additional three year period as outlined in (a) (above). Discounts shall not overlap. The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

SECTION V IMPLEMENTATION

Upon the effective date of the Act, the discount shall be first applied to policies written to be effective on or after July 14, 1982 (automobile), or July 19, 1990 (motorcycle), or with renewal dates on or after July 14, 1982 (automobile), or July 19, 1990 (motorcycle), if applied for by the insured, and shall remain in effect for a 3-year period from the effective date of such policies.

The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

SECTION VI DEFENSIVE DRIVING COURSE CREDENTIAL COMMITTEE

~~(a) To receive the premium discount provided in Section IV, the person must complete a Defensive Driving course approved by the Commissioner. The Commissioner hereby forms an entity known as the Defensive Driving Course Credential Committee ("Committee"). The Committee is appointed to review, examine, and recommend approval or denial, and biannual continuation of approval of course sponsors, who wish to provide a Defensive Driving course for the purpose set out in Section I. In appointing Committee members, the Commissioner shall consider the following characteristics:~~

~~(1) The Committee shall be composed of 5 citizens of this State who are not employed by or have any financial interest in any course sponsor; knowledge of principles of teaching and learning;~~

~~(2) The Committee shall choose its Chairman and shall recommend to the Commissioner approval or denial of course sponsor applicants to provide a Defensive Driving Course and biannually review the continuation of approval; knowledge of safe driving principles;~~

(3) ~~The Committee shall review and examine each application and each applicant to its satisfaction and shall further monitor successful applicants to ensure each course continues to meet the Committee's minimum requirements. The Committee may from time to time recommend amendments to course requirements; knowledge of Delaware Motor Vehicle laws; and~~

(4) To recommend approval of a course or applicant, the Committee shall require the course contains the following: any other relevant characteristics or experience.

(b.) The Committee shall be composed of five citizens of this State who are not employed by or have any financial interest in any course sponsor and who meet the standards set forth in Section X(a)(1) through (4).

(c.) Duties. The Committee shall:

(1) Choose its Chairman and shall make recommendations to the Commissioner concerning the duties set forth herein;

(2) Review and examine defensive driving course sponsors, instructors and prospective sponsors and instructors to its satisfaction.. Recommend certification, denial of certification or de-certification of a course sponsor or prospective sponsors and applicants.

(3) Review and examine defensive driving courses and shall further monitor courses to ensure each course continues to meet the Committee's minimum requirements, as outlined in this Regulation. The Committee may from time to time recommend amendments to course requirements.

(4) Certify approved course sponsors and individual instructors for a two year period so long as the course sponsor/instructor continues to meet the requirements of this Regulation; and

(5) Conduct any other such activity reasonably related to the furtherance of its duties.

SECTION VII CERTIFICATION CRITERIA FOR DEFENSIVE DRIVING PROGRAMS AND SPONSORS

Each course sponsor shall:

(1) Submit for approval written course description for any defensive driving course to be offered that minimally includes the following elements:

a. The definition of defensive driving and the collision prevention formula serving as the basis for the course;

b. Vehicle safety devices, including the use of seat belts, child restraint devices and their proper use and relationship to a child's age and size, including the correct placement of a child in a vehicle. Vehicle air bag systems shall be explained in detail with special attention to proper passenger seating and proper use of anti-lock braking

systems and how they compare to standard braking systems;

c. A discussion of driving situations as they relate to the condition of the driver, driver characteristics, use of alcohol and legal/illegal drugs, including a discussion of Delaware law on drinking and driving and the use of drugs;

d. A discussion of the five factors affecting driving, being: the condition of the driver, the vehicle, the road, weather and lighting as they pertain to driving defensively;

e. A discussion of specific driving situations, including stopping distances, proper following distances, proper intersection driving, stopping at railroad crossings, right-of-way and traffic devices as well as situations involving passing and being passed and how to protect against head-on collisions; and

f. Consideration of the hazards and techniques of city, highway, expressway and rural driving, including but not limited to proper use of exit and entrance ramps, driving in parking lots and a discussion of Delaware law concerning school buses.

(2) Require its instructors to present courses in a manner consistent with the approved curriculum and otherwise in accordance with the standards set forth herein.

(3) Require that each student receives a minimum of six hours of class time for the initial course and three hours of class time for the [refresher advanced] (renewal) course. Each hour shall consist of not less than 50 minutes of instructional time devoted to the presentation of course curriculum.

(4) Require its instructors to be in the classroom with the students during any and all periods of instructional time.

(5) Require instructors to maintain an atmosphere appropriate for class-work.

(6) Supply students who complete a defensive driving course with a certification of completion that includes, at a minimum, the name of the student, the date of the class, the name of the defensive driving course and the course sponsor's authorized signature.

(7) Require that each of its instructors request his or her students complete a standardized Course/Instructor Evaluation Form for not less than one-third of the courses provided by each instructor and retain completed evaluation forms until the expiration of the certification period during which they are completed. The Course/Instructor Evaluation Form shall be in the manner and form prescribed by the Committee.

(8) Notify the Division of Motor Vehicles of each student's successful completion of the course in the manner and form required by the Division.

SECTION VIII DE-CERTIFICATION, SUSPENSION AND PROBATIONARY STATUS

(a) Course sponsors and instructors may be de-certified, placed on probation for not more than 90 calendar

days, or have certification suspended indefinitely upon a finding of the Committee that the course presented does not meet the criteria set forth in this Regulation. Investigations relating to issues of compliance shall be directed by the Committee.

(b) Prior to de-certification, placement on probation or suspension of certification, the course sponsor/instructor shall be notified, in writing, by the Committee. The course sponsor/instructor shall be given a reasonable opportunity to submit evidence of compliance in his or her defense.

(c) A course sponsor/instructor who is placed on probationary status and does not show proof of compliance with the standards set forth herein within 90 calendar days shall be subject to de-certification at the end of the probationary period.

(d) Course sponsor/instructor may be de-certified, suspended or placed on probation for the following:

(1) Falsification of information on, or accompanying, the Application for Certification/Re-certification;

(2) Falsification of, or failure to keep and provide adequate student records and information as required herein;

(3) Falsification of, or failure to keep and provide adequate financial records and documents as required; and

(4) Failure to comply with any other standard set forth in this Regulation.

SECTION IX APPEAL PROCEDURES

(a) Within 10 business days after the date of written notification of certification denial, suspension, probation or de-certification, the course sponsor/instructor may file an appeal requesting review of the action taken.

(b) The appeal shall be addressed to the Committee, citing the reasons for the request, and accompanied by any other relevant substantiating information.

(c) The Committee shall conduct all hearings pursuant to Title 29, Chapter 101 of the Delaware Code Annotated.

SECTION X CERTIFICATION PROCESS FOR DEFENSIVE DRIVING INSTRUCTORS

(a) Basic Requirements. Each instructor shall:

(1) Be at least 18 years of age;

(2) Be a high school graduate or have a G.E.D.;

(3) Hold a valid driver's license with no more than [6 4] points, no suspensions or revocations in the past two years; and

(4) Have no felony convictions during the past four years and no criminal convictions evidencing moral turpitude. The Committee reserves the right to require a criminal history background check of all applicants for an instructor's certification.

(b) The Committee may recommend that Basic

Requirements (a)(2) through (4) hereof be waived upon a finding that an instructor is qualified and fit to act as an instructor.

(c) Re-certification. Every two years each instructor shall:

(1) Submit evidence that he or she has taught the certified course a minimum of 12 hours the previous [calendar] year;

(2) Submit evidence that he or she attended an in-service update training seminar, or other training session, as provided by, or specified by, a certified defensive driving course sponsor; and

(3) Submit a form as prescribed by the Committee certifying that he or she continues to meet the requirements of an instructor as outlined in this Regulation.

[(4) The above-described submissions shall be filed not later than January 31st of the year in which re-certification is desired. The Committee shall accept requests for re-certification not earlier than November 15th of the preceding year and make reasonable efforts to act on such requests within 30 days of receipt thereof.]

Effective date. This act shall become effective on January [1] of 1999.

a. All basic and refresher courses must meet or exceed the American Automobile Association Driving Improvement Program (AAA), the National Safety Council's Defensive Driving Course or the AARP's 55-ALIVE Course;

b. All basic courses must include at least 6 hours in classroom study and all refresher courses must include at least 3 hours of classroom study. In the alternative, the committee is authorized to approve a basic or refresher course which includes "hands-on" defensive driving training and at least 1 hour of classroom instruction;

e. All basic courses must adequately address the following subject areas:

1. The alcohol or drug impaired driver;

2. Preventable accidents and defensive driving techniques;

3. Occupant protection and child restraints and helmet use for motorcycle;

4. The fatigued or physically impaired driver;

5. Stopping and reaction time;

6. Night and bad weather driving; and

7. Proper vehicle maintenance as a safety measure.

d. All refresher courses must reinforce and build upon the content of a basic course.

e. All course instructors shall submit complete and detailed resumés with the course sponsor's application to the Committee to ensure their education, knowledge, ability and competence to teach the course.

~~(5) The Commissioner will follow the Committee's recommendation, if supported by substantial evidence and not an abuse of discretion, and approve or deny the application. If the Commissioner approves the course sponsor and each individual instructor, that approval shall continue for a period of two years as long as the approved program continues to meet the requirements of this section and requirements that are modified, added or amended from time to time.~~

~~(6) Approved Course providers shall notify the Division of Motor Vehicles of the successful completion of the Course by operators in the manner and form required by the Division.~~

~~DATE: June 23, 1995~~ Donna Lee H. Williams
Insurance Commissioner

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**
DIVISION OF AIR & WASTE MANAGEMENT

WASTE MANAGEMENT SECTION
Statutory Authority: 7 Delaware Code,
Chapter 63 (7 Del.C. Ch. 63)

1998 AMENDMENTS TO
DELAWARE REGULATIONS GOVERNING
HAZARDOUS WASTE

Secretary's Order No. 98-A-0026
Date of Issuance: July 17, 1998

Re: **Amendments to the Delaware Regulations
Governing Hazardous Waste**

I. Background

On June 23, 1998, a public hearing was held to receive comment on proposed revisions the Delaware Regulations Governing Hazardous Waste.

II. Findings

1. The Department provided proper notice of the hearing as required by law.
2. Two informal public workshops were held on May 12 and 14, 1998, which were attended by members of the public.
3. The proposed amendments are necessary in order to maintain consistency with the federal program.
4. No one from the public attended the public hearing,

and no written comments were offered regarding the proposed amendments.

5. The record supports promulgation of the amendments to the Delaware Regulations Governing Hazardous Waste.

III. Order

In view of the above findings, it is hereby ordered that the proposed amendments to the Delaware Regulations Governing Hazardous Waste be adopted and promulgated according to the Administrative Procedures Act. It is further ordered that the amendments to the Regulations shall be effected on January 1, 1999.

IV. Reasons

The proposed amendments to the Delaware Regulations Governing Hazardous Waste will further the policies and purposes of 7 Del. C. Chapter 63, and were not opposed in any way by the public or the regulated community. Further, these amendments will enable the Department to maintain equivalency with the federal program and delegation of its Hazardous Waste Management Program from the U.S. EPA.

Christophe A. G. Tulou, Secretary

This package incorporates certain Federal Resource Conservation and Recovery Act amendments into Delaware's hazardous waste management program. The amendments comprising this package include both Hazardous and Solid Waste Act and non-Hazardous and Solid Waste Act [(RCRA Clusters V - VII)] requirements. The State is required to adopt these amendments in order to maintain its Resource Conservation and Recovery Act program delegation and remain current with the Federal hazardous waste program.

The State is also making certain technical changes for the purpose of correcting errors and to add consistency or clarification. Some amendments are being made to the existing regulations in order to improve or enhance the performance of the hazardous waste management program.

The regulatory amendments are listed below and organized by the promulgating Federal Register notice, and provide a brief description of the amendment.

1. 60 Federal Register 33912-33915; Promulgation Date: 6/29/95

Title: Removal of Obsolete Rules

On June 29, 1995 Environmental Protection Agency, promulgated amendments that removed several sections of 40 Code of Federal Regulations pertaining to solid waste, hazardous waste, oil discharges and Environmental Protection Agency's Superfund program that were no longer legally in effect. Deleting these rules helped clarify the legal

status of Environmental Protection Agency's regulations for both the regulated community and the public. Only those rules effecting Delaware's hazardous waste program are part of this change.

2. 60 Federal Register 35703-35706; Promulgation Date: 7/11/95

Title: Liquids in Landfills III

This rule adds a third test to the two already allowed under existing Federal regulations. On November 18, 1992, Environmental Protection Agency promulgated a rule that added two tests that could be used to demonstrate non-biodegradability [~~Delaware Checklist 118~~, adopted ~~the two tests~~ in 1995). The rule provides increased flexibility by adding Organization for Economic Cooperation and Development 301B (Modified Sturm Test) to demonstrate that a sorbent is non-biodegradable.

3. 60 Federal Register 63417-63434; Promulgation Date: 12/11/95

Title: Resource Conservation and Recovery Act Expanded Public Participation

This rule promulgates new regulations that effect the process for permitting Treatment, Storage and Disposal Facilities by providing opportunities for public involvement earlier in the process and by expanding public access to information throughout the permitting process and operational lives of facilities. This change requires the prospective applicant to hold an informal public meeting before submitting an application for the permit and to advertise the meeting in the newspaper, through broadcast media, and on a sign post at or near the property. This would also require Department of Natural Resources and Environmental Control to mail a notice to interested parties when the applicant submits its application and, as we deem necessary, to require the facility owner or operator to set up an informational repository that will hold all information and documents that we decide is necessary. Finally, this change requires all combustion facilities that burn hazardous wastes to notify the public before they hold a trial burn.

4. 61 Federal Register 13103-13106; Promulgation Date: 3/26/96

Title: Recovered Oil Exclusion, Correction

This rule corrects an Environmental Protection Agency error in the regulatory exclusion, from the definition of solid waste, for recovered oil that is inserted into the petroleum refining process. The current text of the exclusion contains a factual error as to the location in the refining process at which recovered oil can be inserted. This error inappropriately restricted legitimate recycling of recovered

oil.

5. 61 Federal Register 15566-15660; Promulgation Date: 4/8/96;

61 Federal Register 15660-15668; Promulgation Date: 4/8/96;

61 Federal Register 19117; Promulgation Date: 4/30/96;

61 Federal Register 33680-33690; Promulgation Date: 6/28/96;

61 Federal Register 36419-36421; Promulgation Date: 7/10/96;

61 Federal Register 43924-43931; Promulgation Date: 8/26/96; and

61 Federal Register 7502-7600; Promulgation Date: 2/19/97

Title: Land Disposal Restrictions Phase III - Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners

Changes in this rule establish treatment standards for hazardous wastes from the production of carbamate pesticides and from primary aluminum production under Land Disposal Restrictions. Also, it amends treatment standards for hazardous waste that exhibit characteristic of reactivity and begins the process of amending existing treatment standards for wastewaters which are hazardous because they display the characteristic of ignitability, corrosivity, reactivity or toxicity. Finally, Environmental Protection Agency codified its existing enforcement policy that combustion of inorganic wastes is an impermissible form of treatment. They contend that the hazardous constituents are being diluted rather than effectively treated.

6. 61 Federal Register 16290-16316; Promulgation Date: 4/12/96;

Title: Imports and Exports of Hazardous Waste: Implementation of Organization for Economic Cooperation and Development Council Decision

This rule identifies those wastes that are subject to a graduated system of procedural and substantive controls when they move across national borders.

EPA has deemed that adoption of this rule by states is optional. However, Environmental Protection Agency has strongly urged states that have already adopted Part 262, Subpart E and F provisions to incorporate this rule into their regulations.

7. 59 Federal Register 62896-62953; Promulgation Date: 12/6/94;

60 Federal Register 26828-26829; Promulgation Date: 5/19/95;

60 Federal Register 50426-50430; Promulgation Date:

9/29/95;

60 Federal Register 56952-56954; Promulgation Date: 11/13/95;

61 Federal Register 4903-4916; Promulgation Date: 2/9/96;

61 Federal Register 28508-28510; Promulgation Date: 6/5/96; and

61 Federal Register 59932-59997; Promulgation Date: 11/25/96;

Title: Consolidated Air Emission Standards for Tanks, Surface Impoundments, and Containers

This change consolidates previous Federal Registers regarding Subpart CC standards. These changes complete the second phase of EPA's efforts to control organic air emissions. The State adopted the first phase in 1995.

8. 62 Federal Register 6622-6657; Promulgation Date: 2/12/97

Title: Military Munitions Rule

Changes in this rule identify when conventional and chemical military munitions become a hazardous waste, amends existing regulations regarding emergency responses, and exempts generators and transporters of these wastes from manifest requirements when transporting the waste on public or private right-of-ways on or along the border of contiguous properties, under control of the same person. This is seen as a reduction in paperwork.

9. 62 Federal Register 25998-26040; Promulgation Date: 5/12/97;

Title: Land Disposal Restrictions - Phase IV

This change finalizes the treatment standards for hazardous waste generated from wood preserving operations and makes a uniform change to the standard for wastes from products of chlorinated aliphatics which carry the waste code F024. It also revises the Land Disposal Restrictions to reduce paperwork, finalizes the decision to employ polymerization as an alternative treatment method, clarifies an exemption for de minimis amounts of characteristic wastewaters, and excludes processed printed circuit boards and scrap metal from regulation. This rule also discusses Environmental Protection Agency's decision not to ban certain wastes from biological treatment.

10. 62 Federal Register 32452-32463; Promulgation Date: 6/13/97;

Title: Testing and Monitoring Activities Amendment III

This rule continues the amendments to SW-846, Third Edition by deleting several obsolete methods and

incorporates revisions and amendments from Updates I, II and III.

11. 62 Federal Register 32974-32980; Promulgation Date: 6/17/97;

Title: Conformance with Carbamate Vacatur

This change amends regulations to conform with the federal appeals court ruling that invalidated Environmental Protection Agency regulations listing certain carbamate wastes as hazardous. The amendments remove K160 from §261.32 and revises the entries for K156, K157 and K158. It also removes a list of carbamate related wastes from §261.33(f), removes 2 listings from part 261, Appendix VIII and adds a list of carbamate related wastes.

12. 62 Federal Register 37694-37699; Promulgation Date: 7/14/97;

Title: Land Disposal Restriction Phase III - Emergency Extension of the K088 National Capacity Variance, Amendment

This rule extends the National capacity variance for spent potliners from primary aluminum production to October 8, 1997. Environmental Protection Agency took the action because it believed that insufficient treatment capacity existed and it provided time for generators to make contractual and other logistical arrangements relating to utilization of the treatment capacity.

13. 62 Federal Register 4556845576; Promulgation Date: 8/28/97;

Title: Emergency Revision of the Carbamate Land Disposal Restrictions

This rule extends the time that the alternative carbamate treatment standards are in place by an additional year because analytical problems associated with the measurement of constituent levels in carbamate waste residues have not yet been resolved.

14. Technical Amendments:

- Section 260.2(c) - is amended to require any person submitting information to Environmental Protection Agency to submit copies of the information to the Secretary of the Department of Natural Resources and Environmental Control;
- Sections 261.5(f)(3)(iv) & (g)(3)(iv) are amended to clearly reflect prohibition of disposal of hazardous waste at non-hazardous solid waste landfills by conditionally exempt small quantity hazardous waste generators;
- Section 261.21(a)(3) & (4) and 261.23(a)(8) are

revised to correct references to 49 Code of Federal Regulations Part 173;

- Section 262.41 - deletes language about off site shipment of hazardous waste and revises designation for Annual Report form;
- Sections 264.221 and 265.221 - Adds date for which existing surface impoundments must comply with new unit requirements or stop hazardous waste activity;
- Sections 265.51(a) and 265.53 are being revised to clarify the requirement of having a printed copy of the facility's contingency plan on site and readily available upon request.

DIVISION OF WATER RESOURCES
WATER SUPPLY SECTION

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

Secretary's Order No. 98-W-0037

Date of Issuance: October 16, 1998

Re: Regulations Governing the Licensing of Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers and Pump Installers

Effective Date of Regulatory Changes: January 1, 1999

I. BACKGROUND

A public hearing was held on August 27, 1998, to receive comment on additions to the Regulations For Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers, and Pump Installers which would impose continuing education requirements for these licensees. Following the hearing the Division of Water Resources submitted a response document, dated September 14, 1998, in which each relevant comment was summarized and addressed. In addition, the Division of Water Resources prepared a final draft of the proposed regulation after making revisions to the hearing draft in accordance with the response document. The Hearing Officer's Memorandum containing his report and recommendation dated September 30, 1998, is expressly incorporated herein.

II. FINDINGS

1. Proper notice of the hearing was provided as

required by law.

2. Public workshops were held on June 3 and June 10, 1998.

3. The Division of Water Resources response document dated September 14, 1998, reflects an accurate summary of relevant comments together with reasoned responses and sound recommendations based on credible evidence.

4. The revised final draft of the regulations, to become effective on January 1, 1999, reflects each of the appropriate changes recommended in the Division of Water Resources response document as well as corrections for typographical errors and other minor non-substantial changes.

5. Continuing education requirements should help improve the quality of well completion logs which are useful in managing water resources in Delaware.

III. ORDER

In view of the above findings, it is hereby ordered that the revised proposed regulations (attached hereto) be issued and take effect on January 1, 1999, and that all appropriate steps be undertaken to promulgate these regulations as required by law.

IV. REASONS

These new regulations will raise the training standards for all licensees in a manner that should improve their skills while not overburdening the regulated community. This should further the policies and purpose of 7 Del.C. Chapter 60.

Christophe A. G. Tulou, Secretary

*** PLEASE NOTE THAT DUE TO THE NUMEROUS FORMATTING AND WORDING CHANGES THAT OCCURRED SUBSEQUENT TO THE PUBLICATION OF THE PROPOSED REGULATION (2:2 DEL.R. 176) THE ENTIRE REGULATION IS BEING REPUBLISHED. FOR INFORMATION REGARDING CHANGES THAT MAY HAVE OCCURRED PLEASE REFER TO THE PROPOSED REGULATION.**

REGULATIONS FOR LICENSING WATER WELL CONTRACTORS, PUMP INSTALLER CONTRACTORS, WELL DRILLERS, WELL DRIVERS, AND PUMP INSTALLERS

ADOPTED: December 15, 1981

EFFECTIVE: January 1, 1982

REVISIONS ADOPTED: October 16, 1998

EFFECTIVE: January 1, 1999

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

SECTION 1 – PURPOSE

1.01 It is the purpose of this regulation to protect the public health and to conserve and protect the water resources of the state; to examine and license those persons engaged in the contracting for and the drilling, boring, coring, driving, digging, construction, installation, removal, or repair of

water wells and water test wells or the installation or removal of pumping equipment in and for a water well or water test well; and for the Secretary to appoint a Water Well Licensing Board to advise and assist the Secretary in the administration of the licensing program.

SECTION 2 – DEFINITIONS

2.01 Application Fee – means the fee set forth by the Secretary to apply for a license in one of the categories of this regulation.

2.02 Board – means the Water Well Licensing Board.

2.03 Certificate of Insurance – means Contractors Liability Insurance.

2.04 Construction of Water Wells – means all acts necessary to obtain ground water by wells, including the location and excavation of the well, installation of casing, grout, screens, and developing and testing.

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

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

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

2.08 License Fees – means the fee set forth by the Secretary for the licensing of water well contractors, pump installer contractors, well drillers, well drivers, and pump installers.

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

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

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

2.12 Pump Installer – means any person in responsible charge of all on-site work in the installation, modification,

and repair of water well pumps and related equipment.

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

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

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

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

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

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

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

SECTION 3 – WATER WELL LICENSING BOARD

3.01 The Secretary shall appoint, with the power of removal, a Water Well Licensing Board (hereafter referred to as the “Board”) to advise and assist the Secretary in the administration of the licensing program. The Board shall consist of six members, four members who are currently licensed by the Department to engage in the construction of water wells or the installation of water well pumping

equipment, one member from the office of the State Geologist who shall serve at the pleasure of the Secretary, and one member from the Department who shall serve at the pleasure of the Secretary. The member from the Department shall act as secretary of the Board and be responsible for the keeping of records, the collection of fees, and any other duties delegated either by the Secretary or the Board. All persons appointed to the Board shall be citizens of the United States and residents of the State of Delaware. Initially, the four Board members from the water well industry shall be appointed to staggered terms so that no more than two members’ terms shall expire the same year, two being appointed to one year terms, one appointed for a two year term and one appointed for three years. Thereafter, Board members shall be appointed to terms of three years.

3.02 The Water Well Contractor Licensing Board, with the consent of the Secretary shall establish and administer such procedures and guidelines as may be necessary for the regulation of those involved in water well construction and pump installation, and shall include at least the following provisions:

Examination of candidates, the granting and renewal of licenses, and

Suspension and revocation of licenses.

SECTION 4 – WHO MUST BE LICENSED

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

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

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

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

SECTION 5 – PROCEDURES FOR LICENSING

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

5.02 Minimum Requirements for Licensing:

The applicant must be at least eighteen years of age;

Has had at least two years experience in the work for which he is applying for a license (one year in the case of a pump installer);

Furnishes the Board with references from two persons actively engaged in the well drilling and/or pump installation business; and

Demonstrates professional competence by passing a written and/or oral examination prescribed by the Board

Eligibility for Examination

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

5.03 Notification for Examination

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

5.04 Examination

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

5.05 Reapplication after Failure of Examination

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

5.06 Reciprocity

The Secretary may license, without examination, upon payment of the required application and license fees, and evidence of required insurance where applicable, applicants who are duly licensed under the laws of any other state

having requirements deemed by the Board at least equivalent to those of the State of Delaware.

5.07 Persons Previously Licensed

Exemptions from Examination and Proof of Experience

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

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

Certificate of Insurance indicating Contractors Liability Insurance in the minimum amounts required where applicable and specified herein, and

Payment of License fee (payable to the "State of Delaware"),

License fees, effective July 1, 1991

Water Well Contractor \$150.00

Pump Installer Contractor 115.00

Well Driller 30.00

Well Driver 15.00

Pump Installer 15.00

SECTION 6 – LICENSE RENEWAL

6.01 License Term

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

6.02 Application for Renewal

A license may be renewed prior to its expiration date providing the licensee submits the following:

A renewal application on forms provided by the Department.

Satisfactory evidence that the liability insurance requirements of section 8 of these regulations have been satisfied.

Satisfactory evidence of compliance with the continuing education requirements of table 1 and sections 6.04 and 7 of these regulations, except as exempted by section 6.04(d)(2).

Any applicable renewal fee.

An expired license may be renewed within one (1) year following its expiration by submitting the information

required in section 6.02(a)(1-4) of these regulations and any applicable late fee.

Licensees who apply for renewal of their licenses under section 6.02(a) and (b) of these regulations shall not be required to take an examination as a condition of license renewal.

6.03 Reinstatement of Expired Licenses

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

6.04 Continuing Education Credits

All licensees shall comply with the continuing education requirements of section 7.03 of these regulations as a condition for the renewal of their license

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

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

Persons holding valid Well Drillers or Well Drivers licenses shall complete a minimum of four (4) hours of continuing education credits prior to being granted a license renewal, with the following exceptions:

Persons holding Well Drillers or Well Drivers licenses that are restricted to the installation of dewatering wells and pumping equipment shall complete a minimum of two (2) hours of continuing education credits prior to being granted a license renewal.

The requirements of section 6.04(b) shall not apply to well driller's licenses that are restricted to the construction of geotechnical wells using hand-operated tools.

Persons holding valid Pump Installer licenses shall complete a minimum of two (2) hours of continuing education credits prior to being granted a license renewal.

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

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

CONTINUING EDUCATION CREDITS REQUIRED FOR LICENSE RENEWAL

Months Licensed	Well Driller Well Driver (WD)	Dewatering (WD)	Pump Installer (PI)
Less than 1	0	0	0
Between 1 and 3	0	0	0
Between 3 and 6	2	1	2
Between 6 and 12	4	2	2

(Table 1)

SECTION 7 – CONTINUING EDUCATION PROGRAMS

7.01 Continuing Education Program Approval

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

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

Shall be instructed by persons knowledgeable in the subject matter, or

Shall be conducted by an accredited educational institution.

Applications for the approval of curriculums, programs, seminars, etc. shall be submitted on forms provided by the Department and shall include the following minimum information:

1. Description of subject matter.
2. Length of course or courses in hours.
3. Name and qualifications of instructor(s).

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

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

Approval shall not be granted for any course, seminar, workshop, etc. dealing with the requirements of the 1999 revisions to the "Regulations for Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers, and Pump Installers" or the 1997 "Regulations Governing the Construction and Use of Wells."

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

first six (6) months of implementation of the requirements.

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

Course work, seminars, workshops, lectures, etc. given by accredited educational institution.

Courses, seminars, workshops, or lectures given by national, state, and local trade associations, product vendors, manufacturers, etc.

Extension studies and correspondence courses.

Papers written by a licensee and published in a professional journal or scientific media requiring peer review.

Instruction of continuing education courses.

Attendance at conferences and conventions sponsored by regional, national and local trade associations.

7.02 Assignment of Credit

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

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

For programs where continuing education units have been assigned, one unit is equivalent to one credit of approved training.

Instructor(s) of approved continuing education programs shall receive credits at the rate of one (1) credit for two (2) hours of continuing education instruction.

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

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

Three (3) credit hours shall be awarded for each paper written by a licensee and published in a scientific media or professional journal requiring peer review. The subject of the paper shall be directly related to the license holder's license category.

7.03 Recording Credits

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

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

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

An official student transcript issued by the educational institution or,

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

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

SECTION 8 – ACCEPTANCE OF INSURANCE

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

SECTION 9 – SUSPENSION OR REVOCATION OF LICENSE

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

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

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

No longer able to perform his duties properly.

9.03 Procedures for Hearings

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

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

The alleged violator may appear with counsel at the

hearing.

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

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

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

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

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

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

SECTION 10 – SUSPENSION

10.01 Suspension

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

10.02 Revocation

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

SECTION 11 – IDENTIFICATION OF LICENSE HOLDER

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

SECTION 12 – MARKING OF VEHICLES AND EQUIPMENT

12.01 Any contractor licensed by the Water Well Licensing Board shall mark each well drilling rig, well

driving rig, water tank truck, well and pump service rig used by the contractor or his employees with legible and plainly visible identification markings.

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

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

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

SECTION 13 – INSURANCE REQUIREMENTS

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

Contractor's Liability Insurance:

Bodily Injury: \$100,000 each person
\$300,000 each occurrence
Property Damage: \$50,000 each occurrence
\$50,000 each aggregate

SECTION 14 – REPEALER

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

SECTION 15 – SEVERABILITY

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

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

16.01 Pursuant to these regulations, licensed water well contractors, pump installer contractors, well drillers, well drivers and pump installers shall be responsible for the

following:

Initiating work only on wells for which the proper approval has been granted;

Compliance with all applicable regulations and requirements;

The conduct of work carried out by himself and any employee; and

The proper submission of completion reports for all work done, signed by the licensed water well driller or driver.

DIVISION OF WATER RESOURCES

WATERSHED ASSESSMENT SECTION

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

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

Secretary's Order No. 98-W-0044

Date of Issuance: November 6, 1998

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

Effective Date of Regulation: December 10, 1998

I. BACKGROUND

A public hearing was held on September 2, 1998, at the University of Delaware Virden Center in Lewes to receive comment on DNREC's proposal to establish Total Maximum Daily Loads (TMDLs) for nitrogen and phosphorous for Indian River, Indian River Bay and Rehoboth Bay.

As part of the public participation process, DNREC engaged in significant public outreach and then established an interagency TMDL workgroup with representatives from several state and federal agencies. DNREC also organized the TMDL Advisory Committee for the Inland Bays with representatives from many stakeholder groups. The Advisory Committee met on July 28 and August 11, 1998, at which meetings DNREC presented the TMDL proposal and responded to questions and comments. The proposed TMDL Regulations were published in the Delaware Register of Regulations, Vol. 2, Issue, 2, Saturday, August 1, 1998. A workshop was held September 2 and a public hearing was held later that evening. During the workshop, DNREC again presented the proposed regulation and its technical basis and responded to questions and comments from the audience. A number of commentors requested an extension of the deadline to make comments. Therefore, the original

deadline to submit comments was changed from September 11 to September 25, 1998.

After the hearing, DNREC prepared a Response Document which summarized each comment and provided the Department's Response. The exhibits introduced at the hearing by the Department (Exhibits A through N), the public comments from the testimony and by letter, and the Department's Response Document are expressly incorporated into this Order. The Hearing Officer prepared his Report and Recommendation dated November 4, 1998, which is also expressly incorporated herein.

II. FINDINGS AND CONCLUSIONS

A. Findings of Fact

1. Proper notice of the proceeding was provided as required by law and efforts to secure public participation went beyond the minimum legal requirements.

2. The water bodies which are the subject of this rulemaking are over-enriched with nitrogen and phosphorous from point and nonpoint sources to an extent that requires elimination or significant reductions in order to achieve and maintain designated uses.

3. The Pollution Control Strategy will incorporate extensive stakeholder input into consideration of economic impacts and practicability for all measures determined to be necessary for compliance along with reasonable and achievable timetables.

4. Differentiation of nutrient sources is not necessary to establish a TMDL which is concerned with total load entering the Inland Bays.

5. Failure to achieve atmospheric deposition reduction targets, should that occur, will be considered along with progress in other areas of nutrient load reductions in assessing pollution control strategies.

6. Establishment of TMDLs is required under the Clean Water Act and implementing regulations. TMDLs include allocations for both point and nonpoint sources.

7. The modeling tool used for establishing the proposed TMDL was developed by the U.S. Army Corps of Engineers and is a state-of-the-art program that has been applied to several estuarine systems, including the Chesapeake Bay. The data used, the technical assumptions made, and the conclusions drawn during the modeling phase were peer reviewed by the Scientific and Technical Advisory Committee of the Inland Bays National Estuary Program. Furthermore, the results of load reduction scenarios and proposed TMDL were peer reviewed by the Interagency TMDL Workgroup and the Scientific and Technical Advisory Committee.

8. Consideration of financial or economic effects is not required under § 303(d) of the Clean Water Act in setting TMDLs. However, such factors will be included in establishing Pollution Control Strategies.

9. Delaware Water Quality Standards for

nutrients cannot be achieved without load reductions from point and nonpoint sources.

10. Determining land use practices (e.g., zoning) would be outside the scope of DNREC authority, both in this rulemaking as well as in the Pollution Control Strategy.

11. The margin of safety required by § 303(d) of the Clean Water Act has been adequately addressed through conservative modeling assumptions and projections showing concentrations which are better than existing Water Quality Standards.

12. The Clean Water Act does not require an implementation schedule as part of a TMDL; however, DNREC will proceed expeditiously in establishing the Pollution Control Strategy and to fully involve all stakeholders.

13. Article 1 of the TMDL Regulation applies to all point sources which add nitrogen and phosphorous loads to the Inland Bays but does not apply to nutrients already contained in intake water.

14. Concerns about disproportionate allocation of the burden of compliance with this TMDL will be addressed in the Pollution Control Strategy.

15. Because of mixing mechanisms and sediment nutrient recirculation in the Inland Bays, nutrient input across the entire watershed must be reduced to achieve Water Quality Standards in four water body segments: Indian River (DE140-004), Upper Indian River Bay (DE140-E01), Lower Indian River Bay (DE140-E02) and Rehoboth Bay (DE280-E01).

16. The elimination of all point source nutrient discharges is a long-term, fundamental objective of the Clean Water Act which will be implemented through the Pollution Control Strategy in an equitable manner.

17. Scenario 69 was selected because it results in the attainment of Delaware Water Quality Standards with the overall least restrictive load reduction targets.

18. Nutrient uptake between point of discharge and impacted waterbodies does not significantly affect assumptions about loadings because total contributions remain the same.

19. Failure to adopt the proposed TMDL will result in EPA action to usurp state management of the process and to impose the same requirements by the federal government.

20. Exemptions for certain point sources are not available under the language of the proposed TMDL although the Pollution Control Strategy will be implemented in a manner that should equitably distribute the burdens of compliance by all stakeholders.

B. Conclusions

Based on credible evidence in the record, the Department has a reasonable basis for promulgating the TMDL Regulation (Articles 1 through 8) regarding excess nutrients in the Inland Bays, notwithstanding that some evidence was offered to the contrary.

IV. ORDER

In view of the above findings and conclusions, it is hereby ordered that the proposed TMDLs as set forth in the record be adopted in final form and that the regulatory promulgation process move forward as required by law.

V. REASONS

The record in this matter provides a reasonable basis to support the Department's proposed TMDL regulation, the adoption of which is necessary to remedy the existing severe nutrient overenrichment problem in the affected waterbodies.

Christophe A. G. Tulou, Secretary

A. INTRODUCTION and BACKGROUND

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

A reduction in the amount of nitrogen and phosphorous reaching the Inland Bays is necessary to reverse the undesirable effects. These nutrients enter the Bays from several sources including point sources, nonpoint sources, and from the atmosphere. Point sources of nutrients are end-of-pipe discharges coming from municipal and industrial wastewater treatment plants and other industrial uses. Nonpoint sources of nutrients include runoff from agricultural and urban areas, seepage from septic tanks, and ground water discharges. Atmospheric deposition comes from both local and regional sources, such as motor vehicle exhausts and emissions from power plants that burn fossil fuels.

Section 303(d) of the Federal Clean Water Act (CWA)

requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality standards and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impacts. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

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

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

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

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

Article 3. The nonpoint source phosphorous loads from tributaries in the upper Indian River shall be reduced by 65 percent (from the base-line period of 1988 through 1990). These tributaries include Swan Creek, Iron Branch, Pepper Creek, Vines Creek, and Millsboro Pond. This shall result in reducing phosphorous loads from these tributaries during a normal rainfall year from 38 kilograms per day (84 pounds per day) to 13 kilograms per day (29 pounds per day).

Article 4. The nonpoint source nitrogen loads from all remaining tributaries to the Indian River, Indian River Bay, and Rehoboth Bay shall be reduced by 40 percent (from the base-line period of 1988 through 1990). This shall result in

reducing nitrogen loads from these tributaries during a normal rainfall year from 732 kilograms per day (1614 pounds per day) to 439 kilograms per day (968 pounds per day).

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

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

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

Article 8. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The strategy will be developed by DNREC in concert with the Department's ongoing Whole Basin Management Program and the affected public.

DIVISION OF WATER RESOURCES
WATERSHED ASSESSMENT SECTION
Statutory Authority: 7 Delaware Code,
Chapter 60 (7 Del.C. Ch. 60)

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

Secretary's Order No. 98-W-0045
Date of Issuance: November 6, 1998

Re: Proposed TMDLs for nitrogen and phosphorus for the Nanticoke River and Broad Creek

Effective Date of TMDL: December 10, 1998

I. BACKGROUND

A public hearing was held on September 9, 1998, at the

Boy's and Girl's Club of Western Sussex in Seaford, to receive comment on a proposed Total Maximum Daily Load (TMDL) regulation for the Nanticoke River and Broad Creek because Section 303(d) of the Clean Water Act (CWA) as amended by the Water Quality Act of 1987 requires states to identify those waters within their boundaries which are water quality limited, to prioritize them, and to develop TMDLs for pollutants of concern. A water quality limited water is a waterbody in which water quality does not meet applicable water quality standards, and/or is not expected to meet applicable standards, even after application of technology-based effluent limitations for Publicly Owned Treatment Works and other point sources. The Nanticoke River and Broad Creek in Delaware have been identified as water quality limited waters, included in Delaware's 1996 and 1998 303(d) list, and targeted for development of TMDLs. The major environmental problems in the subbasin are nutrient overenrichment and low dissolved oxygen levels caused by point source discharges and nonpoint sources.

To develop a TMDL for the Nanticoke River and Broad Creek, intensive water quality monitoring was conducted from 1991 through 1994. During this period, water quality and quantity data were collected for the Nanticoke River and its major tributaries. The result of this monitoring activity was used to develop and calibrate a hydrodynamic and water quality model of the Nanticoke River and Broad Creek. The U.S. Environmental Protection Agency's Water Analysis Simulation Program modeling framework was used for this purpose. The Nanticoke River Model was calibrated to water quality and hydrodynamic conditions of the year 1992 (baseline).

Using the calibrated model of the Nanticoke River, several point and nonpoint source loading scenarios were considered for the subbasin. The results of the analysis showed that to improve water quality conditions of the Nanticoke River, pollutant loads to the River should be significantly reduced. Based on the results of these scenario runs, DNREC proposed TMDLs for the Nanticoke River and Broad Creek. The proposed TMDLs call for implementation of the following action plans:

A. Implement Biological Nutrient Removal in the three large municipal wastewater treatment plants in the subbasin. These facilities include: Seaford STP, Bridgeville STP and Laurel STP.

B. Cap pollutant loads from the remaining sewage treatment plants in the subbasin to their present permitted loads.

C. Develop and implement Best Management Practices for all land use activities in the entire subbasin, so that nonpoint source nitrogen loads are reduced by 30 percent and nonpoint source phosphorus loads are reduced by 50 percent (from the 1992 baseline).

As a result of requests during the hearing, the deadline

for submitting further comments was extended from September 18 to October 2, 1998. Following the hearing, the Department submitted a Response Document, addressing each public comment which is part of the record and is incorporated into this Order along with Exhibits A through L introduced by the Department at the hearing. The Hearing Officer prepared his Report and Recommendation dated November 5, 1998, which is also expressly incorporated herein.

II. FINDINGS AND CONCLUSIONS

A. Findings

1. Proper notice of the proceeding was provided as required by law and efforts to secure public participation went beyond the minimum requirements to include an extensive public outreach program as set forth in the introduction to the Response Document, attached hereto.

2. The following waterbodies are the subject of this rulemaking: Lower Nanticoke River (DE-240-001), Upper Nanticoke (DE-240-002) and Broad Creek (DE-50-001). These waterbody segments are over enriched with nitrogen and phosphorus and polluted with biochemical oxygen demanding (BOD) materials from point and nonpoint sources to an extent that requires significant reductions to achieve and maintain designated uses.

3. Consideration of financial or economic effects is not required under 303(d) of the Clean Water Act in setting TMDLs. However such factors will be included in establishing Pollution Control Strategies.

4. The Pollution Control Strategy will consider appropriate and cost effective measures designed to improve water quality.

5. Based on literature values and best professional judgment, nutrient concentrations of 3.0 mg/l nitrogen and 0.1 mg/l phosphorus are appropriate targets for these waters. Furthermore the application of a confidence limit of 20 percent for establishing the TMDLs is appropriate.

6. Nutrients in the Delaware portions of the Nanticoke River and Broad Creek originate from Delaware sources.

7. Differentiation between nonpoint sources of nutrients is not necessary to establish a TMDL which is concerned with the total loads entering the Nanticoke River and Broad Creek.

8. Point sources in these waters have made significant reductions in their discharges as a result of improvement of their treatment processes, however further reductions are necessary to meet the goals of the Clean Water Act.

9. The Clean Water Act and its implementing regulations require TMDLs for all water body segments that do not meet water quality standards, regardless of the fact that some local areas or downstream segments may meet standards.

10. Based on comments received, DNREC made a number of adjustments to its assumptions and data used in the model with regard to nutrient inputs from the S.C. Johnson plant. None of those changes affected the proposed TMDL.

11. Some facilities use groundwater sources for noncontact cooling water. These cooling waters are adding loads of nitrogen and phosphorus when they are discharged to the Nanticoke River and Broad Creek. Nutrient loads from these facilities are capped at their current levels in the proposed TMDL.

12. The modeling tool used to develop the proposed TMDL was developed by the U.S. EPA and has been widely used for similar systems. This model is an appropriate model for the Nanticoke River and Broad Creek.

13. The nonpoint source loading assumptions made for the model are appropriate and were validated when field data matched predicted results.

14. Appropriate field data and assumptions were used in the model. Furthermore, the assumptions used, load reduction scenarios and proposed TMDL were peer reviewed by the Interagency TMDL Workgroup.

15. Wastewater treatment plants that are meeting their waste load allocations established by this proposed TMDL are in compliance; further upgrades of these facilities will not be required. For those facilities not meeting their waste load allocations, any equivalent technology that will result in meeting the targets will be acceptable.

16. There is a sufficient margin of safety in the proposed TMDL for dissolved oxygen and nutrients based on the conservative assumptions used in developing the model and establishing the proposed TMDL.

17. The DuPont Gut is a tidally influenced tributary of the Nanticoke River with known beneficial uses. Due to its tidal nature, this tributary would exist regardless of DuPont's discharge. Hence DuPont Gut is considered to be waters of the State.

18. The Pollution Control Strategy will incorporate extensive stakeholder input into consideration of economic impacts and practicability for all measures determined to be necessary for compliance along with reasonable and achievable timetables.

19. The Clean Water Act does not require an implementation schedule as part of a TMDL; however, DNREC will proceed expeditiously in establishing the Pollution Control Strategy and to fully involve all stakeholders.

20. Concerns about disproportionate allocation of the burden of compliance with this TMDL will be addressed in the Pollution Control Strategy.

21. Failure to adopt the proposed TMDL will result in EPA action to usurp state management of the process and to impose the same requirements by the federal government.

B. Conclusions

Based on credible evidence in the record, the Department has a reasonable basis upon which to adopt the TMDL regulation as proposed at the hearing, notwithstanding some evidence in the record to the contrary.

III. ORDER

In view of the above findings and conclusions, it is hereby ordered that the proposed TMDLs as set forth in the record be adopted in final form and that the regulatory promulgation process move forward as required by law.

IV. REASONS

The record in this matter provides a reasonable basis to support the Department's proposed TMDL regulation, the adoption of which is necessary to remedy the existing severe nutrient overenrichment and low dissolved oxygen problems in the affected waterbodies.

Christophe A. G. Tulou, Secretary

A. INTRODUCTION and BACKGROUND

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

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

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants of concern. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three

components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (Las) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed the Nanticoke River and Broad Creek on the State's 1996 and 1998 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen and phosphorous.

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

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

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

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

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

Article 5. Based upon hydrodynamic and water quality model runs and assuming implementation of reductions identified by Articles 1 through 4, DNREC has determined that, with an adequate margin of safety, water quality

standards will be met in the Nanticoke River and Broad Creek.

Article 6. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Department's ongoing Whole basin management Program and the affected public.

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code,
Section 209(a) (26 **Del.C.** 209(a))

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF |
A REGULATION TO |
SPECIFY THE INFORMATION |
REQUIRED | **PSC**
TO BE FILED BY A | **REGULATION**
MANUFACTURER TO | **DOCKET NO. 44**
ESTABLISH AN ADDITIONAL |
DEALEROR TO RELOCATE AN |
EXISTING DEALERSHIP |
PURSUANT TO 6 DEL. C. § 4915(a) |

FINDINGS, OPINION AND ORDER NO. 4955

BEFORE: ROBERT J. McMAHON, Chairman
JOSHUA M. TWILLEY, Vice Chairman
JOHN R. McCLELLAND, Commissioner
ARNETTA McRAE, Commissioner
DONALD J. PUGLISI, Commissioner

APPEARANCES:

On behalf of the Delaware Public Service Commission
Staff:

ASHBY & GEDDES
By: James McC. Geddes, Esquire, Rate Counsel

I. BACKGROUND

1. In 1983, the General Assembly charged this Commission with the responsibility of resolving disputes between a new motor vehicle manufacturer and protesting new motor vehicle dealers when the manufacturer seeks to establish a new dealer, or relocate an existing dealer, within, or into, a relevant market area where dealers of the same

line-make exist. 6 Del. C. § 4915. Under the statutory scheme, a manufacturer intending to add or relocate a dealership must first “notify” (in writing) the Commission and all existing same-line dealerships in the market area of its intention. 6 Del. C. § 4915(a). Any existing dealership can then, by filing a protest, call upon the Commission to determine, in an expedited procedure, whether “good cause” exists for permitting the additional or relocated dealership. 6 Del. C. § 4915(a), (c)-(f).

2. In Future Ford Sales, Inc., v. Public Service Commission, Del. Supr., 654 A.2d 837, 845-46 (1995), the Delaware Supreme Court faced a challenge that, in the matter before it, the manufacturer’s intent to establish a new dealership at a specific location had not progressed far enough to have been “ripe” for a Commission determination of good cause under § 4915. In dealing with that specific case, the Court noted that such “ripeness” problems stemmed, in part, because of the “indefiniteness” of the statutory language requiring a manufacturer to “notify” the Commission of its “intention to establish an additional dealer or to relocate an existing dealer.” The Court suggested that the Commission eliminate this “uncertainty” by adopting a rule which specifies the information which must be filed with the Commission, by the manufacturer, as part of its notice of intention. 654 A.2d at 846. The Commission, in 1995, initiated this rule-making docket in response to that suggestion.

3. The Commission gave public notice and referred the matter to a Hearing Examiner for him to summarize the public comments, hold hearings, and then make recommendations about the content of any proposed rule. PSC Order No. 4052 (Sept. 26, 1995). The American Automobile Manufacturers Association (“AAMA”) and the Delaware Automobile and Truck Dealers Association (“DATDA”) actively participated in these proceedings.¹ As contemplated by PSC Order No. 4052, during the course of the proceedings before the Hearing Examiner, the Commission Staff proposed rules to govern the content of information to be filed with the Commission as part of the manufacture’s obligation to provide notice under § 4915(a). For the most part, Staff’s proposed rules required the submission of information which tracked the criteria for “good cause” enunciated in 6 Del. C. § 4915(c). The DATDA generally supported Staff’s rules, but proposed several modifications. In contrast, the AAMA submitted a differing proposed regulation, encompassing a shorter form of notice which would notice the geographic location of the proposed new dealership and the anticipated date of its establishment.²

4. After conducting an evidentiary hearing, the Hearing Examiner filed a report, recommending that the Commission reject Staff’s proposed rules, as well as the modifications proffered by the DATDA. Instead, the Hearing Examiner recommended that the Commission adopt

a regulation much like the one proposed by the AAMA, with some slight modifications. In the Hearing Examiner’s view, the shorter form of notice in such regulation would satisfy the concerns about “ripeness” which has arisen in Future Ford Sales while remaining consistent with the statutory language that the manufacturer “notify” the Commission and relevant dealers of its intention to establish an additional or relocated dealership. Rept. Of the Hearing Examiner (Aug. 12, 1996) (“HE Rpt.”).

5. After considering exceptions by the Commission Staff and the DATDA, the Commission declined to adopt the regulation recommended by the Hearing Examiner. Rather, the Commission adopted the rules as proposed by the Commission Staff. PSC Order No. 4397 (Jan. 21, 1997). In so doing, the Commission concluded the Court’s suggestion in Future Ford Sales was not directed at the Commission defining the content of the notice to be sent to the Commission and dealers. Rather, as the Commission saw it, the suggestion was an entreaty for the Commission to craft an informational filing to be made with it which would provide assurances that the manufacturer’s plans had advanced to the point of evidencing a clear intention to proceed sufficient to allow any later protest process to adequately judge the appropriateness of the proposal. The Staff rules, as the Commission saw it, provided just such assurance. If, as required by Staff’s rules, a manufacturer was obligated to file with the Commission not only its, but also a letter of intent and all then-available information related to “good cause” for the dealership, the Commission could presume that the manufacturer’s “intent” had become firm enough to allow for the prompt proceedings contemplated by § 4915 if any dealer would subsequently protest. Because a manufacturer, even before the filing of a protest, would likely consider the “good cause” factors in making its business determination about franchising a new dealership, the obligation to make such filing would not be unduly burdensome. At the same time, the filing, as contemplated by Staff’s rule, would also allow existing dealers to make better informed decisions about whether to file a protest.

6. The AAMA disagreed with the adopted rules and sought judicial review. By order, the Superior Court vacated the Commission’s rules, determining that the Commission had exceeded its delegated authority by requiring a manufacturer to make a pre-protest filing containing information beyond that encompassed by the statutory term “notify.” American Automobile Manufacturers Assoc. v. Public Service Commission, Del. Super., K.C., 97A-02-004HDR, Ridgeley, P.J. (March 31, 1998) (order). In its ruling, the Court acknowledged the Supreme Court’s view in Future Ford Sales that the statutory language of § 4915(a) was indefinite. To interpret the language, the Superior Court looked to the practice in other jurisdictions under similarly worded statutes. After doing so, it held that the rules

adopted by the Commission - as they required detail beyond the simple notice contemplated by § 4915 - were overbroad, inconsistent with the governing statute, and beyond the authority of the Commission to promulgate. As the Court saw it, if the General Assembly had desired "good cause" detail to be a part of the manufacturer's notice, it would have explicitly called for the inclusion of such detail in the statutory language.

7. In response to the Superior Court's directive, Staff moved that the Commission consider adopting the regulation and form of notice which had been initially recommended by the Hearing Examiner. The AAMA supported such action; the DATDA did not appear in response to Staff's motion. By PSC Order NO. 4900 (Sept. 15, 1998), the Commission proposed to adopt the Hearing Examiner's recommended regulation and directed that public notice of this revised regulation be given by publication in two newspapers and in the Delaware Register of Regulations. The notices called for written comments to be submitted by November 2, 1998, and announced a public hearing before the Commission on November 17, 1998.3

8. No person or entity filed comments. The AAMA did not appear at the hearing; it had previously supported adoption of the proposed regulation. The DATDA did not appear. No other person nor entity appeared to offer comments or evidence. Staff submitted a memorandum, endorsing adoption of the Hearing Examiner's recommended regulation. Exh. 9. After deliberations, the Commission, by unanimous vote, adopted the regulation attached to the original hereto as Exhibit "A".

II. SUMMARY OF THE EVIDENCE AND INFORMATION

9. For the proceedings held prior to the Superior Court's ruling, the Commission adopts and incorporates herein the summaries of evidence set forth in PSC Order No. 4397 at ¶¶ 10-24.

10. In its memorandum submitted at the November 17, 1998 hearing, the Commission Staff now supported the Hearing Examiner's recommended regulation. According to Staff, that regulation was both consistent with the Superior Court's interpretation of the scope the statutory language and the Superior Court's view of the purposes for the notice required by § 4915.

III. FINDINGS AND OPINION

11. Given that the Commission is charged with the responsibility of adjudicating disputes arising under 6 Del. C. § 4915, the Commission has jurisdiction to exercise its general rule-making authority (26 Del. C. § 106) in order to adopt a regulation to implement the notice and protest scheme envisioned by that section. See Future Ford Sales, 654 A.2d at 846.

12. In PSC Order No. 4397, this Commission adopted

rules which required a manufacturer to provide, as part of its notice under § 4915(a), information beyond just the proposed location of the additional or relocated dealership and the anticipated opening date. Instead, in those rules, the Commission chose to require disclosure of detail relevant to the "good cause" for adding or moving the dealership. As explained above, the Commission chose to require this filing of such additional information in order to have an assurance that the manufacturer's intention was firm enough, so that if a protest was then filed, the Commission could make its "good cause" determination based on concrete facts within the limited time allowed by § 4915(e).

13. The Superior Court has now indicated that statutory language "to notify" will not bear the Commission's efforts to reduce uncertainties prior to the invocation of the protest procedure. In the Superior Court's view, the notice requirement under § 4915(a) is a simple one; one aimed at showing "intent", not detail of "good cause." In light of this interpretation of the statutory language, the Commission will adopt the proposed regulation proffered by the Hearing Examiner. The simple and short notice format provided for in that regulation - calling for disclosure of the proposed location and the anticipated date for opening the new dealership - seems to fulfill the criteria for "notice" identified by the Superior Court. American Automobile Manufacturers, slip. op. at 8-9 & n. 13 (citing content of "notice" required under similar Pennsylvania statute).

14. In addition, the Commission now adopts the Hearing Examiner's rationale for this adopted regulation. HE Rpt. at ¶¶ 25-33. The Commission believes that the Hearing Examiner's analysis of the "notice" requirement parallels the Superior Court's interpretation of the statutory language.

15. As noted, the notice format outlined in the adopted regulation is short and concise. The Commission emphasizes the notice procedure adopted here assumes that, once the manufacturer and the proposed new dealer execute the notice (and identify the proposed new location and opening date, the plans concerning that proposed dealership have solidified to such extent that if a protest is thereafter filed, the Commission will be able to undertake its adjudicatory responsibility concerning the "good cause" factors against a backdrop of clear "intent" and concrete facts. A protest proceeding, which the Commission must attempt to resolve within ninety days, cannot become a contest over "intentions" which are merely possibilities. Moreover, the "good cause" factors listed in § 4915(c) require, in part, inquiries into the proposal's resulting effects on both the existing dealers and the proposed new dealership. The Commission cannot, within the ninety day period granted to it, assay those effects unless the relevant facts concerning the proposed dealership are sufficiently fixed. The Commission expects that the notice required by the adopted regulation will not be served on existing dealers

and the Commission until the manufacturer's "intent" is truly clear.

IV. ORDERING CLAUSES

NOW, THEREFORE, this 17th day of November, 1998, the Commission Orders;

1. That the "Public Service Commission Rules Regarding The Information Which Must Be Filed With The Commission By The Manufacturers As Part of Its Notice of Intent to Relocate or Add A Motor Vehicle Dealership," as adopted by PSC Order No. 4397 (Jan. 21, 1997) are hereby vacated.

2. That the findings and recommendations of the Hearing Examiner, as contained in the Report attached to the original hereto as Exhibit "B", are adopted by the Commission to the extent identified in this Order;

3. That the "Rule Governing Notice Provided by Motor Vehicle Manufacturers Pursuant to § 4915(a) of the Motor Vehicle Franchising Practices Act," attached hereto as Exhibit "A", is hereby adopted to govern procedures under 6 Del. C. § 4915.

4. That the Secretary shall forward a copy of this Order (with exhibits) and the adopted rule to the Registrar of Regulations for publication, pursuant to 29 Del. C. § 10118(e), in the Delaware Register of Regulations.

5. That, pursuant to 29 Del. C. § 10118(e), the rule adopted herein shall become effective ten (10) days after publication in the Delaware Register of Regulations.

6. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

ATTEST:

Secretary

1 Bayshore Ford Truck Sales, Inc., a dealership, also filed initial comments and appeared at the initial hearing to endorse the views of the DATDA. Thereafter, Bayshore did not actively participate in the proceedings.

2 The Commission previously detailed the various proposals and the proceedings before the Hearing Examiner in PSC Order No. 4397 at pp. 3-24 (Jan. 21, 1997)

3 See Exhs. 7 & 8 (affidavits of newspaper publication); 2:4 Del. Reg. 679-81, 712-13 (Oct. 1, 1998) (Register notices).

EXHIBIT "A"

RULE GOVERNING NOTICE PROVIDED BY MOTOR VEHICLE MANUFACTURERS PURSUANT TO SECTION 4915 (a) OF THE MOTOR VEHICLE FRANCHISING PRACTICES ACT

Motor vehicle manufacturers notifying the Public

Service Commission and affected new motor vehicle dealers of their intent to establish an additional new motor vehicle dealership or to relocate an existing new motor vehicle dealership pursuant to 6 Del. C. § 4915(a) shall use the following form of notice:

NOTICE OF THE ESTABLISHMENT OF AN ADDITIONAL NEW MOTOR VEHICLE DEALERSHIP OR THE RELOCATION OF AN EXISTING NEW MOTOR VEHICLE DEALERSHIP

TO: [Insert name and address of new motor vehicle dealer selling new motor vehicles in the same line-make in the "relevant market area" as defined by 6 Del. C. § 4902(10).]

You are hereby notified that [insert name of manufacturer] intends to establish a [insert line-make of vehicle] dealership at [specify the street address or, if none exists, the geographic boundaries of the proposed new dealership] on or after [insert earliest date on which manufacturer intends to establish the additional or relocated dealership].

The manufacturer is required to provide this notice to you and to the Public Service Commission pursuant to 6 Del. C. § 4915.

[signature]
On behalf of [insert name of manufacturer]

[signature]
On behalf of [insert name of proposed dealership]

EXHIBIT "B"

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE

IN THE MATTER OF A REGULATION TO SPECIFY THE INFORMATION REQUIRED TO BE FILED BY A MANUFACTURER TO ESTABLISH AN ADDITIONAL DEALER OR TO RELOCATE AN EXISTING DEALERSHIP PURSUANT TO 6 DEL. C. § 4915(A) | PSC REGULATION DOCKET NO. 44

REPORT OF THE HEARING EXAMINER

DATED: AUGUST 12, 1996 WILLIAM F. O'BRIEN HEARING EXAMINER

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* PLEASE NOTE THE PAGES NUMBERS REFER TO THE ORIGINAL DOCUMENT, NOT THE REGISTER.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF A		
REGULATION TO		
SPECIFY THE INFORMATION	PSC	
REQUIRED TO BE FILED BY A	REGULATION	
MANUFACTURER TO ESTABLISH	DOCKET NO. 44	
AN ADDITIONAL DEALER OR		
TO RELOCATE AN EXISTING		
DEALERSHIP		
PURSUANT TO 6 DEL. C. § 4915(A)		

REPORT OF THE HEARING EXAMINER

William F. O'Brien, duly appointed Hearing Examiner in this docket by Commission Order No. 4052 dated September 26, 1995, pursuant to the terms of 26 *Del.C.* § 502 and 29 *Del.C.* Ch. 101, reports to the Commission as follows:

I. APPEARANCES

On behalf of the Delaware Public Service Commission Staff ("Staff"):

ASHBY & GEDDES
BY: JAMES McC. GEDDES, ESQUIRE

On behalf of Delaware Automobile and Truck Dealers Association ("DATDA"):

BAYARD, HANDELMAN & MURDOCK, P.A.
BY: CHARLENE D. DAVIS, ESQUIRE and
WILLIAM D. BAILEY, JR., ESQUIRE

On behalf of American Automobile Manufacturers Association ("AAMA"):

DUANE, MORRIS & HECKSCHER
BY: WILLIAM E. MANNING, ESQUIRE

On behalf of Bayshore Ford Truck Sales, Inc. ("Bayshore"):

SMITH, KATZENSTEIN & FURLOW
BRETT D. FALLON, ESQUIRE

II. BACKGROUND

1. On September 26, 1995, by Order No. 4052, the Public Service Commission ("Commission" or "PSC") established this docket to consider for adoption a regulation specifying the information to be filed by a motor vehicle manufacturer when it gives notification to the PSC of its intent to establish an additional dealer within, or to relocate an existing dealer into, a relevant market area where the same line-make is already represented. Such notification is required pursuant to § 4915(a) of the Motor Vehicle Franchising Practices Act (the "Act"), 6 *Del.C.* Ch. 49.

2. The Commission established this docket in order to implement the suggestion of the Delaware Supreme Court in *Future Ford Sales, Inc., et al. v. PSC and Ford Motor Company*, Del. Supr., 654 A.2d 837, 846 (1995) ("*Future Ford*").⁴ (PSC Order No. 4052 at 1.) In accordance with *Future Ford*, the Commission seeks to consider "the nature and type of information...relevant for filing with the Commission to assure the 'ripeness'" of a manufacturer's intention to establish or relocate a new motor vehicle dealer. (*Id.*)

3. Also by Order No. 4052, the Commission directed Staff to accept written comments from interested persons until November 15, 1995, and to file a proposed regulation within 90 days thereafter. The Commission designated James McC. Geddes, Esquire, as Commission Counsel and designated this Hearing Examiner to conduct hearings and to report to the Commission regarding the reasonableness of the proposed regulation.

4. In accordance with Order No. 4052, Bayshore⁵ and AAMA (Exh. 3)⁶ filed their initial comments on November 15, 1995. After receiving a 30-day extension, DATDA filed its initial comments on December 15, 1995 (Exh. 5). On February 14, 1996, Staff filed its proposed regulation (Exh. 2). On February 29, 1996, AAMA (Exh. 4) and DATDA (Exh. 6) filed rebuttal comments responding to Staff's proposed regulation.

5. A duly noticed (Exh. 1) public evidentiary hearing in this docket was conducted on March 14, 1996, in the Commission's Dover office. Staff witness William C. Schaffer presented live testimony concerning Staff's proposed rule. (Tr. at 7-25.) After cross-examination was completed, counsel for AAMA, DATDA and Staff offered oral argument (Tr. at 31-61.) At the conclusion of the hearing, the evidentiary record consisted of six exhibits and a 64-page *verbatim* transcript. No member of the public appeared at the March 14, 1996 hearing or otherwise participated in this proceeding.

6. DATDA and AAMA submitted post-hearing briefs on April 4, 1996, and April 22, 1996, respectively.⁷ With its brief, AAMA submitted the affidavit of Joseph L. Heisler, a

regional manager for Ford Motor Company, in which Mr. Heisler responded to certain comments made by DATDA counsel during oral argument. (AAMA PHB at Exhibit A.)

7. DATDA moved to strike Mr. Heisler's affidavit as unauthorized, incompetent, and because the affiant had not been subject to cross-examination. (See DATDA's April 26, 1996 Motion to Strike.) After considering the motion and the responses thereto submitted by Staff and AAMA, I denied the motion to strike and offered DATDA the opportunity to cross-examine Mr. Heisler and to offer rebuttal testimony. (See Hearing Examiner's May 8, 1996 letter to the parties.) DATDA decided to forego additional discovery for economic reasons. (See DATDA's May 17, 1996 letter to the Hearing Examiner.)

8. I have considered the entire record of this proceeding, and based thereon, I submit for the Commission's consideration this Report.

III. POSITIONS OF THE PARTICIPANTS

9. Commission Staff. After considering the initial comments filed by Bayshore, DATDA, and AAMA, Staff proposed the following rules:

PUBLIC SERVICE COMMISSION RULES REGARDING THE INFORMATION WHICH MUST BE FILED WITH THE COMMISSION BY THE MANUFACTURER AS PART OF ITS NOTICE OF INTENT TO RELOCATE OR ADD A VEHICLE DEALERSHIP

The following information must be supplied the Public Service Commission of Delaware for their approval relative to the establishment of an additional new motor vehicle dealer or the relocating of an existing new motor vehicle dealer within or into a relevant market area where the same brand/make is then represented.

1) Information and documentation regarding the "Permanency of Investment" including but not limited to:

- a) The exact location of the proposed dealer.
- b) The proposed land area requirements for all usage needs.

c) Information on exclusivity of brand.

d) A certification that the information required in a-c above meets the Manufacturers standard minimum requirements.

2) Information and documentation regarding the growth or decline in population and new car registrations in the relevant market area.

3) Information and documentation regarding the effect on the consuming public in the relevant market area.

4) Information and documentation regarding whether it will be injurious or beneficial to the public welfare for the proposed dealer to be established.

5) Information and documentation regarding the competition and convenient customer care requirements including but not limited to:

a) The demographics of the relevant marketing area or a reference to a published source that may be consulted to obtain such data.

b) The total distance, by a generally accepted measurement technique, between the proposed dealer and existing dealers.

6) Information and documentation regarding the increase in actual competition that will satisfy the "public interest" requirement.

7) Information concerning the effect on the relocating dealer of denial of its relocation.

An existing dealer or party with an interest in the siting in the relevant market area may request additional information or data to satisfy particular needs directly from the manufacturer. At this point in the data exchange the parties may communicate and negotiate directly without Commission intervention. If the requesting dealer or party is still not satisfied with the response to the data request, they may request that the Commission, under its authority in the existing docket for siting the dealership, request the information, if the Commission believes it is appropriate to do so.

10. Staff witness Mr. Schaffer testified that Staff designed its proposed rules considering the requirements of 6 Del. C. § 4915(c). (Exh. 2 at 6, Tr. at 9.) Section 4915(c) provides seven items the Commission must consider when determining, pursuant to a dealer protest, whether a manufacturer has established "good cause" for establishing or relocating a new motor vehicle dealer.

11. Mr. Schaffer asserted that the Delaware Supreme Court would not be satisfied by a rule that simply required a notice of intent. (Tr. at 10.) He added that by requiring the manufacturer to supply, with its notice, information relevant to the § 4915(c) "good cause" considerations, the Commission possibly could avert an unnecessary proceeding. (*Id.*) Mr. Schaffer also noted that the burden of proof, in a "good cause" hearing, rests with the manufacturer and that the manufacturer is the party who holds the necessary information. (*Id.*)

12. Mr. Schaffer responded favorably to several of DATDA's proposed modifications to Staff's rules. (Tr. at 14-17.) He testified that an additional rule which requires the manufacturer to file, within 10 days of the filing of a protest, a letter of intent to establish a dealership would not conflict with Staff's position. (*Id.* at 15.) He also testified that, as long as there were some protection for confidential information, he would not object to adding the word "All" before each of his proposed rules which begin with "Information and documentation regarding..." (*Id.* at 16.) Finally, Mr. Schaffer asserted that he would not object to an additional rule which would require Staff to examine the manufacturer's filed notice to ensure that it complied with the minimum notice requirements. (*Id.* at 17.)

13. The Dealers. DATDA's proposed rules are

attached hereto as Attachment A. Included in the Attachment is a redlined version of DATDA's rules to demonstrate the changes DATDA proposed to Staff's rules.

14. DATDA asserted that its proposed regulation will satisfy the ripeness concerns raised by the Delaware Supreme Court in *Future Ford*. (DATDA PHB at 2.) DATDA offered that its rules will permit dealers to make an informed decision regarding the filing of a protest, thus conserving the resources of the Commission, the manufacturers, and the dealers. (*Id.* at 2-3.) DATDA emphasized that its proposed rules will "insure that the dealers will not be required to expend their limited resources in challenges to plans of the manufacturers which are merely tentative or conditional." (*Id.* at 3.)

15. DATDA argued that its proposed rules are in accord with the purpose of the Act, which, according to DATDA, is to prevent the abusive practices of manufacturers which exist because of the gross disparity in bargaining power. (*Id.* at 3, citing *Future Ford* at 842.) Along these lines, Counsel for DATDA argued that its proposed rules will help the dealers to avoid "a fight with their suppliers that they may not want to be in." (Tr. at 48.) DATDA asserted that as the dealers' suppliers of parts and vehicles, the manufacturers are "the last people you want to get into battle with that you don't have to be." (Tr. at 49.)

16. Bayshore asserted that the "manufacturer should provide as many specifics as possible so that the criteria of the statute can be easily applied." (November 14, 1995 letter from G. C. Turnauer to Commission.) Bayshore proposed a detailed checklist of information relating to forecasted annual sales, physical plant, human investment, and market plan. (*Id.*) Bayshore also suggested that the manufacturer submit a letter of intent to establish the proposed dealer. (*Id.*) At the evidentiary hearing, counsel for Bayshore indicated that Bayshore supports DATDA's position. (Tr. at 31.)

17. The Manufacturers. The AAMA proposed a rule which requires the following notice:

NOTICE OF THE ESTABLISHMENT OF AN ADDITIONAL NEW MOTOR VEHICLE DEALER OR THE RELOCATION OF AN EXISTING NEW MOTOR VEHICLE DEALER

TO: [Insert name and address of new motor vehicle dealer selling new motor vehicles in the same line-make in the relevant market area.]

You are hereby notified that [insert name of manufacturer] intends to establish a [insert line-make of vehicle] dealership at [specify the street address, or if none exists, the geographic boundaries of the proposed new dealership] on or after [insert earliest date on which manufacturer intends to establish the additional or relocated dealership].

The manufacturer is required to give this notice pursuant to 6 *Del.C.* § 4915.

(Exh. 4 at Exhibit A.)

18. At the hearing, AAMA indicated that an acceptable modification to its proposed rule would be to require signatures which evidence acceptance by the manufacturer and the proposed additional or relocated dealer. (Tr. at 28.)

19. AAMA asserted that its proposed regulation more than adequately satisfies the Supreme Court's concern regarding ripeness. (AAMA PHB at 2.) According to AAMA, ripeness would not have been an issue in *Future Ford* had there been an executed letter of intent covering Ford's proposed new dealership. (*Id.*, citing *Future Ford* at 846.) AAMA argued that its proposed notice requirement goes beyond that found to be lacking in *Future Ford* because its notice would inform dealers of the exact location of the proposed new dealership, provide the date upon which the new dealership is to be established, and direct the dealers' attention to the Motor Vehicle Franchise Act. (*Id.* at 3.)

20. The AAMA asserted that DATDA's suggestion that dealers who file a protest face the risk of retaliation from the manufacturer is unfounded and without support in the record. (*Id.* at 4.) The AAMA noted that since the initiation of the Sheehy Ford protest in PSC Docket No. 93-66MV, which Sheehy Ford continues to litigate via the *Future Ford* appeals, Ford Motor Company has awarded two new franchises to the controlling owners of Sheehy Ford. (*Id.* at 5, and at "Exhibit A", Affidavit of Joseph Heisler, p. 2.) Therefore, according to the AAMA, Ford has not punished Sheehy Ford for protesting Ford's plans to establish a new dealership. (*Id.* at 5.)

21. The AAMA discounted DATDA's argument that absent broad disclosure at the notice stage, the dealers lack the information necessary to decide whether or not to protest the proposed dealership. (*Id.*) According to the AAMA, the dealer has as much information as the manufacturer regarding the performance of its own dealership and, moreover, there is a constant flow of information between the dealers and the manufacturers regarding demographic and other market information. (*Id.*)

22. The AAMA argued that DATDA's proposed modifications to Staff's rules inject "even more uncertainty and unfairness into the notice requirement." (*Id.* at 8.) According to AAMA, DATDA's requirement that the manufacturer produce all information upon which it intends to rely to prove "good cause" requires the manufacturer to compile its case in a vacuum, before the dealer specifies the nature of its objection. (*Id.*) AAMA asserted that, in a proceeding to determine "good cause", the dealer has an obligation to come forward with evidence to rebut the manufacturer's assertion of "good cause".⁸ (*Id.* at 9.) Thus, the manufacturer's case depends in part on the nature of the dealer's protest. (*Id.*)

23. Finally, AAMA noted that New Jersey, Pennsylvania, and Virginia, who each have motor vehicle franchise acts with notice requirements similar to that imposed by § 4915(a), do not require the detailed notice proposed by Staff and DATDA. (*Id.*) According to AAMA, a Pennsylvania court affirmatively determined that a simple notice of intention to establish another dealership in the relevant market area satisfies Pennsylvania's notice requirement.⁹

IV. DISCUSSION

24. By considering this rulemaking, the Commission is following the recommendation of the Delaware Supreme Court in a dealer protest case which originated before the Commission in PSC Docket No. 93-66MV. *Future Ford* at 846. In *Future Ford*, the appellant dealers argued that its protest was not "ripe" for resolution because the manufacturer failed to provide evidence of its intention, based on firmly developed plans, to establish a new dealership at a specific location. (*Id.* at 845.) The Court noted that much of the ripeness dispute stemmed from the indefiniteness of the statutory language that requires notice and suggested that the Commission consider a rulemaking to eliminate the uncertainty. (*Id.* at 846.)

25. As seen in the above summary of positions, the dispute in this docket can be reduced to the following: Staff and the dealers believe the approved rules should require manufacturers to provide, with their initial notice, all information they would be required to produce in the event a protest was filed and a "good cause" hearing was conducted. The manufacturers believe such broad disclosure at the notice stage extends beyond the Supreme Court's concerns in *Future Ford* and beyond the statutory intent behind the § 4915(a) notice requirement.¹⁰

26. Because this docket arose specifically and solely to address the "ripeness" concerns expressed by the Supreme Court in *Future Ford* (*See* PSC Order No. 4052), it is appropriate to consult the text of the opinion for guidance regarding the extent of notice necessary to establish whether a manufacturer's proposal is "ripe" for resolution. The Court found that Ford's proposal was ripe because its "plans had advanced to the point of evidencing a clear intention to proceed sufficient to activate the administrative process designed to test the appropriateness of the proposal under the factors set forth in § 4915(c)."¹¹ *Future Ford* at 846.

27. The Court then identified two deficiencies in the record concerning the "finality" of Ford's proposal. (*Id.*) The first was the fact that Ford's letter of intent had yet to be placed into the case record. (*Id.*) Second, the exact location of the new dealership was uncertain because no direct evidence had been presented affirming the availability of the facility which Ford planned to use. The Court directed the Commission, on remand, to clarify these uncertainties. (*Id.*)

28. Thus, it appears that a rule which requires the

manufacturer to provide a letter of intent and to specify the exact location of the proposed dealership addresses the Supreme Court's ripeness concerns in *Future Ford*. Therefore, I concur with AAMA that its proposed rule satisfies the expressed concerns of the Supreme Court when it recommended this rulemaking proceeding.

29. However, Staff argues that once the Commission undertakes to adopt a rule, it may address any concern it sees fit (Tr. at 50). In Staff's view, a legitimate goal of this rulemaking is to attempt to balance the competing interests of the manufacturers and dealers by requiring the expanded notice filing. (Tr. at 51.) Staff agreed with DATDA that the expanded notice will permit a dealer to assess its chances of prevailing before the Commission without having to file a protest and thus risk retribution from its supplier. (Tr. at 52.)

30. The record, though, does not support conclusions regarding whether or not manufacturers actually retaliate against protesting dealers or whether or not the dealers' fear of retaliation is reasonable. The retaliation issue was not broached until closing arguments and the only record evidence consists of an affidavit from one manufacturer which was admitted after the hearing. (AAMA PHB at "Exhibit A", Affidavit of Joseph Heisler.) However, the Commission, in my view, need not resolve the retaliation issue because of several overriding considerations.

31. In order to adopt Staff's proposed rule, the Commission must find that it is not inconsistent with the enabling statute (§ 4915) and that it does not extend the limits of the statute.¹² Section 4915(a) provides: "the manufacturer shall in writing first notify the Public Service Commission and each new motor vehicle dealer in such line-make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area." Staff's and the dealers' proposed rules expand the meaning of the word "notify" in this section to unrecognizable proportions. As argued by AAMA, if the General Assembly had intended manufacturers to supplement their notice with additional information, then it would have included such a requirement in § 4915, as it did in other notice provisions in the Act.¹³ (Exh. 4 at 7-8.)

32. In fact, the General Assembly recently amended the Act to address the primary issue in this docket; i.e., the flow of information from manufacturers to dealers when a manufacturer seeks to establish or relocate a dealership. Prior to the enactment of 70 Del. Laws, c. 497,¹⁴ on July 12, 1996, § 4913(b)(2) of the Act simply prohibited manufacturers from refusing to disclose to a dealer its "manner and mode of distribution" of that dealer's line-make within Delaware.

33. Section 2 of 70 Del. Laws, c. 497, revised the § 4913(b)(2) disclosure requirement to include: any matters relating to the manner and mode of distribution...*including, without limitation, matters related to the establishment or relocation of dealers under § 4915* (but with appropriate

exclusion of financial information not essential to a complete understanding of the manufacturer's manner and mode of distribution.) (Emphasis added.)

This amendment enables a dealer to obtain from the manufacturer, before any protest is filed with the Commission, information regarding the manufacturer's plans for an additional or relocated dealership.

34. Thus, the General Assembly has spoken regarding a manufacturer's disclosure requirements when it intends to add or relocate a dealership. Interestingly, the General Assembly chose not to amend the notice requirement of § 4915(a). Rather, it chose to modify § 4913, a code section which the Commission has not been charged with administering.

35. Further, the implementation of Staff's proposed rule would create various practical problems. I concur with AAMA that Staff's rule injects more uncertainty into the notice requirement than that which presently exists. (Exh. 4 at 1, 4-5.) For instance, Staff's proposed Rules 3 and 4 require, respectively, "information and documentation regarding the effect on the consuming public in the relevant market area," and "information and documentation regarding whether it will be injurious or beneficial to the public welfare..." (Exh. 2 at Attachment.) These rules lack precision and do not give adequate notice to the manufacturers of what information is required.

36. As noted above, Staff acquired this language from § 4915(c), which provides seven factors for the Commission to consider when determining whether "good cause" exists for an additional or relocated dealership. Perhaps the General Assembly selected this general language in order to leave the Commission with substantial discretion when considering the public interest factors. However, the language of § 4915(c), which may be appropriate to identify public interest considerations in a "good cause" determination, does not translate well into a notice requirement which demands precision.

37. Staff apparently anticipated that the application of its rule would lead to disputes. Staff included a mechanism by which a dealer, who is dissatisfied with the data provided by the manufacturer, may petition the Commission to compel production of the data. (See Staff's proposed rule, *supra*, at last paragraph.) First, it is questionable whether the Commission (or Staff) has authority to intercede in a dispute before a protest has been filed, a docket has been opened, and the parties are properly before the Commission. Second, determinations regarding what evidence must be produced in these cases are best left to the discretion of the hearing examiner in the course of discovery.

38. DATDA argues that the Commission should require a manufacturer to file substantial additional information with its notice under the same authority and for the same reasons that it requires utilities to meet extensive minimum filing requirements with their applications for rate changes. (Tr. at

47.) This analogy is not helpful for several reasons.

39. First, the Commission's regulatory authority over utilities under Title 26 is far more expansive than its authority over motor vehicle manufacturers and dealers under § 4915 of the Act. For example, with respect to rulemaking, 26 *Del.C.* § 209 provides the Commission with the authority to: Fix just and reasonable standards, classifications, regulations, practices, measurements or services to be furnished, imposed, observed and followed thereafter by any *public utility*. (Emphasis added.) On the other hand, to promulgate rules in the motor vehicle arena, the Commission must rely on its general rulemaking authority under 26 *Del.C.* § 106. *Future Ford* at 846.15 Section 106 authorizes the Commission to: ...make all needful rules for its government and other proceedings not inconsistent with this title.

This weaker language is sandwiched between the Commission's authority to have an office and furniture and its authority to hold meetings. It certainly does not carry the same weight of regulatory authority as is present in § 209 above.

40. Second, the Commission initiates a utility rate case proceeding upon the filing of the application and the utility, at the outset, bears the burden of proving the reasonableness of its proposed rate. 26 *Del.C.* § 307. However, in the motor vehicle setting, it is the protest, not the notice, which causes the Commission to initiate a proceeding and no burden attaches unless and until such protest is filed. 6 *Del.C.* § 4915(a). (See AAMA PHB at 9.) Third, the Commission's minimum filing requirements are more precise than the proposed notice rules, and a utility can ascertain, with little or no uncertainty, what information is required.

41. No participant objected to the individual elements of AAMA's proposed notice requirement; i.e., 1) the manufacturer's indication of its intent to establish or relocate a dealer; 2) the exact location of the proposed dealership; 3) the earliest date on which the establishment or relocation will take place; 4) a reference to § 4915 of the Act; and, as modified, 5) signatures from representatives of the manufacturer and the proposed dealer. (Tr. at 60.)

42. As discussed above, these elements satisfy the Supreme Court's expressed concerns in *Future Ford*. Further, I do not believe that AAMA's proposed rule extends beyond the General Assembly's intent when it directed manufacturers to "notify" the Commission and affected dealers of its intention to add or relocate a dealership.

43. However, since AAMA's proposed rule fails to recognize that the manufacturer must provide the notice to the Commission, as well as to the affected dealers, I recommend minor additions to clarify that point. (See Attachment B.) I also fashioned AAMA's proposed notice into the form of a Commission rule. Finally, I noted, in the proposed form of notice, that the term "relevant market area" is used as it is defined in 6 *Del.C.* 4902(10).

44. With these minor modifications, I find AAMA's proposed rule to be reasonable and in the public interest. The form of notice which I recommend is attached as Attachment B.

45. In an ancillary matter, the Superior Court recently suggested the need for a rule providing for sunset of Commission approvals of additional or relocated dealerships. *Future Ford Sales, Inc., et al. v. PSC and Ford Motor Company*, Del. Super., C.A. No. 95A-10-016-FSS, Silverman, J., at 14, (April 30, 1996). The Court found that "giving Ford open-ended permission to proceed or not to proceed is problematic, theoretically." (*Id.*) However, the Superior Court issued its decision after the record was closed in this case and thus a sunset rule was not addressed.

46. Therefore, I do not recommend any time limit be placed in the notice rules. However, I suggest that the Commission, when approving the addition or relocation of a dealership, should consider adopting the practice of including a sunset provision in its order, such that its approval expires one year after its decision. The one-year time period, which was recommended by the Superior Court, should commence on the date of the Commission order or at the conclusion of all appeals, whichever is later. (*Id.*)

VI. RECOMMENDATIONS

In summary, for the reasons stated above, I recommend the following:

A. That the Commission find the regulation proposed by Staff to be unreasonable;

B. That the Commission find the regulation attached hereto as Attachment B to be reasonable; and

C. That the Commission adopt the regulation attached hereto as Attachment B.

Respectfully submitted,

William F. O'Brien
Hearing Examiner

Dated: August 12, 1996

Attachment A - DATDA's Proposed Rules with redlined version.

PUBLIC SERVICE COMMISSION RULES REGARDING THE INFORMATION WHICH MUST BE FILED WITH THE COMMISSION BY THE MANUFACTURER AS PART OF ITS NOTICE OF INTENT TO RELOCATE OR ADD A MOTOR VEHICLE DEALERSHIP

I. INFORMATION REQUIRED

A. The following information must be supplied to the Public Service Commission of Delaware (the "Commission") with the manufacturer's notice of intention to establish an additional new motor vehicle dealer or to

relocate an existing new motor vehicle dealer within or into a relevant market area where the same line-make is then represented.

1) All information and documentation on which the manufacturer intends to rely in the event of a hearing regarding the "permanency of investment" including but not limited to:

a) The exact location of the proposed dealership.

b) The proposed land area requirements for all and for each usage need(s) of the proposed dealership.

c) Information on exclusivity or nonexclusivity of line-make at the proposed dealership.

d) A certification that the information required in a-c above meets the manufacturer's standard minimum requirements for new dealerships.

2) All information and documentation on which the manufacturer intends to rely in the event of a hearing regarding the growth or decline in population and new car registrations in the relevant market area.

3) All information and documentation on which the manufacturer intends to rely in the event of a hearing regarding the effect on the consuming public in the relevant market area.

4) All information and documentation on which the manufacturer intends to rely in the event of a hearing regarding whether it will be injurious or beneficial to the public welfare for the proposed dealership to be established.

5) All information and documentation on which the manufacturer intends to rely in the event of a hearing regarding competition and convenient customer care, including but not limited to:

a) The demographics of the relevant marketing area or a reference to a published source that may be consulted to obtain such data.

b) The total distance, by a generally accepted measurement technique, between the proposed dealer and existing dealers.

6) All information and documentation on which the manufacturer intends to rely in the event of a hearing regarding the increase in actual competition that will be in the "public interest."

7) All information on which the manufacturer intends to rely in the event of a hearing concerning the effect on the relocating dealer of denial of its relocation.

B. Within ten (10) days following the filing of a protest pursuant to 6 *Del. C.* § 4519(a), the manufacturer must submit a letter of intent signed by the manufacturer and proposed dealer.

II. PROCEDURES

A. The Commission Staff shall review all filings to insure compliance with the minimum filing requirements and shall notify the manufacturer within ten (10) days after the date of filing of any defects in compliance. After

notification of non-compliance, the manufacturer shall have twenty (20) days to correct the defects. The time period for filing the protest under 29 Del. C. § 4915(a) shall begin to run from the date of the filing of the notice of intent in full compliance with the filing requirements.

B. An existing dealer or party with an interest in the siting of the proposed dealership in the relevant market area may request additional information and documentation directly from the manufacturer and the parties may communicate and negotiate directly without Commission intervention. If the existing dealer or party with an interest in the relevant market area of a proposed dealership is still not satisfied with the response to its request, it may request that the Commission, pursuant to its authority in the docket for siting the proposed dealership, require the submission of the data and/or information, if the Commission concludes it is appropriate and relevant to the ripeness of the manufacturer's intent.

C. The Commission or Hearing Examiner may, in its discretion, permit the manufacturer to submit evidence at the hearing that was not submitted with the notice of intent;

- 1) if submission of the information and/or documentation is not required by this rule;
- 2) if there is good cause shown;
- 3) if the submission of the information will not cause unfair prejudice; or
- 4) if the consideration of the information is in the interest of justice and the efficient administration of the hearing.

**PUBLIC SERVICE COMMISSION RULES REGARDING
THE INFORMATION WHICH MUST BE FILED WITH
THE COMMISSION BY THE MANUFACTURER AS
PART OF ITS NOTICE OF INTENT TO RELOCATE OR
ADD A MOTOR VEHICLE DEALERSHIP**

I. INFORMATION REQUIRED

A. The following information must be supplied to the Public Service Commission of Delaware (the "Commission") ~~for their approval relative with the manufacturer's notice of intention to the establishment of an additional new motor vehicle dealer or the relocating of to relocate an existing new motor vehicle dealer within or into a relevant market area where the same brand/line-make is then represented.~~

- 1) All information and documentation on which the manufacturer intends to rely in the event of a hearing regarding the "Permanency of Investment" including but not limited to:
 - a) The exact location of the proposed dealership.
 - b) The proposed land area requirements for all and for each usage ~~needs~~ need(s) of the proposed dealership.
 - c) Information on exclusivity or nonexclusivity of brand line-make at the proposed dealership.

d) A certification that the information required in a-c above meets the ~~m~~Manufacturer's standard minimum requirements for new dealerships.

2) All information and documentation on which the manufacturer intends to rely in the event of a hearing regarding the growth or decline in population and new car registrations in the relevant market area.

3) All information and documentation on which the manufacturer intends to rely in the event of a hearing regarding the effect on the consuming public in the relevant market area.

4) All information and documentation on which the manufacturer intends to rely in the event of a hearing regarding whether it will be injurious or beneficial to the public welfare for the proposed dealership to be established.

5) All information and documentation on which the manufacturer intends to rely in the event of a hearing regarding the competition and convenient customer care, requirements including but not limited to:

- a) The demographics of the relevant marketing area or a reference to a published source that may be consulted to obtain such data.
- b) The total distance, by a generally accepted measurement technique, between the proposed dealer and existing dealers.

6) All information and documentation on which the manufacturer intends to rely in the event of a hearing regarding the increase in actual competition that will ~~satisfy~~ be in the "public interest." requirement.

7) All information on which the manufacturer intends to rely in the event of a hearing concerning the effect on the relocating dealer of denial of its relocation.

B. Within ten (10) days following the filing of a protest pursuant to 6 Del. C. § 4519(a), the manufacturer must submit a letter of intent signed by the manufacturer and proposed dealer.

II. PROCEDURES

A. The Commission Staff shall review all filings to insure compliance with the minimum filing requirements and shall notify the manufacturer within ten (10) days after the date of filing of any defects in compliance. After notification of non-compliance, the manufacturer shall have twenty (20) days to correct the defects. The time period for filing the protest under 29 Del. C. § 4915(a) shall begin to run from the date of the filing of the notice of intent in full compliance with the filing requirements.

B. An existing dealer or party with an interest in the siting of the proposed dealership in the relevant market area may request additional information and documentation ~~or data to satisfy particular needs~~ directly from the manufacturer and ~~At this point in the data exchange~~ the parties may communicate and negotiate directly without Commission intervention. If the ~~requesting~~ existing dealer

or party with an interest in the relevant market area of a proposed dealership is still not satisfied with the response to its request, ~~they~~ it may request that the Commission, ~~under~~ pursuant to its authority in the existing docket for siting the proposed dealership, ~~request~~ require the submission of the data and/or information, if the Commission believes concludes it is appropriate to do so and relevant to the ripeness of the manufacturer's intent.

C. The Commission or Hearing Examiner may, in its discretion, permit the manufacturer to submit evidence at the hearing that was not submitted with the notice of intent;

- 1) if submission of the information and/or documentation is not required by this rule;
- 2) if there is good cause shown;
- 3) if the submission of the information will not cause unfair prejudice; or
- 4) if the consideration of the information is in the interest of justice and the efficient administration of the hearing.

Attachment B - Hearing Examiner's recommended rule.

RULE GOVERNING NOTICE PROVIDED BY
MOTOR VEHICLE MANUFACTURERS PURSUANT
TO SECTION 4915(a) OF THE MOTOR VEHICLE
FRANCHISING PRACTICES ACT

Motor vehicle manufacturers notifying the Public Service Commission and affected new motor vehicle dealers of their intent to establish an additional new motor vehicle dealership or to relocate an existing new motor vehicle dealership pursuant to 6 Del.C. § 4915(a) shall use the following form of notice:

NOTICE OF THE ESTABLISHMENT
OF AN ADDITIONAL NEW MOTOR VEHICLE
DEALERSHIP OR THE RELOCATION OF AN
EXISTING NEW MOTOR VEHICLE DEALERSHIP

TO: [Insert name and address of new motor vehicle dealer selling new motor vehicles in the same line-make in the "relevant market area" as defined by 6 Del.C. 4902(10).]

You are hereby notified that [insert name of manufacturer] intends to establish a [insert line-make of vehicle] dealership at [specify the street address, or if none exists, the geographic boundaries of the proposed new dealership] on or after [insert earliest date on which manufacturer intends to establish the additional or relocated dealership].

The manufacturer is required to provide this notice to you and to the Public Service Commission pursuant to 6 Del.C. § 4915.

_____[signature]_____
On behalf of [insert name
of manufacturer]

_____[signature]_____
On behalf of [insert name
of proposed dealership]

EXHIBIT "A"

RULE GOVERNING NOTICE PROVIDED BY MOTOR
VEHICLE MANUFACTURERS PURSUANT TO
SECTION 4915 (a) OF THE MOTOR
VEHICLEFRANCHISING PRACTICES ACT

Motor vehicle manufacturers notifying the Public Service Commission and affected new motor vehicle dealers of their intent to establish an additional new motor vehicle dealership or to relocate an existing new motor vehicle dealership pursuant to 6 Del. C. § 4915(a) shall use the following form of notice:

NOTICE OF THE ESTABLISHMENT OF AN
ADDITIONAL NEW MOTOR VEHICLE DEALERSHIP
OR THE RELOCATION OF AN EXISTING NEW
MOTOR VEHICLE DEALERSHIP

TO: [Insert name and address of new motor vehicle dealer selling new motor vehicles in the same line-make in the "relevant market area" as defined by 6 Del. C. § 4902(10).]

You are hereby notified that (insert name of manufacturer) intends to establish a (insert line-make of vehicle) dealership at (specify the street address or, if none exists, the geographic boundaries of the proposed new dealership) on or after (insert earliest date on which manufacturer intends to establish the additional or relocated dealership).

The manufacturer is required to provide this notice to you and to the Public Service Commission pursuant to 6 Del. C. §4915.

_____(Signature)_____
On behalf of (insert name
of manufacturer)

_____(Signature)_____
On behalf of (insert name
of proposed dealership)

DEPARTMENT OF STATE

OFFICE OF THE STATE BANKING COMMISSION

Statutory Authority: 5 Delaware Code,
Chapter 7 (5 Del.C. Ch. 7)

ORDER ADOPTING REVISED REGULATIONS
5.121.0002, 5.701/774.0001, 5.833.0004 AND 5.844.0009

IT IS HEREBY ORDERED, this 6th day of November, 1998, that revised regulations 5.121.0002, 5.701/774.0001,

5.833.0004 and 5.844.0009 are adopted as regulations of the State Bank Commissioner. Copies of revised regulations 5.121.0002, 5.701/774.0001, 5.833.0004 and 5.844.0009 are attached hereto and incorporated herein by reference. Revised regulations 5.121.0002, 5.701/774.0001, 5.833.0004 and 5.844.0009 supersede previous regulations 5.121.0002, 5.701/774.0001, 5.833.0004 and 5.844.0009, respectively. The effective date of revised regulations 5.121.0002, 5.701/774.0001, 5.833.0004 and 5.844.0009 is December 11, 1998. Revised regulations 5.121.0002, 5.701/774.0001, 5.833.0004 and 5.844.0009 are issued by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Revised regulations 5.121.0002, 5.701/774.0001, 5.833.0004 and 5.844.0009 are adopted pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed amendments and the text of amended regulations 5.121.0002, 5.701/774.0001, 5.833.0004 and 5.844.0009 were published in the October 1, 1998 issue of the Delaware Register of Regulations. The Notice also was published in the News Journal and the Delaware State News on October 9, 1998, and mailed on or before that date to all persons who had made timely written requests to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The Notice included, among other things, a summary of the proposed amended regulations, invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before November 5, 1998, and stated that the proposed amended regulations were available for inspection at the Office of the State Bank Commissioner, that copies were available upon request, and that a public hearing would be held on November 5, 1998 at 10:00 a.m. in Room 112 of the Tatnall Building, William Penn Street, Dover, Delaware 19901.

2. No comments were received on or before November 5, 1998.

3. A public hearing was held on November 5, 1998 at 10:00 a.m. regarding the proposed amended regulations 5.121.0002, 5.701/774.0001, 5.833.0004 and 5.844.0009. The State Bank Commissioner, the Deputy Bank Commissioner for Supervisory Affairs and the Court Reporter attended the hearing. No other person attended the hearing. The State Bank Commissioner and the Deputy Bank Commissioner for Supervisory Affairs summarized the proposed amended regulations for the record. No other comments were made or received at the hearing on the proposed amended regulations.

4. After review and consideration, the State Bank Commissioner decided to adopt revised regulations 5.121.0002, 5.701/774.0001, 5.833.0004 and 5.844.0009 as proposed.

Timothy R. McTaggart
State Bank Commissioner

[Document Control No: 20-15/98/11/01]

Regulation No.: 5.121.0002

[Effective Date: December 11, 1998]

**PROCEDURES GOVERNING THE CREATION AND
EXISTENCE OF AN INTERIM BANK**

This regulation establishes procedures governing the creation and existence of an Interim Bank, which shall have no authority to conduct a banking business until merged with an Insured Bank.

1. Definitions

(a) "Articles of Association" means the articles of association described in Section 723 of Title 5 of the Delaware Code.

(b) "Articles of Organization" means the articles of organization described in Section 728 of Title 5 of the Delaware Code.

(c) "Bank" means a Delaware State Bank, Out-of-State State Bank, Delaware National Bank or Out-of-State National Bank.

(d) "Bank Holding Company" has the meaning specified in the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 et seq.).

(e) "Certificate Authorizing the Transaction of Business" means the certificate described in Section 733 of Title 5 of the Delaware Code.

(f) "Delaware Bank" means a Delaware National Bank or a Delaware State Bank.

(g) "Delaware National Bank" means a national banking association created under the National Bank Act (12 U.S.C. § 21 et seq.) that is located in this State.

(h) "Delaware State Bank" means a bank (as defined in § 101 of Title 5 of the Delaware Code) chartered under the laws of this State.

(i) "Insured Bank" means a bank that is an insured depository institution, as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c).

(j) "Interim Bank" means a bank established exclusively for the temporary purposes set forth in this regulation.

(k) "Interim Bank Agreement" means an agreement that expressly provides, among other things, for the creation of an Interim Bank and its merger with an Insured Delaware Bank.

(l) "Located in this State" means, with respect to a state-chartered bank, a bank created under the laws of this State and, with respect to a national banking association, a

bank whose organization certificate identifies an address in this State as the place at which its discount and deposit operations are to be carried out.

(m) "Notice of Intent" means a notice of the intention of the incorporators to form an Interim Bank, as provided in Section 5 of this regulation.

(n) "Out-of-State Bank" means an Out-of-State State Bank or an Out-of-State National Bank.

(o) "Out-of-State Bank Holding Company" has the meaning specified in the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 et seq.).

(p) "Out-of-State National Bank" means a national bank association created under the National Bank Act (12 U.S.C. § 21 et seq.) that is not located in this State.

(q) "Out-of-State State Bank" means a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813(a), that is not chartered under the laws of this State.

(r) "Public Notice" means a public notice, as provided in Section 5 of this regulation.

2. Scope

An Interim Bank may only be formed to facilitate:

(a) The establishment of a Bank Holding Company by an Insured Delaware Bank's stockholders. The proposed Bank Holding Company, once incorporated, applies in the manner set forth at Section 5 of this regulation for an Interim Bank charter for a subsidiary to be newly formed. An agreement is executed between the proposed Bank Holding Company and the Insured Delaware Bank that provides, among other things, that the Insured Delaware Bank will be merged or consolidated with the Interim Bank and become a subsidiary of the Bank Holding Company upon the receipt of all necessary federal and state approvals for the proposed Bank Holding Company so to act; or

(b) The acquisition of an Insured Delaware Bank by another Insured Delaware Bank or Bank Holding Company (e.g., pursuant to Subchapter VI of Chapter 7 or Subchapters IV or V of Chapter 8 of Title 5 of the Delaware Code). In such instances, the Interim Bank is used to assure that the to-be-acquired Insured Delaware Bank will become wholly-owned through a merger or consolidation pursuant to an agreement between the Insured Delaware Banks or between an Insured Delaware Bank and a Bank Holding Company that provides, among other things, for an Insured Delaware Bank to merge or consolidate with the Interim Bank.

(c) The merger of one or more Out-of-State Banks with or into one or more Delaware Banks to result in a Delaware State Bank, in accordance with Section 795D or Section 795G of Title 5 of the Delaware Code.

3. Interim Bank Agreement Required

An Interim Bank may not be chartered unless there is an Interim Bank Agreement.

4. Who May Incorporate

An Interim Bank may be incorporated, in accordance with Section 722 of Title 5 of the Delaware Code, by three or more individual persons, at least two of whom must be citizens and residents of Delaware.

5. Application Procedures

An application to form an Interim Bank shall be submitted as follows, except as otherwise provided in connection with a contemporaneous application in accordance with another regulation (e.g., Regulation 5.844.0009, "Application by an Out-of-State Bank Holding Company to Acquire a Delaware Bank or Bank Holding Company"):

(a) The Notice of Intent shall be filed in duplicate in the Office of the Commissioner and shall state:

- (i) the purpose for forming an Interim Bank;
- (ii) the proposed name of the Interim Bank;
- (iii) the name and address of the incorporators; and
- (iv) the amount of the capital stock of the Interim Bank.

Bank.

(b) The Notice of Intent shall attach as exhibits:

- (i) the Interim Bank Agreement;
- (ii) a copy of the proposed Articles of Association of the Interim Bank;
- (iii) a copy either of the certificate of public convenience and advantage or the legislative and/or corporate instruments of banking authority for the Insured Bank which is to be merged with the Interim Bank pursuant to the Interim Bank Agreement.

(c) Upon notification by the Commissioner that the Notice of Intent to form an Interim Bank is complete, the applicant shall cause to be published in a newspaper of general circulation throughout the State of Delaware, once a week for two (2) consecutive weeks, a Public Notice of its intention to form an Interim Bank. The Public Notice shall include the proposed name of the Interim Bank, the names of the incorporators, the amount of the capital stock of the Interim Bank, and a brief summary of the purpose of the Interim Bank, shall identify this regulation under which the Interim Bank is to be formed, and shall inform interested persons of their right to comment on the application before the Commissioner decides whether to approve the Interim Bank.

6. Decision of Commissioner: Incorporation

Within two weeks of the last publication of the Public Notice, the Commissioner shall issue a decision as to whether to charter the Interim Bank. This two week period may be extended by two additional weeks if the Commissioner requires more time or information.

Upon the Commissioner's approval, the Incorporator shall take the necessary steps to form the Articles of Organization and the Commissioner shall endorse the Articles. The Incorporator shall then incorporate the Interim

Bank and file the necessary documents with the Secretary of State.

A Certificate Authorizing the Transaction of Business shall not be issued until the Interim Bank has been merged with the Insured Bank.

7. Powers of Interim Bank Before Merger

An Interim Bank may not engage in any banking activity or operate as a bank until it has merged with an Insured Bank. An Interim Bank may take only those corporate and fiduciary steps and actions reasonably incidental and necessary to facilitate and complete the merger. Such limitation shall not preclude the Commissioner from granting a certificate of public convenience and advantage, and to otherwise facilitate and authorize the formation and incorporation of the Interim Bank, provided that no Certificate Authorizing the Transaction of Business pursuant to § 733 of Title 5 of the Delaware Code shall be issued prior to the consummation of the merger of the Interim Bank with an Insured Bank.

The receipt by the Commissioner of an Interim Bank Agreement and a copy of either the certificate of public convenience and advantage or the legislative and/or corporate instruments pursuant to which the Insured Bank with which the Interim Bank will merge derives its banking powers shall constitute sufficient authority for the Commissioner to issue a certificate of public convenience and advantage to the Interim Bank.

8. Proof of Merger: Revocation of Certificate

From the date an Interim Bank is authorized pursuant to this regulation, the parties to the Interim Bank Agreement shall have six (6) months in which to effect the merger with the Insured Bank. Proof of the merger must be timely supplied to the Commissioner.

Upon proof of the consummation of the merger of the Interim Bank with the Insured Bank, a Certificate Authorizing the Transaction of Business, as required by § 733 of Title 5 of the Delaware Code shall be issued immediately by the Commissioner to the surviving entity if the Interim Bank is the survivor.

Extensions may be granted by the Commissioner if the parties to the Interim Bank Agreement can show good cause as to why an extension is needed to complete the merger.

The Commissioner may revoke the certificate of public convenience and advantage of the Interim Bank (and may take such other steps he deems appropriate at any time) if proof of the merger between the Interim Bank and the Insured Bank has not been provided to the Commissioner at the end of the authorized time, if the Interim Bank actually conducts any banking business prior to its proposed merger, or if any related merger or acquisition application is denied or withdrawn.

9. Fees

A non-refundable investigation fee of \$1,150 to offset the administrative expense of the Commissioner's office shall be included with the Notice of Intent; provided, however, that such fee shall be considered as part of and not in addition to any fee being paid at the same time to the Commissioner's office in connection with a contemporaneous application for a merger or acquisition. In addition, depending on the structure of the transaction, other fees may be required in accordance with applicable statutes or regulations (e.g., Section 735 of Title 5 of the Delaware Code).

[Document Control No.: 20-15/98/11/02]

Regulation No.: 5.701/774.0001

[Effective Date: December 11, 1998]

PROCEDURES FOR APPLICATIONS TO FORM A BANK, BANK AND TRUST COMPANY OR LIMITED PURPOSE TRUST COMPANY PURSUANT TO CHAPTER 7 OF TITLE 5 OF THE DELAWARE CODE

1. Scope

This Regulation establishes procedures for filing an application to organize a bank or bank and trust company (hereinafter collectively referred to as a "Bank") or limited purpose trust company pursuant to Chapter 7 of Title 5 of the Delaware Code and the manner in which determinations will be made by the State Bank Commissioner (the "Commissioner") respecting such applications.

2. Notice of Intent

(a) Notice of the intention ("Notice of Intent") of the incorporators (the "Incorporators") to form a Bank or limited purpose trust company shall be filed with the Commissioner. All filings must be in duplicate.

(b) A \$1,150 non-refundable investigation fee shall be submitted with the Notice of Intent, payable to "Office of the State Bank Commissioner."

(c) The Notice of Intent shall specify: (i) the names of all Incorporators; (ii) the name of the proposed Bank or limited purpose trust company (note: the word "trust" may be used only if a limited purpose trust company or a bank with trust powers is being formed); (iii) the city or town in which the Bank or limited purpose trust company will be located; and (iv) the amount of capital stock of the proposed Bank or limited purpose trust company.

(d) The Notice of Intent shall have attached as exhibits: (i) a copy of the application for a Certificate of Public Convenience and Advantage (the "Application") in the form the Incorporators intend to file pursuant to Section 4 of this

Regulation; (ii) a copy of the proposed form of written agreement in which the subscribers thereto associate themselves with the intent of forming a Bank or limited purpose trust company (the "Articles of Association"); (iii) a proposed form of public notice as provided for in Section 3 of this Regulation (the "Public Notice"); and, (iv) where the Incorporators are acting on behalf of a corporate entity in the application process, a copy of the corporate resolution, sworn to and subscribed by a president or vice-president and certified by the secretary or an assistant secretary, authorizing the Incorporators to execute and file the Notice of Intent and Application on behalf of the corporation.

3. Public Notice

(a) If the Notice of Intent and the attached exhibits filed with the Commissioner are in the form required by this Regulation, conform to applicable provisions of law and are approved by the Commissioner, the Commissioner shall schedule a formal, public evidentiary hearing to receive testimony and documentary evidence relevant to determining whether the public convenience and advantage would be promoted by the establishment of the Bank or limited purpose trust company and whether the Articles of Association are in compliance with applicable provisions of law (such hearing to be held within 60 days following the second publication of Public Notice in accordance with Section 3(b) of this Regulation, but not prior to the expiration of twenty days following the date of the second publication).

(b) The Incorporators shall cause a Public Notice in such form as the Commissioner shall have approved to be published at least once a week, for two successive weeks, in at least two Delaware newspapers of general circulation designated by the Commissioner, at least one of which newspapers shall be published in the county where it is proposed to establish the Bank.

(c) The Public Notice shall (i) specify the names of all Incorporators; (ii) set forth the name of the proposed Bank or limited purpose trust company; (iii) identify the city or town where the Bank or limited purpose trust company is to be located; (iv) specify the amount of the Bank's capital stock; (v) describe the subject matter of the proceedings; (vi) give the date, time and place fixed for a hearing on the Application; (vii) cite the law (5 Del. C. § 726 for a Bank, and 5 Del. C. § 777 for a limited purpose trust company) and regulations (State Bank Commissioner Regulations 5.701/774.0001 and 5.725/726.0003.P/A for a Bank, and 5.701/774.0001 and 5.777.0002 for a limited purpose trust company) giving the Commissioner authority to act; (viii) inform interested parties of their right to present evidence, to be represented by counsel and to appear personally or by other representatives; and (ix) state the Commissioner's obligation to reach his decision based upon the evidence received.

4. Application For A Determination of Public Convenience and Advantage

(a) Within sixty days following the second publication of Public Notice, and prior to or on the date of the public hearing, but not prior to the expiration of twenty days following the date of the second publication, the Incorporators shall file the definitive fully executed Application in the form prescribed by the Commissioner. See Commissioner's Regulation No. 5.725/726.0003.P/A for a Bank, and 5.777.0002 for a limited purpose trust company.

(b) The Application shall include the information specifically requested in the form of application supplied by the Commissioner and any supplemental information requested by the Commissioner.

5. Public Hearing

(a) The public hearing provided for in this Regulation may be conducted by the Commissioner or his designee. At such hearing, the Commissioner or his designee shall accept all relevant, non-cumulative evidence offered by or on behalf of the Incorporators or by any interested person. Interested parties may appear at the public hearing, in person or by counsel or by other representative. Anyone wishing to present testimony is requested to register with the Commissioner in advance of the hearing.

(b) A record from which a verbatim transcript can be prepared shall be made. The Incorporators shall be responsible for arranging for a certified court reporter to be present at the public hearing and shall bear the expense of an original written transcript for the Commissioner's use (which shall be supplied to the Commissioner as promptly as practical following the public hearing). Additional transcripts provided to any interested person shall be at the expense of the person requesting the transcript.

(c) The Commissioner or his designee may request the Incorporators or any other party or parties who appear at the public hearing to submit proposed findings of fact and conclusions of law.

6. Record

(a) With respect to each Application, all notices, correspondence between the Commissioner and the Incorporators or other interested parties, all exhibits, documents and testimony admitted into evidence and all recommended orders, summaries of evidence and findings, and all interlocutory and final orders shall be included in the Commissioner's record of the matter and shall be retained for a period of at least five (5) years following final action on the Application.

(b) A copy of the proposed order shall be mailed or hand delivered to the Incorporators (or their agent) and to each person who presented data, views or argument at the public hearing, each of whom shall thereafter have twenty (20) days to submit in writing to the Commissioner

exceptions, comments and arguments respecting the proposed order.

(c) If the decision on the Application is not adverse to the Incorporators, the Commissioner may waive the entry of a proposed order and may instead proceed directly to the entry of a final order under Section 7 of this Regulation.

7. Decision and Final Order

(a) Every decision on an Application shall be incorporated in a final order which shall include: (i) a brief summary of the evidence; (ii) findings of fact based upon the evidence; (iii) conclusions of law; (iv) any other conclusions or findings required by law; and (v) a concise statement of the determination or action on the case.

(b) Every final order shall be authenticated by the signature of the Commissioner and shall be mailed or delivered to (i) the Incorporators (or their agent); (ii) each person that presented data, views or argument at the hearing; and (iii) any other person requesting a copy of the final order.

8. Organization Meeting of Incorporators

(a) The first meeting of the Incorporators shall be called by a notice signed by the Incorporator designated in the Articles of Association for that purpose or by a majority of Incorporators (see 5 Del. C. § 727). The statutory purpose of the first meeting is to organize by: (i) choosing by ballot a temporary secretary; (ii) adopting bylaws; and (iii) electing in such manner as the bylaws may determine directors, a president, a secretary, and such other officers as the bylaws may prescribe. All of the officers elected shall be sworn to the faithful performance of their duties. Action permitted to be taken at the organization meeting may be taken without a meeting if each Incorporator signs a written consent in lieu of meeting which states the action so taken.

(b) The President and a majority of directors elected at the organization meeting of the Incorporators shall make, sign and make oath to a certificate (hereinafter the "Articles of Organization") setting forth: (i) a true copy of the Articles of Association; (ii) the names of the subscribers thereto; (iii) the name, residence, and mailing address of each officer; and (iv) the date of the first meeting of the Incorporators (see 5 Del. C. § 728).

(c) The Articles of Organization and attachments shall be submitted to the Commissioner. The Commissioner may require such amendments or additional information as he may consider proper or necessary. The Commissioner shall endorse approval upon the Articles of Organization at such time as he has determined that the applicable provisions of law have been complied with (see 5 Del. C. § 729).

9. Incorporation and Commencement of Business

(a) The Articles of Organization shall be filed with the Secretary of State within 30 days after the date of the

Commissioner's endorsement (see 5 Del. C. § 730).

(b) Upon issuance of a Certificate of Incorporation by the Secretary of State and compliance with all provisions of law, a certified copy of the Certificate of Incorporation together with the endorsed Articles of Organization shall be recorded in the Office of the Recorder of Deeds for the county in which the place of business of the Bank or limited purpose trust company is to be located (see 5 Del. C. § 731).

(c) A certified copy of the Bank's or limited purpose trust company's Certificate of Incorporation together with its bylaws and its Articles of Organization shall be filed with the Commissioner together with the \$5,750 fee for the certificate to transact business. No transaction of business can begin until authorized by the Commissioner by the issuance of a certificate to transact business (see 5 Del. C. §§ 733, 735, 902, 903).

(d) An application for a certificate to transact business shall include a certification as to the issuance of the whole capital stock of the Bank or limited purpose trust company (unless the Articles of Organization otherwise specifically provide) and receipt of payment therefor in cash; a list of stockholders (including the number of shares held by each and the residence and post office address of each stockholder), which list shall be certified by the president and the cashier or treasurer of the Bank; evidence of the deposit of the proceeds of the sale of capital stock in an account for the benefit of the Bank or limited purpose trust company; and, for a Bank, evidence satisfactory to the Commissioner demonstrating that FDIC deposit insurance for the Bank has been approved by the FDIC.

(e) The Commissioner shall review the application and, in the case of a Bank, the status of the applicant's FDIC insurance. If the above referenced \$5,750 fee has been paid and it appears that all requirements of this Regulation and applicable law have been complied with, the Commissioner shall issue a certificate authorizing the Bank or limited purpose trust company to begin the transaction of business.

[Document Control No.: 20-15/98/11/03]

Regulation No.: 5.833.0004

[Effective Date: December 11, 1998]

**APPLICATION BY AN OUT-OF-STATE SAVINGS
INSTITUTION, OUT-OF-STATE SAVINGS AND LOAN
HOLDING COMPANY OR OUT-OF-STATE BANK
HOLDING COMPANY TO ACQUIRE A DELAWARE
SAVINGS BANK OR DELAWARE SAVINGS AND
LOAN HOLDING COMPANY
5 DEL. C. §833**

INSTRUCTIONS

This Application is to be filed by an "out-of-state savings institution", "out-of-state savings and loan holding company" or an "out-of-state bank holding company" (as defined in Section 831 of Title 5 of the Delaware Code), or subsidiary thereof, for the purpose of acquiring a Delaware savings bank or Delaware savings and loan holding company pursuant to the Savings Bank Acquisition Act (5 Del. C. §831 et seq.).

This Application is to be completed, executed and acknowledged by a lawfully empowered officer of the out-of-state savings institution, savings and loan holding company or bank holding company. The completed Application and required exhibits should be filed with the Office of the State Bank Commissioner, Dover, Delaware, in duplicate, accompanied by a non-refundable filing fee made payable to the State of Delaware in the amount of five thousand seven hundred and fifty dollars (\$5,750.00), together with a non-refundable processing fee in the amount of one thousand one hundred and fifty dollars (\$1,150.00) made payable to the Office of the State Bank Commissioner. THE COMMISSIONER WILL NOT DEEM ANY APPLICATION AS FILED UNTIL THE COMMISSIONER HAS DETERMINED THAT ALL OF THE INFORMATION REQUESTED IN THE APPLICATION HAS BEEN PROVIDED; THAT THE CERTIFICATE HAS BEEN PROPERLY SIGNED AND ACKNOWLEDGED; THAT ALL REQUIRED EXHIBITS ARE ATTACHED; AND THAT ALL FEES HAVE BEEN PAID.

Application Process

Upon notification by the Commissioner that this Application is deemed as filed, the applicant shall cause to be published in a newspaper of general circulation throughout the State of Delaware, once a week for two (2) consecutive weeks, a notice of its intention to acquire a Delaware savings bank or Delaware savings and loan holding company, and, if applicable, to form an interim savings bank in connection therewith. Such notice shall include the date, time and location of the public hearing on the application as established by the Commissioner. Such notice shall expressly invite members of the public to examine the Application on file with the Office of the State Bank Commissioner and to submit comments regarding the Application to the Office of the State Bank Commissioner. A public hearing will be conducted by the Commissioner or the Commissioner's designee in accordance with Chapter 101 of Title 29, Delaware Code, to review the Application and to take such testimony and to gather such evidence as the Commissioner or the Commissioner's designee deems necessary to determine whether the proposed acquisition

(and, where applicable, the formation of the proposed interim savings bank) will serve the public convenience and advantage pursuant to the criteria set forth in 5 Del. C. §833 (b). When applicable, the Commissioner or his designee will also consider whether a proposed acquisition should be approved even though the acquiring out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company, or any subsidiary thereof, would control, together with any affiliated insured depository institution, 30 percent or more of the total amount of deposits of insured depository institutions in this State, as provided in 5 Del. C. §832(b). A record from which a verbatim transcript can be prepared shall be made of all hearings. The expense of any transcription of the proceedings requested by the Commissioner or the Commissioner's designee shall be borne by the applicant; in all other instances, the expense of such transcription shall be borne by the person requesting it. The Commissioner or the Commissioner's designee will issue preliminary findings of fact and law and make the same available for comment to the applicant and all parties shall have thereafter twenty (20) days to submit in writing to the Commissioner or the Commissioner's designee exceptions, comments and arguments respecting the preliminary findings. If the Commissioner or the Commissioner's designee presides at a hearing conducted pursuant to this regulation and if the decision on the applicant is not adverse to the applicant, the Commissioner or the Commissioner's designee has the right to waive the preliminary findings of fact and law and proceed directly to the entry of a final order.

CONFIDENTIAL INFORMATION

An applicant may request that specific information included in this Application be treated as confidential. Any information or exhibits for which the applicant claims the designation of confidential shall be segregated at the end of the Application as a separate exhibit which the applicant shall designate as "confidential". The Commissioner, in his sole discretion, will determine whether any or all of the information for which the "confidential" designation is requested by the applicant meets the criteria for confidentiality set forth in 29 Del. C. §10112(b)(4). All portions of this Application which the Commissioner does not designate as "confidential" will be made available for public inspection and copying.

APPLICATION FOR AUTHORITY OF AN OUT-OF-STATE SAVINGS INSTITUTION OUT-OF-STATE SAVINGS AND LOAN HOLDING COMPANY OR OUT-OF-STATE BANK HOLDING COMPANY TO ACQUIRE A DELAWARE SAVINGS BANK OR DELAWARE SAVINGS AND LOAN HOLDING COMPANY

I. Certification

The undersigned, _____
(Name and Title)

(Name of out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company) having first been duly authorized, does hereby make application on behalf of _____
to acquire _____

(Name of Delaware Savings Bank
or Delaware Savings and Loan Holding Company)

The undersigned acknowledges that he/she has read and is familiar with the provisions of the Savings Bank Acquisition Act of 1987 and all rules and regulations issued in connection therewith; that all of the information provided as part of this Application is, to the best of the knowledge and belief of the undersigned, true and accurate; and that he/she is duly authorized to execute this certification on behalf of the applicant.

WITNESS

Sworn to and subscribed before me, a Notary Public of the State of _____, this _____ day of _____, _____.

II. Identification of Applicant

A. State formal name and state of incorporation of applicant.

B. Identify the name and address of a resident of the State of Delaware who is designated as agent of the applicant for the service of any paper, notice or legal process upon applicant in connection with any matter arising out of Subchapter III, Chapter 8, Title 5, Delaware Code.

III. Acquisition

A. Identify the Delaware savings bank or Delaware savings and loan holding company to be acquired (if a savings and loan holding company, further identify the savings bank subsidiary or subsidiaries of such holding company).

B. Describe the method of acquisition of the Delaware savings bank or Delaware savings and loan holding company (enclose as an exhibit to this Application a copy of the acquisition agreement between the applicant and the Delaware savings bank or Delaware savings and loan holding company).

C. Indicate whether this Application is the only pending application for the acquisition of a Delaware bank or savings bank or Delaware bank holding company or savings and loan holding company. If not, identify and attach a copy of any other application pending.

D. Attach as an exhibit a statement of counsel that the

Delaware savings bank or Delaware savings and loan holding company is not prohibited by its articles of incorporation, charter, or legislative act from being acquired.

E. If not previously filed, attach as exhibits the most recent statement of income and condition, together with the three most recent annual statements of income and condition of each savings bank subsidiary of the Delaware savings and loan holding company to be acquired filed with the Office of the State Bank Commissioner or, if a federal savings bank, the Office of Thrift Supervision.

F. State whether the proposed acquisition has received: (1) the necessary approval of the stockholders of the out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company and the Delaware savings and loan holding company or Delaware savings bank (if so, attach certified copies of the resolutions of such approval; if not, describe the status of such approval processes); and (2) whether all necessary federal regulatory approvals have been obtained (if so, provide copies of such approvals; if not, describe the status of the application process for such approvals and attach actual or pro forma applications without exhibits except for transmittal correspondence, and any responses from the federal regulatory authorities).

IV. Information regarding formation of interim savings bank (OPTIONAL).

If applicant has applied for a certificate of public convenience and advantage for an interim savings bank from the Office of Thrift Supervision, attach the certificate of public convenience and advantage issued with respect to such interim savings bank. If such certificate has not been issued, provide a copy of the application to form such interim savings bank without exhibits other than the transmittal letter and any responses received from the Office of Thrift Supervision.

V. Information addressing the criteria for approving or disapproving an acquisition provided for at 5 Del. C. §833(b).

A. Financial history of the applicant.

1. Describe in narrative fashion the financial history of the applicant, its affiliates, and its bank, savings bank and non-bank subsidiaries over the past three (3) years. Include as exhibits all annual statements of income and condition filed with the bank regulatory authority or authorities in each state where the out-of-state savings institution operates or where the out-of-state bank holding company or out-of-state savings and loan holding company maintains a bank or savings bank subsidiary, or with the Office of the Comptroller of the Currency or the Office of Thrift Supervision; provided, that such filings shall not be required with respect to any bank or savings bank under the jurisdiction of a bank regulatory authority with whom the

State Bank Commissioner shall have entered into a cooperative agreement for the provision of such reports pursuant to the provisions of 5 Del. C. §834(4) or any other provision of Title 5.

2. Provide for the past three calendar years, copies of all Form 10-K's and quarterly reports filed on Form 10-Q (or their state equivalents) (if required) with respect to the out-of-state savings institution, out-of-state bank holding company or out-of-state savings and loan holding company, together with all proxy statements, tender offer materials, other disclosure documents, etc., relating to the proposed application (if required), or any other acquisition undertaken by applicant.

If an applicant is not required to file any report under the Securities and Exchange Act of 1934 (15 U.S.C. §78 et seq. as amended), or an equivalent state filing, the applicant shall file information substantially equivalent to the information which would otherwise be contained in such reports in a form reasonably satisfactory to the Bank Commissioner, including the previous three years' statements of condition and a three year income statement, statements of changes in shareholders' equity, all as prepared in accordance with generally accepted accounting principles.

B. Provide a statement in narrative form of a three (3) year business plan of the applicant for the Delaware savings and loan holding company and its savings bank and non-bank subsidiaries, or the Delaware savings bank to be acquired. Such plan should include but is not limited to a description of:

1. In detail, any proposed change during the first year of operation in the products or services offered by the Delaware savings bank or the subsidiary or subsidiaries of the Delaware savings and loan holding company;

2. In detail, any contemplated or proposed change during the first year after the effective date of the acquisition in the executive officers of the Delaware savings bank or the Delaware savings and loan holding company and its savings bank and non-bank subsidiaries, with specific reference to the termination, transfer, or reduction of authority or responsibilities of any such executive officers;

3. Using the current table of organization of the Delaware savings bank or Delaware savings and loan holding company and its savings bank and non-bank subsidiaries, describe proposed changes in levels of employment among non-management personnel;

4. Any change in the geographic market to be served by the Delaware savings bank or the subsidiary of the Delaware savings and loan holding company (with specific reference to the opening, closing or expansion of branches);

5. Additional products or services which the Delaware savings bank or subsidiary of the Delaware savings and loan holding company will provide after the acquisition;

6. For the next three (3) years, proposed changes

in the capitalization of the Delaware savings bank or the Delaware savings and loan holding company and any subsidiary thereof;

With respect to each of the above subject areas, include specific references, if any, to any relevant sections of the acquisition agreement, merger agreement with an interim savings bank, any other agreement or understanding (with any person or party) not incorporated in such acquisition or merger agreements or any exhibits or supplements as to any of such items.

C. State whether the applicant, or any subsidiary thereof, would control, together with any affiliated insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. §1813(c)), 30 percent or more of the total amount of deposits of insured depository institutions in this State after the proposed acquisition. If so, explain why the Application should be approved in accordance with the convenience and needs of the public of this State.

D. If applicant has acquired or has made application to acquire any other Delaware bank holding company, Delaware savings and loan holding company, Delaware bank, or Delaware savings bank describe in detail the extent to which the acquisition which is the subject of this Application will affect present competition between the savings bank or savings bank subsidiaries of a Delaware savings and loan holding company to be acquired under this Application and the Delaware bank or Delaware savings bank or subsidiary of a Delaware bank holding company or Delaware savings and loan holding company previously acquired or pending acquisition approval.

E. Describe in detail the activities which applicant proposes for fostering economic development and employment within the State of Delaware. By way of historical background, and as part of such description, include the following information:

1. With respect to the commercial loan activity of the applicant and the Delaware savings bank or subsidiary of the Delaware savings and loan holding company to be acquired, the total dollar value, and the percentage of total commercial loans outstanding, of the following categories of commercial loans:

- a. Small business loans (SBA);
- b. Other small business loans;
- c. Industrial authority development loans;
- d. Financing of ESOP's and leveraged

buy-outs;

e. Financing directly or indirectly of non-profit, community development projects;

f. Loans in other categories designed to stimulate industrial growth and employment.

2. Enclose for both the applicant and/or its subsidiaries and the Delaware savings bank or subsidiaries of the Delaware savings and loan holding company to be

acquired copies of the most recent report filed pursuant to the Home Mortgage Disclosure Act, 12 U.S.C. §2801-9.

[Document Control No.: 20-15/98/11/04]

Regulation No.: 5.844.0009

[Effective Date: December 11, 1998]

**APPLICATION BY AN OUT-OF-STATE BANK
HOLDING COMPANY TO ACQUIRE A DELAWARE
BANK OR BANK HOLDING COMPANY 5 DEL. C. §844**

INSTRUCTIONS

This Application is to be filed by an "out-of-state bank holding company" (as defined in Section 801 of Title 5 of the Delaware Code) for the purpose of acquiring a Delaware bank or bank holding company pursuant to the Delaware Interstate Banking Act (5 Del.C. §841 et seq.).

This Application is to be completed, executed and acknowledged by a lawfully empowered officer of the out-of-state bank holding company. The completed Application and required exhibits should be filed with the Office of the State Bank Commissioner, Dover, Delaware in duplicate, accompanied by a non-refundable filing fee made payable to the State of Delaware in the amount of five thousand seven hundred and fifty dollars (\$5,750.00), together with a non-refundable processing fee made payable to the Office of the State Bank Commissioner in the amount of one thousand one hundred and fifty dollars (\$1,150.00). THE COMMISSIONER WILL NOT DEEM ANY APPLICATION AS FILED UNTIL THE COMMISSIONER HAS DETERMINED THAT ALL OF THE INFORMATION REQUESTED IN THE APPLICATION HAS BEEN PROVIDED; THAT THE CERTIFICATE HAS BEEN PROPERLY SIGNED AND ACKNOWLEDGED; THAT ALL REQUIRED EXHIBITS ARE ATTACHED; AND THAT ALL FEES HAVE BEEN PAID.

APPLICATION PROCESS

Upon notification by the Commissioner that this Application is deemed as filed, the applicant shall cause to be published in a newspaper of general circulation throughout the State of Delaware, once a week for two (2) consecutive weeks, a notice of its intention to acquire a Delaware bank holding company or bank, and, if applicable, to form an interim bank in connection therewith. Such notice shall include the date, time and location of the public hearing on the application as established by the Commissioner. Such notice shall expressly invite members

of the public to examine the Application on file with the Office of the State Bank Commissioner and to submit comments regarding the Application to the Office of the State Bank Commissioner. A public hearing will be conducted by the Commissioner or his designee in accordance with Chapter 101 of Title 29, Delaware Code to review the Application and to take such testimony and to gather such evidence as the Commissioner or his designee deems necessary to determine whether the proposed acquisition (and, where applicable, the formation of the proposed interim bank) will serve the public convenience and advantage pursuant to the criteria set forth in 5 Del.C. §844(b). When applicable, the Commissioner or his designee will also consider whether a proposed acquisition should be approved even though the acquiring out-of-state bank holding company, or any subsidiary thereof, would control, together with any affiliated insured depository institution, 30 percent or more of the total amount of deposits of insured depository institutions in this State, as provided in 5 Del. C. § 843(b). A record from which a verbatim transcript can be prepared shall be made of all hearings. The expense of any transcription of the proceedings requested by the Commissioner or his designee shall be borne by the applicant; in all other instances, the expense of such transcription shall be borne by the person requesting it. The Commissioner or his designee will issue preliminary findings of fact and law and make the same available for comment to the applicant and all parties having presented data, views or argument at the hearing. Said parties shall have thereafter twenty (20) days to submit in writing to the Commissioner exceptions, comments and arguments respecting the preliminary findings. If the Commissioner or his designee presides at a hearing conducted pursuant to this regulation and if the decision on the Application is not adverse to the applicant, the Commissioner or his designee has the right to waive the preliminary findings of fact and law and may instead proceed directly to the entry of a final order.

CONFIDENTIAL INFORMATION

An applicant may request that specific information included in this Application be treated as confidential. Any information or exhibits for which the applicant claims the designation of confidential shall be segregated at the end of the Application as a separate exhibit which the applicant shall designate as "confidential". The Commissioner, in his sole discretion, shall determine whether any or all of the information for which the "confidential" designation is requested by the applicant meets the criteria for confidentiality set forth in 29 Del. C. §10112(b)(4). All portions of this Application which the Commissioner shall not designate as "confidential" shall be made available for public inspection and copying in the manner provided by

law.

APPLICATION FOR AUTHORITY OF AN OUT-OF-STATE BANK HOLDING COMPANY TO ACQUIRE A DELAWARE BANK OR BANK HOLDING COMPANY

I. Certification

The undersigned, _____
(Name and Title)

(Name of Bank Holding Company)

having first been duly authorized, does hereby make application on behalf of _____
to _____
acquire _____

(Name of Delaware Bank or Bank Holding Company)

The undersigned acknowledges that he/she has read and is familiar with the provisions of the Delaware Interstate Banking Act and all rules and regulations issued in connection therewith; that all of the information provided as part of this Application is, to the best of the knowledge and belief of the undersigned, true and accurate; and that he/she is duly authorized to execute this certification on behalf of the applicant.

WITNESS

Sworn to and subscribed before me, a Notary Public of the State of _____, this _____ day of _____, _____.

II. Identification of Applicant

A. State formal name and state of incorporation of applicant.

B. Identify the name and address of a resident of the State of Delaware who is designated as agent of the applicant for the service of any paper, notice or legal process upon applicant in connection with any matter arising out of Subchapter IV, Chapter 8, Title 5, Delaware Code.

III. Acquisition

A. Identify the Delaware bank or bank holding company to be acquired (if a bank holding company, further identify the bank subsidiary or subsidiaries of such holding company).

B. Describe the method of acquisition of the Delaware bank holding company or bank (if not otherwise included as part of the Application for Formation of an Interim Bank, enclose as an exhibit to this Application a copy of the acquisition agreement between the applicant and the Delaware bank or bank holding company).

C. Indicate whether this Application is the only

pending application for the acquisition of a Delaware bank or bank holding company. If not, identify and attach a copy of any other application pending.

D. Attach as an exhibit a statement of counsel that the Delaware bank holding company and/or Delaware bank are not prohibited by its articles of incorporation, charter, or legislative act from being acquired.

E. If not previously filed, attach as exhibits the most recent statement of income and condition, together with the three most recent annual statements of income and condition of each bank subsidiary of the Delaware bank holding company to be acquired filed with the Office of the State Bank Commissioner or, if a national bank, the Comptroller of the Currency.

F. State whether the proposed acquisition has received: (1) the necessary approval of the stockholders of the out-of-state bank holding company and the Delaware bank holding company or bank (if so, attach certified copies of the resolutions of such approval; if not, describe the status of such approval processes); and (2) whether all necessary federal regulatory approvals have been obtained (if so, provide copies of such approvals; if not, describe the status of the application process for such approvals and attach actual or pro forma applications without exhibits except for transmittal correspondence, and any responses from the federal regulatory authorities).

IV. Information regarding formation of interim bank (OPTIONAL).

A. If applicant is seeking a certificate of public convenience and advantage from the Commissioner for an interim bank as part of this Application, then applicant should comply with the provisions of Regulation No. 5.121.0002 with respect to the formation of such interim bank as part of this Application; provided, however, that an application for authorization to form an interim bank which is filed as part of this Application by an out-of-state bank holding company shall be governed by the notice, publication and hearing requirements of this Application as described in the section captioned "Application Process", rather than the notice and publication requirements of Regulation No. 5.121.0002.

B. If applicant has previously applied for a certificate of public convenience and advantage for an interim bank from the Comptroller of the Currency, attach the certificate of public convenience and advantage issued with respect to such interim bank. If such certificate has not been issued, provide a copy of the application to form such interim bank without exhibits other than the transmittal letter and any responses received from the Office of the Comptroller of the Currency.

V. Information addressing the criteria for approving or disapproving an acquisition provided for at 5 Del.C.

§844(b).

A. Financial history of the applicant.

1. Describe in narrative fashion the financial history of the applicant, its affiliates, and its bank and non-bank subsidiaries over the past three (3) years. Include as exhibits all annual statements of income and condition filed with the bank regulatory authority or authorities in each state where the bank holding company maintains a bank subsidiary or, in the case of a national bank, with the Comptroller of the Currency; provided, that such filings shall not be required with respect to any bank subsidiary under the jurisdiction of a bank regulatory authority with whom the State Bank Commissioner shall have entered into a cooperative agreement for the provision of such reports pursuant to the provisions of 5 Del.C. §845 or any other provision of Title 5.

2. Provide for the past three calendar years, copies of all Form 10-K's and quarterly reports filed on Form 10-Q (or their state equivalents) (if required) with respect to the bank holding company, together with all proxy statements, tender offer materials, other disclosure documents, etc. relating to the proposed application (if required), or any other acquisition undertaken by applicant.

If an applicant is not required to file any report under the Securities Exchange Act of 1934 (15 U.S.C. §78 et seq. as amended), or an equivalent state filing, the applicant shall file information substantially equivalent to the information which would otherwise be contained in such reports in a form reasonably satisfactory to the Commissioner, including the previous three years' statements of condition and a three year income statement, statements of changes in shareholders' equity, all as prepared in accordance with generally accepted accounting principles.

B. Provide a statement in narrative form of a three (3) year business plan of applicant for the Delaware bank holding company and its bank and non-bank subsidiaries, or the Delaware bank to be acquired. Such plan should include but is not limited to a description of:

1. In detail, any proposed change during the first year of operation in the products or services offered by the Delaware bank or the subsidiary or subsidiaries of the Delaware bank holding company;

2. In detail, any contemplated or proposed change during the first year after the effective date of the acquisition in the executive officers of the Delaware bank or the Delaware bank holding company, with specific reference to the termination, transfer, or reduction of authority or responsibilities of any such executive officers;

3. Using the current table of organization of the Delaware bank or bank subsidiary, describe proposed changes in levels of employment among non-management personnel.

4. Any change in the geographic market to be served by the Delaware bank or the subsidiary of the

Delaware bank holding company (with specific reference to the opening, closing or expansion of branches);

5. Additional products or services which the Delaware bank or subsidiary of the Delaware bank holding company will provide after the acquisition;

6. For the next three (3) years, proposed changes in the capitalization of the Delaware bank or the Delaware bank holding company and any subsidiary thereof.

With respect to each of the above subject areas, include specific references, if any, to any relevant sections of the acquisition agreement, merger agreement with an interim bank, any other agreement or understanding (with any person or party) not incorporated in such acquisition or merger agreements or any exhibits or supplements as to any of such items.

C. State whether the applicant, or any subsidiary thereof, would control, together with any affiliated insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. §1813(c)), 30 percent or more of the total amount of deposits of insured depository institutions in this State after the proposed acquisition. If so, explain why the Application should be approved in accordance with the convenience and needs of the public of this State.

D. If applicant has acquired or has made application to acquire any other Delaware bank holding company or Delaware bank, describe in detail the extent to which the acquisition which is the subject of this Application will affect present competition between the banks or bank subsidiaries of a Delaware bank holding company to be acquired under this Application and the Delaware bank or bank subsidiary of a Delaware bank holding company previously acquired or pending acquisition approval.

E. Describe in detail the activities which applicant proposes for fostering economic development and employment within the State of Delaware. By way of historical background, and as part of such description, include the following information:

1. With respect to the commercial loan activity of the bank subsidiaries of both the applicant and the Delaware bank or bank subsidiary of the bank holding company to be acquired, the total dollar value, and the percentage of total commercial loans outstanding, of the following categories of commercial loans:

- a. Small business loans (SBA)
- b. Other small business loans
- c. Industrial authority development loans
- d. Financing of ESOP's and leveraged

buy-outs

- e. Financing directly or indirectly of
community development projects
- f. Loans in other categories designed to

stimulate

industrial growth and employment

2. Enclose for both the bank subsidiary or subsidiaries of applicant and the Delaware bank or bank subsidiaries of the bank holding company to be acquired copies of the most recent report filed pursuant to the Home Mortgage Disclosure Act, 12 U.S.C. §2801 et seq.

[Document Control No.: 20-15/98/11/05]

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER FIFTY-FIVE**

TO: HEADS OF ALL STATE DEPARTMENTS,
AGENCIES AND AUTHORITIES, AND ALL
POLITICAL SUBDIVISIONS AND
GOVERNMENTAL UNITS OF THE STATE
OF DELAWARE

RE: STATE EMPLOYEES' CHARITABLE CAMPAIGN

WHEREAS, the employees of the State of Delaware have demonstrated their generosity and commitment to, the support of charitable health and welfare causes; and

WHEREAS, it is in the best interest of the State to provide a single annual campaign with minimum disruption to the work and services that our state employees provide to the residents of our State; and

WHEREAS, it is impossible to allow every nonprofit organization to conduct a campaign, but it is reasonable to establish guidelines and procedures to establish a single, combined annual campaign; and

WHEREAS, it is a worthy endeavor to encourage state employees to contribute to charitable organizations within Delaware.

NOW, THEREFORE, I, THOMAS R. CARPER, by virtue of the authority vested in me as Governor of the State of Delaware do hereby declare and order the following:

I. Continuation of the State Employees' Charitable Campaign.

The State of Delaware shall henceforth continue to conduct an annual combined charitable solicitation campaign (hereinafter referred to as the "Campaign") to provide its employees with the opportunity to make charitable contributions either through direct payment or payroll deduction.

II. Criteria for Selection.

An organization must meet the following criteria in order to participate in the Campaign:

A. Foundation, Umbrella Organization, or Individual Organization.

An organization may be a foundation, an umbrella organization, or an individual organization.

1. A foundation means a not-for-profit

organization that makes grants to other organizations. Such a foundation must meet the other criteria for selection as set forth herein.

2. An umbrella organization means an organization that meets the other criteria for selection as set forth herein and that serves as the administrative agency for at least four non-profit organizations, each of which meets the other criteria for selection as set forth herein. An approved umbrella organization shall certify that each of its participating organizations meets the criteria for selection as set forth herein. The certification shall apply only for purposes of the Campaign. The documentation supporting the certification of an individual organization under an umbrella organization shall be provided to the Campaign Steering Committee upon request. An organization may not affiliate with more than one umbrella organization for purposes of the Campaign.

3. An individual organization means an organization that meets the other criteria for selection as set forth herein and that is not affiliated with a foundation or an umbrella organization.

B. Health and Welfare Purpose.

An organization must be organized and operated for the purpose of rendering, or materially or financially supporting the rendering of, services to benefit the health and welfare of residents of the State of Delaware, including, but not limited to:

1. Delivery of health care to ill or infirm individuals;

2. Education and training of personnel for the delivery of health care to ill or infirm individuals;

3. Health research for the benefit of ill or infirm individuals;

4. Delivery of education, training, and care to physically and mentally handicapped individuals;

5. Education of individuals who, without assistance, would not be able to afford it;

6. Treatment, care, rehabilitation, and counseling of juvenile delinquents, persons convicted of crimes, persons who abuse drugs or alcohol, persons who are victims of family violence or abuse, persons who are otherwise in need of social adjustment and rehabilitation, and the families of such persons;

7. Relief for victims (including non-residents of Delaware) of crime, war, casualty, famine, natural disasters, and other catastrophes or emergencies;

8. Neighborhood and community-wide services that directly assist needy, poor, and indigent individuals, including provision of emergency relief and shelter, recreation, transportation, and preparation and delivery of

meals, educational opportunities, and job training;

9. Legal aid services that are provided without unlawful discrimination to needy, poor, and indigent individuals solely because such individuals cannot afford legal counsel;

10. Protection of families that, on account of poverty, indigence, emergency, or other adversity, are in need of family, child care, or maternity services, child or marriage counseling, foster care, and guidance or assistance in the management and maintenance of the home and household;

11. Relief for needy, poor, and indigent infants and children (including orphans), including the provision of adoption services;

12. Relief for needy, poor, and indigent adults and of the elderly;

13. Assistance, consistent with the mission of the state agency or facility involved, to members of its staff or service, who, by reason of geographic isolation, emergency conditions, injury in the line of duty, or other extraordinary circumstances, have exceptional health or welfare needs; or,

14. Lessening of the burdens of government with respect to the provision of any of the foregoing services.

C. Established Physical Presence in State.

An organization must have an established physical presence in the State of Delaware, either in the form of an office or service facility which is staffed at least fifteen hours a week, or by making available its staff through scheduled appointments with Delaware residents or businesses at least fifteen hours a week.

D. Charitable Status.

An organization shall hold and maintain a currently valid designation from the Internal Revenue Service as a section 501(c)(3) organization, and be eligible to receive tax-deductible contributions under Section 170 of the Internal Revenue Code. A copy of the Internal Revenue Service designation letter shall be submitted with the application.

E. Nondiscrimination.

An organization shall have a policy and demonstrate a practice of nondiscrimination on the basis of race, color, religion, sex, age, national origin, or physical or mental handicap, applicable to staff employment, and to memberships on its governing board.

F. Annual Report.

An organization shall prepare an annual report or report to the general public on an annual basis, which shall include a full description of the mission, target population, activities, objectives, and achievements of the organization and the names of its chief administrative personnel.

Organizations with an annual budget of less than \$1 00,000 shall not be required to prepare an annual report, but must submit a copy of the Form 990 which they file with the Internal Revenue Service with the Campaign Steering Committee.

G. Limit on Administrative and Campaign Costs.

Each foundation, umbrella organization, and individual organization shall submit a statement certifying that its management, general, and fundraising expenses are not in excess of twenty-five percent of total revenue. If such costs are in excess of the percentage of total revenue established above, an organization shall provide an explanation and documentation that its actual expenses for those purposes are reasonable and appropriate under the circumstances. The Steering Committee established in Section III of this Order, shall decide that such excess is acceptable or shall require the organization to come within the percentage cap within a certain time period.

H. Fundraising Practices.

The publicity and promotional activities of a foundation, an umbrella organization and its constituent organizations, or an individual organization must be based upon the actual program and operations of the entity and must be truthful, nondeceptive, and consumer-oriented. Fundraising practices must assure: protection against unauthorized use of the organization's contributors' list; no payment of commissions, kickbacks, finder fees, percentages, or bonuses for fundraising; that no mailing of unsolicited tickets or commercial merchandise with a request for money in return will occur; and that no general telephone solicitations will be conducted. This requirement shall apply only to those activities connected with the Campaign.

I. Voluntary Board of Directors.

An organization shall be directed by an active, voluntary board of directors which serves without compensation, holds regularly scheduled meetings, and exercises effective administrative control. If the board of directors is not located in Delaware, there must be a local board comprised of Delaware citizens which advises the board of directors with respect to Delaware activities.

J. Accounting Standards.

An organization shall adopt and employ the Standards of Accounting and Financial Reporting for voluntary Health and Welfare Organizations from the American Institute of Certified Public Accountants ("AICPA") and provide for an annual external audit by an independent, certified public accountant. Organizations with an annual budget of less than \$100,000 shall not be required to submit to an independent audit, but must submit a copy of the Form 990 which they file with the Internal Revenue

Service with the Campaign Steering Committee.

K. Establishment of Organization.

An organization must have been in operation in Delaware for at least three years before application in order to demonstrate a reasonable degree of continuity and economical, effective, and efficient operation.

L. Organizations Deemed Not Eligible.

The following organizations are not eligible to participate in the State Campaign:

1. Those with partisan political and propaganda programs;
2. Those with programs which exist solely to advocate particular religious or ethical beliefs; and
3. Those organizations which do not promote health and welfare.

III. Establishment and Appointment of the State Employees' Charitable Campaign Steering Committee.

A. The State Employees' Charitable Campaign Steering Committee (hereinafter referred to as the "Steering Committee") is hereby established and shall consist of seven members who shall be state employees and who shall be appointed to serve at the pleasure of the Governor. Of the members appointed, there shall be at least one employee from each of the three counties. In addition, one of the appointees shall be an employee who is represented by one of the unions under which the employees of the State are organized; one shall be an employee of the Department of Finance recommended by the Secretary of Finance; and one shall be a representative from the Governor's staff.

B. The Governor shall appoint the chairperson of the Steering Committee.

C. Four members of the Steering Committee shall constitute a quorum. A simple majority vote of a quorum of voting members shall be required for the Steering Committee to take formal action. A representative of the organization which serves as administrator for the program shall attend the meetings of the Steering Committee, but shall not be a voting member.

D. Meetings of the Steering Committee shall be open to the public in accordance with state law, including to representatives of the approved and participating foundations, umbrella, and individual organizations.

IV. Responsibilities of the Steering Committee.

A. The Steering Committee shall have the following duties, responsibilities, and authority:

1. Develop all necessary schedules, policies, and procedures to implement this Executive Order;
2. Develop, receive, and review applications for

participation in the Campaign by foundations, umbrella organizations, and individual organizations;

3. Approve eligible foundations, umbrella organizations, and individual organizations for participation in the Campaign;

4. Select the administrator for the Campaign in accordance with the procedures set forth at Section VI;

5. Oversee the management of the Campaign;

6. Recruit employee chairpersons;

7. Promote and publicize the Campaign; and

8. Review pamphlets, donor cards, and other promotional materials for the Campaign.

V. Selection of Eligible Organizations by Steering Committee.

A. Organizations interested in participating in the Campaign shall submit an application in accordance with the procedures set forth by the Steering Committee.

B. The Steering Committee, in accordance with its procedures, shall review each application and determine whether an organization should be approved for participation in the Campaign.

C. In the event the Steering Committee determines to reject an organization for participation in the Campaign, the Steering Committee shall send the subject organization a certified letter return receipt requested, advising the organization that the Steering Committee has rejected its application, and stating the reason(s) for that rejection. The decision of Steering Committee with respect to approval of eligible foundations, umbrella organizations, and individual organizations, shall be final.

VI. Administration of State Employees' Charitable Campaign.

A. The Campaign shall be administered by one of the organizations which has previously been approved for participation in the Campaign.

B. The Steering Committee shall issue to all organizations previously accepted for participation in the Campaign an invitation to submit a bid as administrator of the Campaign.

C. The bid specifications shall describe the services to be provided, including, but not limited to the:

1. Organization and administration of any informational presentation to employees;

2. Assistance to any department or division which wishes to have a rally or other event by providing professional or training assistance and promotional materials;

3. Manufacture and distribution of informational

pamphlets, posters, donor cards or other promotional materials;

4. Collection of donations and donor cards and tabulation of fund designation information;

5. Proper distribution of donations to approved organizations, both with respect to funds collected at the time of the Campaign and to those which will be forwarded to the administrator from the Department of Finance representing payroll deductions authorized during the Campaign by employees; and,

6. Completion of an audit of the Campaign; and

7. Provision of a written report to the Committee detailing the distribution of funds to participating agencies at each time of distribution.

D. Bid proposals shall include a statement from the organization which substantiates a claim that the organization:

1. Demonstrates the administrative and financial capability to manage and operate an extensive fund-raising campaign among State employees in an efficient manner; and,

2. Ensures public accountability, by certifying that it: annually submits to a financial audit by a certified public accountant; makes its audited financial statement, or a summary thereof, available to the public upon request; will provide evidence that it engages in sound management practices that indicate that contributions donated by the public have been utilized with the utmost integrity.

E. Bid proposals shall further include a percentage figure representing that portion of each donated dollar the organization would charge if chosen to serve as the administrator of the Campaign.

F. The Steering Committee shall choose as the administrator of the program that organization which submits a responsible bid with the lowest percentage figure as outlined above, unless the Steering Committee determines that the State's interest is best served by selecting other than the lowest responsible bidder, in which case the Steering Committee shall state, in writing, its reasons for such determination. The Steering Committee may choose to reject all bids and rebid the matter.

G. The organization which is chosen to administer the program shall not assign, subcontract, or otherwise transfer its duties and responsibilities to manage and administer the Campaign unless expressly permitted to do so in writing by the Steering Committee.

VII. State Employees' Charitable Campaign Fund Drive Programs.

A. All facets of the Campaign shall have safeguards to

ensure fair and equitable treatment and representation of the approved organizations.

B. If practical, all pamphlets, donor cards, and other promotional materials representing the Campaign shall be formatted in such a way as to provide equal representation of each of the approved organizations.

VIII. Distribution of Contributions.

Contributions shall be distributed to organizations as designated by contributors. Undesignated funds shall be distributed to each approved organization in an amount proportionate to the percentage of the total designated funds contributed to that approved organization. Likewise, shrinkage due to unfulfilled pledges shall be absorbed by each approved organization in an amount proportionate to that percentage for the total designated funds which were contributed to that approved organization.

Approved this 4th day of November, 1998

Thomas R. Carper
Governor

Attest:
Edward J. Freel
Secretary of State

GOVERNOR'S APPOINTMENTS

1037

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Housing Partnership	Hon. Darrell Minott	11/10/01
Statewide Independent Living Council	Mr. Virgil Horne, Jr. Ms. Janet Leitch	11/10/01 11/10/01
Vocational Rehabilitation Advisory Council for the Division for the Visually Impaired	Ms. Debra A. Wallace, Dir. Div. for the Visually Impaired	Ex-Officio

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on December 17, 1998 at 11:00 a.m.

**DEPARTMENT OF HEALTH &
SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES**
PUBLIC NOTICE

Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its Community Support Services/Mental Health, Community Support Services/Alcohol & Drug Abuse, Practitioner, Non-Emergency Medical Transportation, Out-Patient Hospital, Private Duty Nursing, and General Policy provider manual(s).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by January 1, 1999.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**
**DIVISION OF AIR AND WASTE MANAGEMENT
WASTE MANAGEMENT SECTION**
1. TITLE OF THE REGULATIONS:

Regulations Governing Solid Waste

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

Revisions are being proposed to many sections of the regulations. See attachment for a section-by-section synopsis of the substantive changes.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Title 7 Delaware Code, Chapter 60

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

A public hearing will be held on Thursday, January 7, 1999, from 7:00 p.m. to 10:00 p.m. in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover DE.

7. PREPARED BY:

Janet T. Manchester (302) 739-3820 Nov. 12, 1998

**DIVISION OF FISH AND WILDLIFE
WILDLIFE SECTION**
1. TITLE OF THE REGULATIONS:

Wildlife and fresh water fish regulations update and revision.

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The wildlife and fresh water fish regulations last received a complete revision in 1971 and have been revised multiple times since then. The Division of Fish and Wildlife proposes to delete all existing regulations and adopt entirely new ones, based on the existing regulations with modifications. The new regulations will add new definitions; eliminate gunning rig permits; establish a beaver harvesting season; reconsider the terrapin season; eliminate limits for released game on shooting preserves; clarify the limits on harvesting deer and the issuance of quality deer tags; permit the use of bait for hunting deer, revise rules for using state wildlife areas to prohibit target shooting, establish limits for horseback and trail bike riding; prohibit nailed tree stands, clarify the training of dogs, and review the use of motor vehicles, limit deer drives; establish a new section to limit the sale and/or possession of certain nongame wildlife and prohibit the sale of bear parts and other exotic animals if such sale is prohibited in the place of origin; redefine the limit on squirrels and rabbits at four; establish rules for falconry; and consider other technical changes recommended by the public in readopting the existing regulations.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

The proposed regulations will be effective until modified by future regulatory action. They are likely to serve as a basic framework of law for at least ten years.

4. **STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:** Title 7, Chapter 1, Section 103.

5. **LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:**
None

6. **NOTICE OF PUBLIC COMMENT:**
This action is noted in Start Action Notice 98-26, approved on October 14, 1998. A preliminary draft of the proposed regulations will be available by October 29. A workshop to receive public input to the draft regulations will be held on Tuesday, November 10, 1998, 7:30 p.m. at the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover. Written comments may be submitted before the workshop or until November 12. A public hearing to consider revised draft regulations will be held on Tuesday, December 29, 1998, 7:30 p.m. at the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover. Written comments on the revised draft regulations will be received until January 30, 1999.

7. **PREPARED BY:** H. Lloyd Alexander, Jr., 302-739-5297 or FAX 739-6157. Division of Fish and Wildlife, Wildlife Section, 89 Kings Highway, Dover, DE 19901.

DIVISION OF FISH & WILDLIFE

1. **Title of the Regulations:** **BOATING REGULATIONS**

2. **Brief Synopsis of the Subject, Substance and Issues:** Amendments are being proposed to: 1) define the terms "operate," "ship lifeboat" and "passenger for hire;" 2) update the regulations to reflect the enactment of Senate Bill No. 290 and House Bill No. 55; 3) authorize the revocation, cancellation or suspension of a certificate of number under certain conditions; 4) require owners of homemade vessels to file a photograph of such vessel with the Division of Fish and Wildlife before the certificate of number is issued or renewed; 5) prevent vessels used exclusively as boat docking facilities from being issued certificates of number; 6) require vessels used primarily as boat docking facilities to comply with Chapter 72 of Title 7 (relating to the use of subaqueous lands); 7) establish criteria for reviewing applications from persons engaged in both retail sales and repairs of boats to issue boat registrations; 8) provide guidance relating to refunds of fees for certain unused registrations; and 9) correct typographical errors.

3. **Possible Terms of the Agency Action:** None

4. **Statutory Basis or Legal Authority to Act:** 23 Delaware Code, Sections 2113A(a) and 2114

5. **Other Regulations Affected by the Proposal:** Regulations promulgated by the Department of Natural Resources and Environmental Control, Division of Water Resources pursuant to 7 Del.C. § 7212.

6. **Notice of Public Comment:** A public hearing will be held on Monday, January 4, 1999, at 7:30 p.m. in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, DE. Written comments must be received by 4:30 p.m. on January 10, 1999. Comments may be mailed to the attention of James H. Graybeal, Chief of Enforcement, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901.

7. **Prepared by:** James H. Graybeal (302-739-3440)

PUBLIC SERVICE COMMISSION

ORDER NO. 4949

AND NOW, to-wit, this 17th day of November, 1998;

WHEREAS, in PSC Order No. 3283 (June 18, 1991) entered *In The Matter of the Sale, Resale and Other Provisions of Interstate Telecommunications Services*, PSC Regulation Docket No. 10, the Commission issued its "Rules For The Provision of Competitive Intrastate Telecommunications Services" to govern telecommunications carriers offering intrastate telecommunications services for public use within the State; and

WHEREAS, by Order No. 4468 (April 8, 1997) issued *In The Matter of the Development of Regulations for the Facilitation of Competitive Entry Into the Telecommunications Local Exchange Service Market*, PSC Regulation Docket No. 45, the Commission issued "Interim Rules Governing Competition In The Market For Local Telecommunications Services" to govern competitive local exchange telecommunications services within the State; and

WHEREAS, the Commission Staff has reviewed both the Rules For The Provision of Competitive Intrastate Telecommunication Services (the "Docket 10 Rules") and the Rules Governing Competition In The Market For Local Telecommunications Services (the "Docket 45 Rules") and has proposed amendment of those Rules to lessen regulatory burdens on telecommunications carriers, as well as on the Commission; to reflect the changing regulatory environment; to harmonize, where appropriate, the provisions of the Docket 10 and Docket 45 Rules; and to conform, where practicable, the requirements of these Rules

with other regulatory provisions; and

WHEREAS, the Commission is authorized by 26 Del. C. § 209 to fix just and reasonable standards, classifications, regulations, practices, measurements, or services to be furnished, imposed, observed, and followed thereafter by any public utility; and

WHEREAS, the Commission deems it appropriate to consider amendment of the Docket 10 and Docket 45 Rules as proposed by its Staff, pursuant to the procedures for amendment of agency regulations set forth by 29 Del. C. §§ 10113-10119.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Commission proceedings captioned *In The Matter of the Sale, Resale and Other Provisions of Interstate Telecommunications Services*, PSC Regulation Docket No. 10 and *In The Matter of the Development of Regulations for the Facilitation of Competitive Entry Into the Telecommunications Local Exchange Service Market*, PSC Regulation Docket No. 45, are hereby re-opened to consider amendment of the Rules promulgated therein. These proceedings shall be consolidated and conducted as a single proceeding for this purpose.

2. That Robert P. Haynes is designated as the Hearing Examiner for this proceeding pursuant to the terms of 26 Del. C. § 502 and 29 Del. C. § 10116, to organize, classify, and summarize all materials and other testimony filed in this proceeding, and to make findings and recommendations to the Commission concerning the proposed amendments on the basis of the materials and information submitted. Hearing Examiner Haynes is specifically authorized to solicit additional comments and to conduct, upon due notice, such public hearings as may be required to develop further materials and evidence. Barbara MacDonald, Esquire, is designated as Staff Counsel for this matter.

3. That the Commission seeks public comment and input concerning the content of the proposed amendments to the Docket 10 and Docket 45 Rules, and for this purpose and to comply with the requirements of 29 Del. C. §§ 1133 and 10115, the Commission hereby issues the Notices of Proposed Rule Amendment attached hereto as Exhibits "A" and "B" for publication, respectively, in the Register of Regulations and in two (2) newspapers of general circulation in the State.

4. That the Commission Secretary shall file the Notice of Proposed Rule Amendment, together with copies of the existing text of the Docket 10 and Docket 45 Rules and the proposed amendments thereto, with the Registrar of Regulations for publication in the Register of Regulations, as required by 29 Del. C. § 10115, on December 1, 1998. In addition, the Commission Secretary shall, contemporaneous with such filing, cause a copy of the Notice attached as Exhibit "A" and the existing Docket 10 and Docket 45 Rules

and the proposed amendments thereto to be sent by United States Mail to: (1) all prior participants in PSC Regulation Dockets 10 and 45; (2) all persons who have made timely requests for advance notice of such proceedings; and (3) the Division of the Public Advocate.

5. That the Commission Secretary shall cause the publication of the attached Notice of Proposed Rule Amendment attached hereto as Exhibit "B" to be made in The News Journal and the Delaware State News newspapers on the following dates, in two column format, outlined in black:

December 1, 1998 (for The News Journal)

December 2, 1998 (for the Delaware State News)

6. That the telecommunications service providers regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 Del. C. § 114.

7. That the Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper by Order of the Commission.

BY ORDER OF THE COMMISSION:

ATTEST:
Secretary

**DELAWARE RIVER BASIN
COMMISSION
P.O. BOX 7360
WEST TRENTON, NEW JERSEY**

The Delaware River Basin Commission will meet on Wednesday, December 9, 1998, in West Trenton, N.J. for more information contact Susan M. Weisman at (609) 883-9500 ext. 203.

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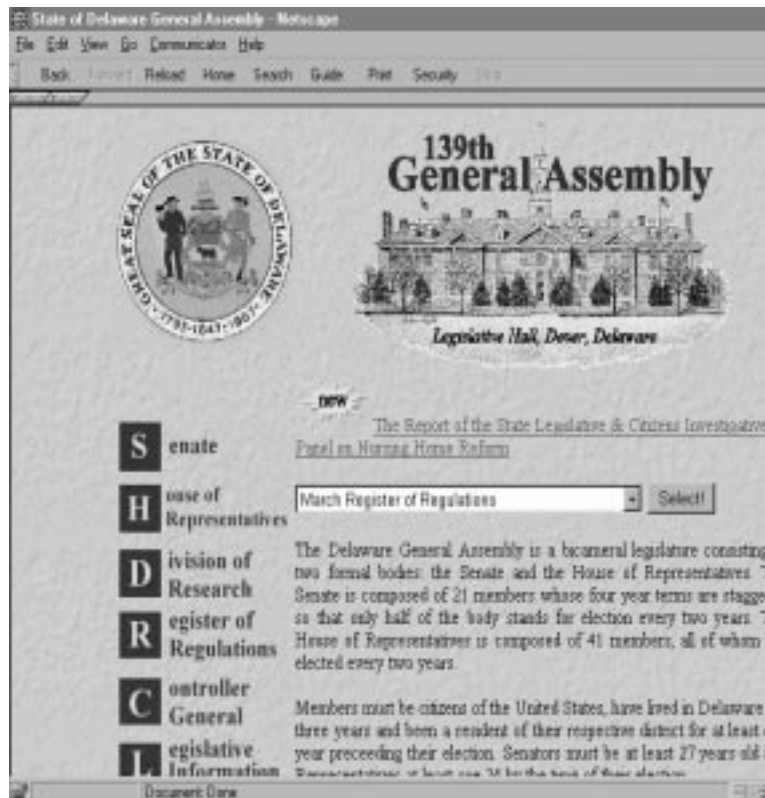
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