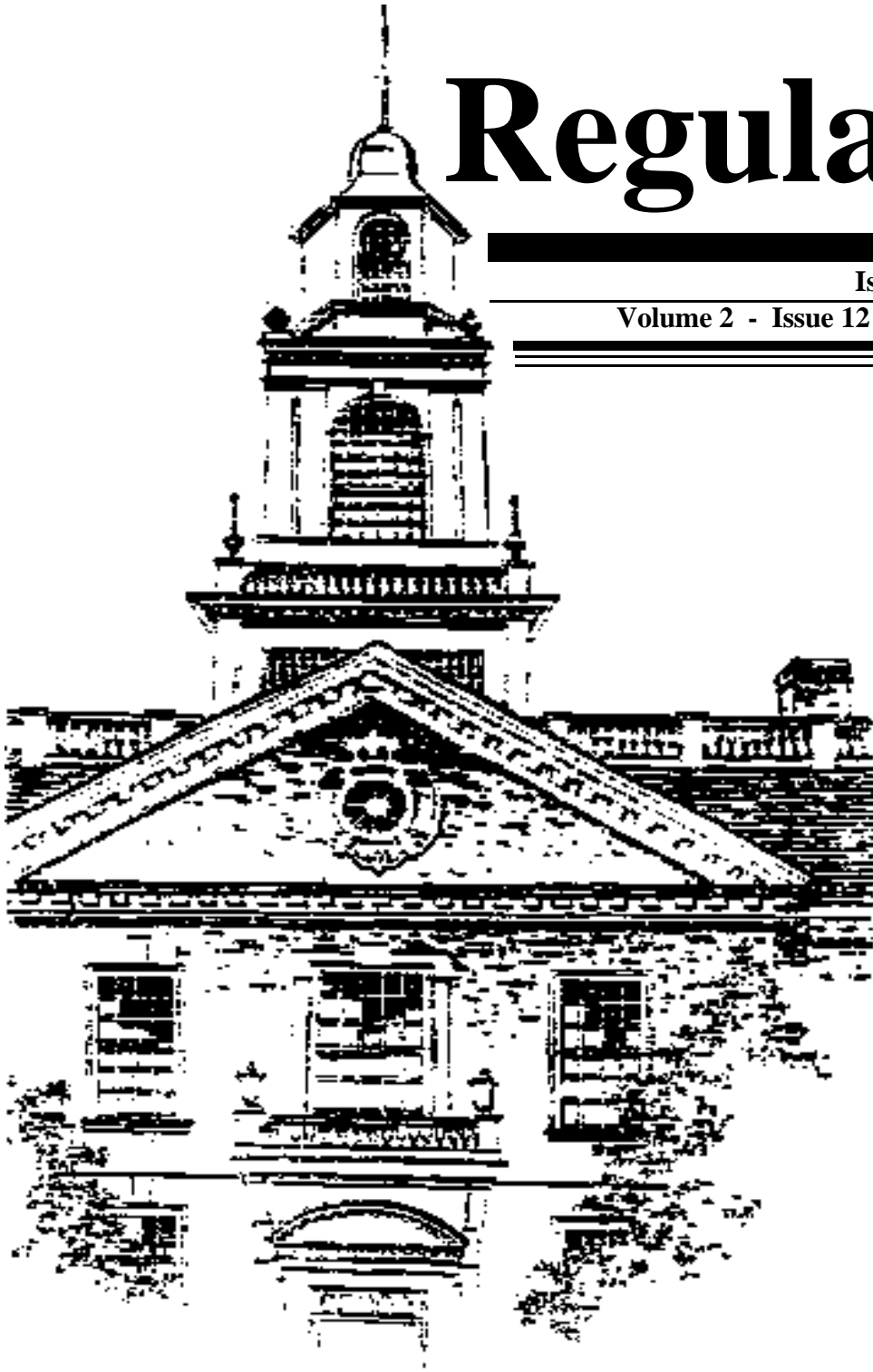

Delaware Register of Regulations



Issue Date: June 1, 1999

Volume 2 - Issue 12

Pages 2181 - 2343

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- Proposed
- Final

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Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received on or before May 15, 1999.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.

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IN VOLUME 2, ISSUE 11 AT PAGE 2046 THE DELAWARE HEALTH CARE COMMISSION WAS IMPROPERLY LISTED UNDER THE DEPARTMENT OF HEALTH & SOCIAL SERVICES. THE CORRECT TEXT OF THE ORDER FOLLOWS:

**HEALTH CARE COMMISSION
DELAWARE HEALTH INFORMATION NETWORK**

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

ORDER

In the fall of 1998, the board of directors for the Delaware Health Information Network ("DHIN") proposed to this Commission regulations for the governance and administration of the former as contemplated in 16 Del.C. §9921(e). Thereafter, the Commission caused to be published the text of the proposed regulations and a Notice of the Public Hearing in the Delaware Register of Regulations, Volume 2, Issue 9 on Monday, March 1, 1999. In addition, the Commission caused Notice of March 22, 1999 Public Hearing to be published in two newspapers of general circulation and left the record open until March 31, 1999.

The Commission appointed Judith A. Chaconas as the Hearing Officer. Ms. Chaconas reports that she received only oral and written comments in support of the proposed regulations and recommends the regulations be promulgated without change.

WHEREAS, the Commission finds that promulgation of the proposed regulations will provide guidance for the appointment of individuals to the Board, their terms of office and duties, and guidance for officers of the Board and their duties, as well as the rules of practice and procedure to be used by the Board, its committees, and workgroups;

WHEREAS, the Commission concludes that all necessary lawful requirements have been met in accordance with 29 Del.C. Ch. 101 regarding the proposed regulations; and,

WHEREAS, the text of the regulations are as follow:

***Please note that no changes were made to the regulation as originally proposed and published in the March 1, 1999 issue of the Register at page 1434 (2:9 Del.R. 1434). Therefore, the final regulation is not being republished. Please refer to the March 1, 1999 issue of the Register or contact the Department of Health and Social Services.**

IT IS HEREBY ORDERED this 1st day of April, 1999

That the above regulations for the governance and administration of the Delaware Health Information Network are hereby promulgated to be effective 10 days from the date published as final regulations in the Delaware Register of Regulations.

John C. Carney
Jacquelyne W. Gorum, DSW
Joseph A. Lieberman, MD
Lois M. Studte, RN
Robert F. Miller
A. Herbert Nehrling, Jr.
Gregg C. Sylvester, MD
Dennis Rochford
Donna Lee Williams

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))

**EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL. C., SECTION 122(d)****DELAWARE STUDENT TESTING PROGRAM****A. TYPE OF REGULATORY ACTION REQUESTED**

New Regulation

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

The Secretary seeks the consent of the State Board of Education to adopt new regulations on the Delaware Student Testing Program. These regulations are necessary in order to carry out the requirements of 14 Del. C., Sections 151 through 153 on the student testing. The regulations deal with the following issues: grades when students are tested and what subject areas are tested, testing all students, accommodations for special education and limited English proficient students, security and confidentiality issues and the levels of student performance on the DSTP.

C. IMPACT CRITERIA

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

The new regulations will help to improve student achievement by assessing student progress on meeting the

requirements of the state content standards.

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

The new regulations address assessment issues, not equity issues.

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

The new regulations address assessment issues, not health and safety issues.

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

The new regulations address assessment issues, not students' legal rights.

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

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

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

The new regulations will add to the reporting and administrative requirements in the local school districts but the Del. C. directs the Department of Education to make such regulations.

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

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

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

The new regulations will be consistent with and not an impediment to the implementation of other state educational policies.

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

The Del C. requires the Department of Education to make such regulations.

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

There are additional costs associated with the Delaware State Testing Program but the state has funded and will continue to fund the majority of the program costs.

PROPOSED REGULATION

100.1 Delaware Student Testing Program

1.0 Assessments created pursuant to the Delaware Student Testing Program shall be administered annually, on dates specified by the Secretary of Education, to students in grades 3, 5, 8, and 10, in the content areas of reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in the content areas of social studies and science. All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same, may from time to time be amended hereafter.

2.0 In order to assure uniform and secure procedures, the Delaware Student Testing Program shall be administered pursuant to the Delaware Student Testing Program Coordinators Handbook, as the same, may from time to time be amended hereafter.

2.1 Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the affidavit provided by the Department of Education regarding test security before, during and after test administration.

2.2 Violation of the security or confidentiality of any test required by the Delaware Code and the regulations

of the Department of Education shall be prohibited.

2.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials. Conduct that violates the security or confidentiality of a test is defined as any departure from the test administration procedures established by the Department of Education. Conduct of this nature may include the following acts and omissions:

2.3.1 duplicating secure examination materials;

2.3.2 disclosing the contents of any portion of a secure test;

2.3.3 providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;

2.3.4 changing or altering a response or answer of an examinee to a secure test item or prompt;

2.3.5 aiding or assisting an examinee with a response or answer to a secure test item or prompt;

2.3.6 encouraging or assisting an individual to engage in the conduct described above;

2.3.7 failing to report to an appropriate authority that an individual has engaged in conduct outlined above;

2.4 Individuals who engage in the conduct prohibited in section 2.3 may be subject to disciplinary action as provided in Delaware Code for educators who engage in acts of misconduct.

3.0 There shall be five levels of student performance on the assessments administered pursuant to the Delaware State Testing Program. Said levels are defined and shall be determined as follows:

3.1 Distinguished Performance: A student's performance in the tested domain is deemed exceptional. Students in this category will have shown mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

3.2 Exceed the Standard: A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Standard. Students in this category must demonstrate mastery of the Delaware Content Standards. Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good." The cut points for Exceeds the Standard performance shall be determined by the Department of Education, with the consent of the State Board of Education,

using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.

3.3 Meets the Standard: A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category must demonstrate that their level of understanding is such that they are prepared to succeed in further academic pursuits. Student performance in this range can be classified as "good." The cut points for Meets the Standard performance shall be determined by the Department of Education, with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.

3.4 Below the Standard: A student's performance in the tested domain indicates a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students at the upper end of this level are to be further sub-classified as Near the Standard. Students who are Near the Standard are those whose performance on the fundamental skills and knowledge articulated in the Delaware Content Standards is not yet sufficient to Meet the Standard, but the student is near the threshold in relation to the Meets the Standard category. The threshold shall be determined by the Department of Education, with the consent of the State Board of Education, using an error of measurement determined by the test data and the results from the standard setting process. Students who are Below the Standard generally require additional instruction in order to succeed in further academic pursuits, and can be classified as academically "deficient." The cut points for Below the Standard performance shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

3.5 Well Below the Standard: A student's performance in the tested domain indicates a performance that is clearly unsatisfactory in terms of the fundamental skills and knowledge articulated in the Delaware Content Standards and is such that it can be clearly inferred that the student's grasp on the fundamental skills and knowledge articulated in the standards is well below the expectation for Meets the Standard. Students who are Well Below the Standard have demonstrated broad deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and can be classified as "very deficient." The cut points for Well Below the Standard performance shall be determined by the Department of Education, with the consent of the State

Board of Education, using test data and the results from the Standard Setting process.

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

THE SCHOOL HEALTH TUBERCULOSIS (TB) CONTROL PROGRAM

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary seeks the consent of the State Board of Education to amend the regulation 800.16 The School Health Tuberculosis (TB) Control Program found in the document the Regulations of the Department of Education. The amendment is necessary in order to clarify the issue of testing of volunteers in the public schools for evidence of Tuberculosis. The present regulation requires that all volunteers, sharing the same air space with students, have or have proof of having a Mantoux tuberculin skin test in the past 12 months. The amended regulation requires that all volunteers complete a written screening test as a first step. This process is sanctioned by the Delaware Department of Health and Social Services and the Center for Disease Control who advocate testing only high risk target groups. If any questions on the test are answered affirmatively, the school would then require that the individual have the tuberculin test. This screening process would prevent the school from having to test all volunteers.

The amended regulation does not change the definition of a volunteer, but it deletes the reference to "frequent contact with students", adds the reference to the questionnaire, assures confidentiality, does not require annual testing of student teachers, and requires a retake of the screening test every five years. The regulation has also been revised for clarity and consistency and now has four parts, educators, volunteers, students and positive reactors.

C. IMPACT CRITERIA

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

The amended regulation addresses health issues, not curriculum issues.

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

The amended regulation addresses health issues,

not equity issues.

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

The amended regulation ensures that students' health is protected by requiring all volunteers who work in the schools to complete a health screening questionnaire to ascertain the need for a Mantoux tuberculin skin test.

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

The amended regulation addresses health issues, not students' legal rights.

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

The amended regulation preserves the necessary authority of local decision makers. It allows flexibility to determine who will supervise/monitor tuberculosis screening.

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

The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The amended regulation decreases the need for further follow-up with volunteers who pass the written screening test.

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

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

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

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

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

The regulation needs to be amended in order to clarify the requirements for volunteers and to provide consistent requirements for all positive reactors.

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 local boards for compliance with this amended regulation. There will be a savings to local districts who currently provide free skin testing to all volunteers. With the new regulation, only a small percentage of volunteers will require the skin test.

PROPOSED REGULATION

800.16 The School Health Tuberculosis (TB) Control Program May 1998, Amended July 1999

~~1.0 All school employees, substitutes, student teachers, and contract employees (including bus drivers) who are in frequent contact with students shall receive the Mantoux tuberculin skin test or show proof of being tested in the past 12 months during the first 15 working days of employment. Volunteers (those persons who give their time to help others for no monetary reward) shall show proof of Mantoux tuberculin skin test results taken within the last twelve months prior to assignment of tasks in the school environment where they share the same air space with students and staff on a regularly scheduled basis. Known positive reactors need verification from private physician or Division of Public Health Clinics for:~~

~~1.1 skin test reaction recorded in millimeters~~

~~1.2 completion of preventive therapy for TB infection or chemotherapy for TB disease~~

~~1.2.1 If documentation is available, the known positive reactor need not have this tuberculin skin test. When documentation is unavailable, the employee should be tested. If documentation does not exist and the employee refuses to be skin tested again, the employee shall be asked to provide a statement in writing that he or she has had a positive skin test result in the past, and that he/she has been counseled about the signs and symptoms of tuberculosis.~~

~~2.0 Present employees shall show proof of Mantoux tuberculin skin test results to the district designee by October 15, every fifth year of employment.~~

~~3.0 Newly infected positive reactors will be referred to the public health clinic or their private physicians for further evaluation. Known positive reactors who have appropriate documentation and are asymptomatic are not required to have another skin test or a chest x-ray.~~

~~4.0 All new school enterers shall show proof of a Mantoux tuberculin skin test results within the past 12 months or follow the recommendations of the American Academy of Pediatrics (AAP) 1997. Physicians must send documentation of the decisions. Multi-puncture skin tests will not be acceptable. A school enterer is any child between~~

the ages of one year and 21 years entering or being admitted to a Delaware school district for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from nonpublic schools. Known positive reactors need verification from their private physician or Division of Public Health clinics for:

4.1 skin test reaction recorded in millimeters

4.2 completion of preventive therapy for TB infection or chemotherapy for TB disease

4.2.1 Tuberculin skin test requirements may be waived for children whose parent(s) or guardian(s) present a notarized document that tuberculin skin testing is against their religious beliefs.

5.0 School nurses shall record the results of the Mantoux tuberculin skin test in the School Health Record.

1.0 School Employees, Substitutes, Student Teachers, and Contract Employees - All school employees, substitutes, student teachers, and contract employees (including bus drivers) shall receive the Mantoux tuberculin skin test or show proof of being tested in the past 12 months during the first 15 working days of employment.

1.1 Present employees, substitutes, and contract employees shall show proof of Mantoux tuberculin skin test results to the district designee by October 15, every fifth year of employment.

1.2 Student teachers need not be retested if they move from district to district as part of their student teaching assignments.

2.0 Volunteers - Volunteers, those persons who give their time to help others for no monetary reward and who share the same air space with students and staff on a regularly scheduled basis, shall complete the Delaware Department of Education's *Health Questionnaire for Volunteers in Public Schools* prior to their assignment. Should the volunteer answer affirmatively to any of the questions, he/she must provide proof of a Mantoux tuberculin skin test in the past 12 months before beginning their assignment.

2.1 Volunteers shall complete the Delaware Department of Education's *Health Questionnaire for Volunteers in Public Schools* every fifth year.

2.1.1 The district designee(s) shall collect and monitor the volunteer questionnaires. These questionnaires will be stored in the School Nurse's office in a confidential manner.

3.0 Students - All new school enterers shall show proof of a Mantoux tuberculin skin test results within the past 12

months or follow the recommendations of the American Academy of Pediatrics (AAP). Health Care Providers must send documentation of the decisions. Multi-puncture skin tests will not be accepted. A school enterer is any child between the ages of one year and 21 years entering or being admitted to a Delaware school district for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from nonpublic schools.

3.1 School nurses shall record the results of the Mantoux tuberculin skin test in the School Health Record.

3.2 Tuberculin skin test requirements may be waived for children whose parent(s) or guardian(s) present a notarized document that tuberculin skin testing is against their religious beliefs.

4.0 Positive Reactors - Positive reactors (those currently identified and those with a history) need verification from a Health Care Provider or Division of Public Health indicating:

- skin test reaction recorded in millimeters
- current disease status, i.e. contagious or non-contagious
- current treatment, completion of preventive treatment for TB infection, or chemotherapy for TB disease
- date when the individual may return to their school assignment without posing a risk to the school setting.

4.1 If documentation of the test is available, the known positive reactor need not have this tuberculin skin test but provide the above information related to disease status and treatment.

4.1.1 Verification from a Health Care Provider or Division of Public Health shall be required only once if treatment was completed successfully.

4.2 If documentation of the test is unavailable, the individual should be tested. If the individual refuses to be skin tested again, the individual shall provide from a Health Care Provider or the Division of Public Health information related to disease status and treatment.

4.3 Updated information regarding disease status and treatment shall be provided to the district designee by October 15 every fifth year if treatment was previously contraindicated, incomplete or unknown.

**EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL. C., SECTION 122(d)****SCHOOL SAFETY AUDIT****A. TYPE OF REGULATORY ACTION REQUESTED**

New Regulation

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

The Secretary seeks the consent of the State Board of Education to adopt a new regulation requiring public school safety audits. The need for the regulation comes from concerns expressed by the interagency work group on school safety and from a recent conference on school safety plus the reaction to the incidents in the state of Colorado.

C. IMPACT CRITERIA

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

The new regulation addresses school safety, not curriculum issues.

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

The new regulation addresses school safety issues, not equity issues.

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

The new regulation addresses school safety issues by requiring schools to do school safety audits each year.

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

The new regulation addresses school safety issues, not students' legal rights.

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

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

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

The new regulation will not place unnecessary reporting or administrative requirements or mandates upon

decision makers at the local board and school levels.

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

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

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

The new regulation will be consistent with and not an impediment to the implementation of other state educational policies.

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

The issue must be addressed by regulation to ensure that every school performs a safety audit.

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 to the local board.

800.21 School Safety Audit

1.0 Each school year every Delaware public school including Charter Schools and Alternative Schools shall conduct a School Safety Audit. Such audit shall be conducted using guidelines provided by the Department of Education.

**EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL. C., SECTION 122(d)****SCHOOL CRISIS RESPONSE PLANS****A. TYPE OF REGULATORY ACTION REQUESTED**

New Regulation

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

The Secretary seeks the consent of the State Board of Education to adopt a new regulation requiring each public school in the state to have a school crisis response plan and to conduct at least one practice drill annually. The need for

the regulation comes from concerns expressed by the interagency work group on school safety and from a recent conference on school safety plus the reaction to the incidents in the state of Colorado.

C. IMPACT CRITERIA

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

The new regulation addresses school safety, not curriculum issues.

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

The new regulation addresses school safety, not equity issues.

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

The new regulation addresses school safety by requiring each school to develop a School Crisis Response Plan and to conduct at least one practice drill annually.

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

The new regulation addresses school safety, not students' legal rights.

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

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

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

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

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

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

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

science, language arts and social studies?

The new regulation will be consistent with and not an impediment to the implementation of other state educational policies.

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

The issue must be addressed by regulation to ensure that every school has a School Crisis Response Plan and conducts a practice drill once a year.

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 to the local Board.

PROPOSED REGULATION

800.22 School Crisis Response Plans

1.0 Every Delaware public school including Charter Schools and Alternative Schools shall develop a School Crisis Response Plan and shall conduct at least one practice drill annually. Such plan shall be developed using guidelines provided by the Department of Education.

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

CONSTITUTION AND BYLAWS OF THE DELAWARE SECONDARY SCHOOL ATHLETIC ASSOCIATION (DSSAA)

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary recommends to the State Board of Education that the proposed changes to the Constitution and Bylaws of the Delaware Secondary School Athletic Association (DSSAA) be adopted. The attached proposals are the result of an annual review of the constitution and bylaws by the DSSAA Constitution and Bylaws Committee and the DSSAA Board of Directors. Approximately two-thirds of the proposals are editorial changes or minor revisions that received no opposition from member school representatives at the 54th Annual Membership Meeting. The proposed revisions were submitted to the Constitution and Bylaws Committee by either a member school, a

conference, or the Executive Director. They were discussed at length by the Committee on November 4, 1998 and then submitted to the Board of Directors for initial review at the November 19, 1998 meeting. A formal vote on the proposed changes was not taken due to the lack of a quorum. The proposals were then forwarded to the member schools in December with an invitation to either attend the 54th Annual Membership Meeting on January 28, 1999 and participate in an open discussion of the proposed revisions or to submit written comments regarding the proposed changes. In a special session prior to the Annual Membership meeting, the Board reviewed the proposals for a second time and also discussed two new proposals which had been recommended by an ad hoc committee on event sponsorship and commercialism in high school athletics. With the exception of the two new proposals which were not included in the package previously sent to the member schools, all of the proposed revisions received initial approval from the Board. The entire package of proposals was then presented to the member school representatives in attendance for their consideration and comment. At the regularly scheduled session following the Annual Membership Meeting, all of the proposed changes, with the exception of the two new proposals, received a second affirmative vote. Those two proposals received initial approval and were then forwarded to the member schools for written comment. A second vote on those two proposals was taken at the March 25, 1999 Board meeting. Both proposals were approved and the thirty-one proposed changes which received two affirmative votes from the Board were forwarded to the Secretary for her endorsement. The Secretary is currently considering changes to two of the proposals and they may be remanded back to the DSSAA Board.

Changes to the bylaws which are substantive in nature include:

- A change in the age eligibility cut-off date from August 15 to June 15.
- The inclusion of post-season senior all-star contests for a sportsmanship related game ejection.
- A clarification of the financial hardship and program of study exceptions to the transfer rule and a requirement that principals scrutinize such waiver requests and certify that they are not athletically motivated.
- The addition of wording to ensure that the residence and transfer rules are compatible with 14 Del. C., Chapter 6 §607 and 14 Del. C., Chapter 4 respectively.
- A clarification of the amateur status rule.
- A deletion of the “reasonable efforts” requirement for an appeal of the forfeiture penalty for use of an ineligible athlete.
- An extension of the DSSAA Board’s authority over state championships to include approval of the

selection and seeding procedures for the participating teams.

- A requirement that all head coaches hold a current CPR certification beginning with the 2000-01 school year and that all assistant coaches hold a current CPR certification beginning with the 2001-02 school year.
- The establishment of a “floating date” (first Friday in December) for the start of competition during the winter sports season.
- A clarification of “open gym” programs.

C. IMPACT CRITERIA

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

The proposals will probably not have a measurable effect on the academic achievement of students participating in athletics.

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

The primary responsibility for enforcing the rules and regulations of the Delaware Secondary School Athletic Association rests with the member schools. If properly applied, the rules and regulations provide “a level playing field” and an equal opportunity for all interested to participate in interscholastic athletics. The DSSAA Board of Directors and the Executive Director will enforce the proposed regulations equitably without regard to athletic ability, race, gender, economic standing, or school of attendance.

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

The proposals will probably not have a measurable effect on the health and safety of the students participating in athletics.

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

The Constitution and Bylaws address the legal rights of students participating in athletics, and the proposed amendments dealing with eligibility further clarify those rights.

5. Will the amendments preserve the necessary authority and flexibility of decision makers at the local board and school levels?

The amendments will not alter the existing authority and flexibility of decision makers at the local board and school levels as provided in the Constitution and Bylaws.

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

The proposed amendments will not place any unnecessary reporting or administrative requirements 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 will remain in the same entity.

8. Will the amendments 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 proposed amendments 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 Constitution and Bylaws must be amended in this way for DSSAA to fulfill its regulatory function.

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

Compliance with the proposed amendments will not result in any additional costs for the state and local boards.

CONSTITUTION AND BYLAWS PROPOSALS

1. Article IV. Administration, Section 1. Board of Directors B.

B. A member who is absent from three (3) regularly scheduled meetings of the Board of Directors ~~three (3) or more times during a six month period during a given school year~~ shall be replaced by the appropriate nominating group provided in Section 1. A. above.

2. Article IV. Administration, Section 4. Election of Officers of Board of Directors A.

A. The officers of the Delaware Secondary School Athletic Association shall be selected by the Board of Directors at its regularly scheduled meeting in May. ~~initial meeting following the appointment or reappointment of members by the State Board of Education.~~

3. Article IV. Administration, Section 8. Executive Director B. 5.

5. Decide issues between meetings of the Board of Directors. ~~The Executive Director is authorized to initiate a review of or fully investigate~~ He/she is authorized to fully investigate or direct a member school or officials' association to investigate an alleged violation of the DSSAA Constitution and Bylaws which ~~he has seen, heard or read about, he/she has observed or discovered~~ or which has been reported to him/her. He/she is expected to report the findings of any such investigation to the Board of Directors. Subsequent action by the Executive Director may include an official reprimand, placement on probation, a fine, the imposition of sanctions or ~~the~~ suspension from participation for a designated period of time of a ~~player, student, team, coach, or official, spectator, team, school, or officials' association in order~~ to ensure the necessary, orderly, and proper conduct of interscholastic ~~competition~~ athletics.

4. Article V. Vacancies on Board of Directors A.

A. Vacancies occurring on the Board of Directors shall be filled in accordance with the procedures set forth in Article IV., Section 1. and Section 3. The appropriate group shall submit nominations to the State Board of Education. The individual so appointed shall begin his/her term at the next regularly scheduled meeting of the Board of Directors following appointment by the State Board of Education.

5. Article VI. Meetings

N/A

F. Meetings shall be conducted in accordance with Roberts Rules of Order.

6. Article VIII. Responsibilities, Powers, and Duties of Administrative Head of School, Section 2. Powers and Duties of Administrative Head of School A.

A. ~~To have general control over all interscholastic athletic matters and the contests in which his/her school participates.~~

The administrative head of each member school shall exercise general control over all of the interscholastic athletic matters of his/her school which include, but are not limited to, the following:

(change B. - L. to 1. - 11.)

7. Sportsmanship Rule, Section 2. Processing Violations of the Sportsmanship Rule C. Penalties 1. Game Ejection c. (2)

2. Seniors shall fulfill their penalty in another sport during the same season or another sport during a subsequent sports season. the post-season all-star game in that sport. If not chosen to participate in the all-star game, they shall fulfill their penalty in another sport during the same season

or another sport in a subsequent season. When a senior is disqualified from the last game of his/her high school career, the member school is requested to take appropriate administrative action to discipline the offending student.

8. Rule 1. Eligibility, Section 1. Age A

A. Students who become 19 years of age on or after June 15, 1999 shall be eligible for all sports during the current school year provided all other eligibility requirements are met. Students who have attained the age of 19 prior to June 15, 1999 shall be ineligible for all sports.

9. Rule 1. Eligibility, Section 1. Age A.

B. Notwithstanding Rule 1. Section 4. Transfer, a student who reaches the age of majority (18), leaves his/her parents' place of residency and jurisdiction thereof, and moves to another attendance zone to continue his/her high school education shall be ineligible to participate in athletics for 180 school days commencing with the first day of official attendance. This provision shall not apply to a students participating in the Delaware School Choice Program as authorized by ~~House Bill 144 of the 138th General Assembly.~~ 14 Del. C., Chapter 4 provided the student's choice application was properly submitted prior to the his/her change of residence.

10. Rule 1. Eligibility, Section 3. Residence

N/A

6. A student who is a non-resident of Delaware shall be eligible at a public, vocational-technical, or charter school if, in accordance with 14 Del. C., Chapter 6 § 607, his/her custodial parent or legal guardian is a full-time employee of that district.

11. Rule 1. Eligibility, Section 4. Transfer E. 1.

N/A

e. Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in H. 1., H. 2., H. 3., and H. 4. below.

12. Rule 1. Eligibility, Section 4. Transfer E. 2. a.

a. Proof of extreme financial hardship caused by significant loss of and unexpected reduction in income and or increased-increase in expenses.

b. Statement from the principal of both the sending

and receiving schools that the student is not transferring primarily for athletic advantage as defined in H. 1., H. 2., H. 3., and H. 4. below.

13. Rule 1. Eligibility, Section 4. Transfer F. 1.

1. The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade are required to be in attendance.

14. Rule 1. Eligibility, Section 4. Transfer K.

K. A student who transfers from a school of choice, as authorized by ~~House Bill 144 of the 138th General Assembly, to a public, private, vocational-technical, or charter~~ 14 Del.C., Chapter 4, to either a private school or, after completing his/her two-year commitment, to a public, vocational technical, or charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in G. 1., G. 2., G. 3., and G. 4. Above F. 1., F. 2., F. 3., and F. 4. above.

15. Rule 1. Eligibility, Section 5. Amateur A. 4.

4. Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

16. Rule 4. Passing Work E. and F.

E. Local school boards and non-public schools may establish more stringent requirements over and above the minimums for academic eligibility than the minimum standards herein prescribed ~~for eligibility.~~

F. ~~With respect to the non-public member schools, only the preceding requirements shall be applicable for student participation. These requirements shall not preclude non-public schools from maintaining requirements beyond those herein prescribed.~~

17. Rule 10. Eligibility Lists C.

C. ~~A student not listed on the original eligibility report or subsequent addenda on file in the Executive Director's office shall be ineligible.~~ In the case of a student who met all

DSSAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

18. Rule 13. Licensed Physician

Rule 13. Licensed Physician

Rule 13. Medical Supervision

A. Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service. ~~The athletic trainer and nurse shall be limited to rendering first aid service only.~~

19. Rule 14. Use of Ineligible Athlete A.4.

4. The offending school may appeal to the DSSAA Board of Directors for a waiver of the ~~forfeit or for the imposition of a lesser penalty~~ forfeiture penalty if the ineligible athlete had no tangible affect on the outcome of the contest(s), ~~and the offending school can document conclusively that it made a reasonable effort(s) to determine the eligibility of the athlete in question. "Reasonable effort(s)" shall include but not be limited to the following: If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both instances, resides entirely with the offending school.~~

a. ~~Conduct meetings prior to summer vacation at the high school and the middle schools in the feeder pattern in order to review district and DSSAA eligibility requirements with students interested in participating in interscholastic athletics.~~

b. ~~Distribute prior to summer vacation the DSSAA physical examination form and the DSSAA student medical history/parental consent form, including the list of eligibility reminders, and have the signed forms on file before the start of practice.~~

c. ~~Distribute an athletic code or contract, including a residence check, which must be signed by the student and his/her custodial parent(s) or legal guardian(s) and have the signed forms on file before the start of practice.~~

d. ~~Compare the address listed on the athletic code or contract with school records when completing the DSSAA eligibility report.~~

20. Rule 18. Conferences and All-Star Games

Rule 18. Conferences ~~and All-Star Games~~

A. Member schools may establish voluntary conference organizations according to the following rules:

1. Any such organization may be composed of public and non-public schools

2. Any conference so formed must submit its proposed membership and ~~bylaws~~ constitution and bylaws to the DSSAA Board of Directors and ~~these they~~ they must be approved prior to the schools entering into any contractual agreements.

All subsequent amendments to the ~~constitute~~ constitution and bylaws of the conference must be approved by the DSSAA Board of Directors.

~~B. Students of member schools, who have completed their eligibility in a sport, may participate in not more than one (1) all star game in that sport until they have graduated from high school. The game must be approved by DSSAA in accordance with the criteria listed below, and a full financial report must be filed with the Executive Director within thirty (30) days of the game. Failure to submit a financial report within the specified time period shall result in the coaches' association or other sponsoring organization being assessed a \$100.00 fine.~~

~~1. The game shall not be for determining a regional or national champion.~~

~~2. The game shall be sponsored by and all profits go to a nonprofit organization.~~

~~3. The awards given shall be symbolic in nature with no intrinsic value.~~

~~4. The travel distance shall not exceed 600 miles round trip.~~

Rule 19. All-Star Contests

A. An all-star contest shall be defined as an organized competition in which the participants are selected by the sponsoring organization or its designee on the basis of their performance during the interscholastic season in that sport.

B. Students who have completed their eligibility in a sport may participate in one all-star contest in that sport, if approved by DSSAA, prior to graduation from high school.

C. Member schools shall not make their facilities, equipment, or uniforms available to the sponsoring organization or the participants unless the all-star contest is approved by DSSAA.

D. The all-star contest must be approved by DSSAA in accordance with the following criteria:

1. The contest shall not be for determining a regional or national champion.

2. The contest shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited

to providing financial support.

3. The awards given shall be in compliance with Rule 1., Section 5. Amateur.

4. Exceptions to the adopted rules code for the sport shall require the approval of DSSAA.

5. A full financial report must be filed with the Executive Director within thirty (30) days of the contest. Failure to submit a financial report within the specified period of time shall result in the sponsoring organization being assessed a \$50.00 fine.

6. The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

21. Rule ~~49~~ 20. Sponsoring Interscholastic Teams, Section 2. Sponsorship of Teams A. 1. and A. 2.

1. The governing bodies body of the participating districts or schools approved district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

2. The governing bodies body of the participating districts or schools control district or non-public school controls the funds needed to conduct support the proposed program team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions and donations of equipment or services from outside sources must be approved in writing by the administrative head of the school must be submitted in writing and must include an acknowledgment that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

22. Rule ~~20~~ 21. State Championships C. 1.

Each tournament format, as well as the criteria and procedures for selecting and seeding the participating teams, must be approved by the Board of Directors and any subsequent changes in format must also be approved by the Board. The Executive Director shall advise the committees as to which proposed changes must be presented to the Board. In instances where If the Executive Director and the committee cannot agree, the proposed change must be presented to the Board of Directors for approval.

23. Rule ~~24~~ 22. Certified Coaches A. 2. and B. 4. c. (3)

2.E. All varsity head coaches (junior varsity if the school does not sponsor a varsity team) shall be required to

attend the DSSAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DSSAA office. Beginning with the 2000-01 school year, head coaches at all levels of competition shall be required to hold a current certification in adult CPR.

~~B-3-1.~~ Beginning with the 2001-02 school year, assistant coaches at all levels of competition shall be required to hold a current certification in adult CPR.

24. Rule ~~24~~ 22. Certified Coaches B. 4. c. (1)

(1) He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

25. Rule ~~22~~ 23. Sports Seasons and Practices B. and D.

B. The regular winter sports season shall begin on November 15 with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament play in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

D. Practice for any fall sport shall not begin earlier than 21 days before the first Friday after Labor Day. Practice for any winter sport shall not begin earlier than November 15 21 days before the first Friday in December and practice for any spring sport shall not begin earlier than March 1.

26. Rule ~~24~~ 25. Baseball and Softball Pregame Warmup and Rule 25. Track and Field Events

Rule 24. Baseball and Softball Pregame Warmup

~~A. In baseball and softball the last twenty-minute practice period on the field prior to game time shall be reserved for the visiting team.~~

Rule 25. Track and Field Events

~~A. The standard order of events, as prescribed in the National Federation official rules book, shall be followed by member schools in all track and field meets in which they participate, except that the javelin shall not be contested. Put in appendix under Playing Rules Adoptions/Modifications.~~

27. Rule ~~27~~ 28. Awards C. 1.

1. ~~Tournament sponsors shall be allowed to present the members of the participating teams with a~~

~~complimentary T-shirt and event program.~~

28. Rule ~~27~~ 28. Awards D. 1.

1. With the exception of post-secondary scholarships, the awards shall have symbolic value only. Awards with utilitarian value are prohibited. The ~~cost~~ value of the award shall not exceed \$50.00.

29. Rule ~~36~~ 37. "Open Gym" Programs A. 3.

3. The activities must be unstructured and student-generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

a. A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate

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

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES**

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 122 (16 Del.C. 122)

PUBLIC NOTICE

Communicable Disease Regulations

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16, Part 1, Subchapter II, #122 Et. Seq. the Delaware Department of Health and Social Services/ Division of Public Health is amending its Communicable Disease Regulations. These regulations were last amended April 13, 1995.

A summary of the content of the revisions is incorporated in this notice. Anyone wishing a complete copy of the Regulations with recommended changes noted should call 302-739-3033 requesting same or write to the Division at the address listed below.

A Public Hearing will be held on Wednesday, June 23, 1999, in the third floor conference room of the Jesse Cooper Building on the corner of Federal and Water Streets from 4pm to 6pm. Persons wishing to be heard on this matter should appear in person at that time. Parties must enter by 5pm in order to be admitted.

Persons who wish to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulations must submit same to the Office of the Director, Division of Public Health, P.O., Box 637, Dover, DE 19901 by close of business June 25, 1999.

* Please note paragraph numbering and the table of contents may not be reflective of the final document. This should not, and is not meant to substantively alter the meaning of the proposed regulatory revisions.

**Regulations for the Control of Communicable and Other
Disease Conditions**

Adopted August 2, 1984

Amended:

June 21, 1986

January 6, 1989

June 16, 1989

September 1, 1989

January 12, 1990

October 19, 1990

December 10, 1993

April 13, 1995

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

PART I

Applicable Codes

These regulations are adopted by the ~~Delaware State Board of Health~~ Department of Health & Social Services pursuant to 16 Del. C. §122(1), (2), (3) (a and j), (4), (5); §128; §129; §151; §503; §504; §505; §507; §508; §702; §706 and 707. These regulations are ~~are~~ were originally adopted on August 2, 1984 ~~and are~~ effective September 1, 1984, and subsequently amended.

PART II

Definitions

When used in Parts II and III, the following terms shall mean:

1. "Carrier" - A person who harbors pathogenic organisms of communicable disease but who does not show clinical evidence of the disease and serves as a potential source of infection.

2. "Case" - A person whose body has been invaded by an infectious agent with the result that clinical symptoms have occurred.

3. "Child Care Facility" - Any organization or business created for, and having as its major purpose, the daily care and/or education of children under the age of 7 years.

4. "Communicable Disease" - An illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly, through an intermediate plant or animal host, vector, or the inanimate environment.

5. "Contact" - A person or animal that has been in such association with an infected person or animal or a contaminated environment as to have had opportunity to acquire the infection.

~~"Designated Representative" - The person officially named by the Local Health Unit Administrator or the Section Chief to represent and to carry out the functions of the Division Director or designee Unit or the Section, respectively, in the absence of the Division Director or designee Unit Administrator or the Section Chief.~~

6. "Designee" - The person named by the Director of the Division of Public Health to assume a specific responsibility.

7. "Division Director" - The Director of the Division of Public Health.

8. "Directly Observed Therapy (DOT)" - an adherence-enhancing strategy in which a health care worker or other designated person watches the patient swallow each dose of medication.

9. "Epidemic" or "Outbreak" - The occurrence in persons in a community, institution, region, or other defined area of cases of an illness of similar nature clearly in excess of normal expectancy.

~~"Immunizations" - DPT is diphtheria, tetanus, and pertussis, DT is diphtheria and tetanus, Td is tetanus, diphtheria toxoids, OPV is oral Polio vaccine, IPV is injectable polio vaccine~~

~~"Local Health Unit" - The main offices of the Division of Public Health which are located in Kent, Sussex and New Castle Counties.~~

~~New Castle Local Health Unit
2055 Limestone Road
Wilmington, DE 19804
995-8650~~

~~Kent Local Health Unit
805 River Road
Dover, DE 19901
736-5305~~

~~Sussex Local Health Unit
544 South Bedford Street
Georgetown, DE 19947
856-5355~~

~~"Local Health Unit Administrator" - The person officially named by the Division of Public Health Director responsible for the operations within a local health unit.~~

10. HIV Infection - repeatedly reactive screening tests for HIV antibody (for example, enzyme immunoassay) with specific antibody identified by the use of supplemental tests such as Western Blot or immunofluorescence assay; or direct identification of virus in host tissues by virus isolation (for example, culture); or HIV antigen detection (for example p24 antigen); or a positive result on any other highly specific licensed test for HIV.

11. "Medical Examiner" - A physician appointed pursuant to 29 Del. C. §4703 or 7903(a)(3) who is authorized to investigate the causes and circumstances of death.

12. "Nosocomial Disease" - A disease occurring in a patient in a health-care facility and in whom it was not present or incubating at the time of admission.

13. "Notifiable Disease" - A communicable disease or

condition of public health significance required to be reported to the Division of Public Health in accordance with these Rules.

14. "Notification" - A written or verbal report as required by any section of these Rules.

15. "Outbreak" - Refer to definition of "Epidemic".

16. "Post-Secondary Institution" - Means and includes state universities, private colleges, technical and community colleges, vocational technical schools and hospital nursing schools.

17. "Quarantine" - An official order that limits the freedom of movement and actions of persons or animals in order to prevent the spread of notifiable disease or other disease condition. ~~The Division Director or designee The Local Health Unit Administrator or the Section Chief~~ shall determine which persons or animals are subject to quarantine and shall issue appropriate instructions.

18. "Resistant Organism" - Any organism which traditionally was inactivated or killed by a drug but has, over time, developed mechanisms to render that drug ineffective.

~~"Section" - The Health Monitoring and Program Consultation Section of the Division of Public Health~~

~~"Section Chief" - The Chief of the Health Monitoring and Program Consultation Section, Division of Public Health.~~

19. "Sensitive Situation" - A setting, as judged by the Director of the Division of Public Health or ~~his designate~~ designee in which the presence of a person or animal infected with or suspected of being infected with a notifiable or other communicable disease or condition which may affect the public health would increase significantly the probability of spread of such disease and would, therefore, constitute a public health hazard. Sensitive situations may include, but are not limited to, schools, child-care facilities, hospitals, and other patient-care facilities, food storage, food processing establishments or food outlets.

20. "Source of Infection" - The person, animal, object or substance from which an infectious agent passes directly to the host.

21. "Suspect" - A person or animal whose medical history and symptoms suggest that he or it may have or may be developing a communicable disease condition.

PART III

Regulations

Section 1. Notifiable Diseases or Conditions to be Reported

The ~~list of~~ notifiable diseases ~~or conditions (notifiable diseases)~~ specified in the ~~Appendix~~ Appendices to these

regulations are declared as dangerous to the public health. The occurrence or suspected occurrence of these diseases, including those ~~who at the time of death were so affected~~ identified after death, shall be reported as defined in Section 3 to the ~~Local Health Unit Administrator~~ Division of Public Health. Such reports shall be made within 48 hours of recognition except as otherwise provided in these regulations. Reports shall be made by telephone or in writing except for certain specified diseases as indicated by a (T) which shall be reported immediately by telephone. Certain diseases are reportable in number only and are indicated by an (N). The ~~Section~~ Division of Public Health may list additional diseases and conditions on its reporting forms for which reporting is encouraged but not required.

Section 2. Report of Outbreaks

Any person having knowledge of any outbreak of any notifiable disease or clusters of any illness which may be of public concern, shall report such outbreaks within 24 hours to the ~~Local Health Unit Administrator~~ Division Director or designee.

Section 3. Reporting of Notifiable Diseases

3.1 Attending Practitioners

Reports required by Sections 1 and 2 shall be made to the Division Director or designee ~~Local Health Unit Administrator~~ by any attending practitioner, licensed or otherwise permitted in Delaware to practice medicine, osteopathic medicine, chiropractic, naturopathy, or veterinary medicine, who diagnoses or suspects the existence of any disease on the notifiable disease list or by the medical examiner in cases of unattended deaths.

3.2 Others

In addition to those who are required to report notifiable diseases, the following are requested to notify the Division Director or designee ~~Local Health Unit Administrator~~ of the name and address of any person in his or her family, care, employ, class, jurisdiction, custody of control, who is suspected of being afflicted with a notifiable disease although no practitioner, as in Section 3.1 above, has been consulted: every parent, guardian, householder; every nurse, every dentist, every midwife, every superintendent, principal, teacher or counselor of a public or private school; every administrator of a public or private institution of higher learning; owner, operator, or teacher of a child-care facility; owner or manager of a dairy, restaurant, or food storage, food-processing establishment or food outlet; superintendent or manager of a public or private camp, home or institution; director or supervisor of a military installation; military or Veterans Administration Hospital, jail, or

juvenile detention center.

3.3 Hospitals

3.3.1 The chief administrative officer of each civilian hospital, long-term care facility, or other patient-care facility shall (and the United States military and Veterans Administration Hospitals are requested to) appoint an individual from the staff, hereinafter referred to as "reporting officer," who shall be responsible for reporting cases or suspect cases of diseases on the notifiable disease list in persons admitted to, attended to, or residing in the facility.

3.3.2 Such case reports shall be made to the Division Director or designee ~~Local Health Unit Administrator~~ within 48 hours of recognition or suspicion, except as otherwise provided in these regulations.

3.3.3 Reporting of a case or suspect case of notifiable disease by a hospital fulfills the requirements of the attending practitioner to report; however, it is the responsibility of the attending practitioner to ensure that the report is made pursuant to Section 3.1.

3.3.4 The hospital reporting officer shall also report to the Division Director or designee ~~Local Health Unit Administrator~~ communicable diseases not specified in Section 1, should the disease occur in a nosocomial disease outbreak situation which may significantly impact the public health.

3.4 Laboratories

3.4.1 ~~All laboratories~~ Any person in charge of a clinical or hospital laboratory, or other facility in which a laboratory examination of any specimen derived from a human body and submitted for microbiological examination shall report results of laboratory examinations of specimens indicating or suggesting the existence of a notifiable disease to the Division of Public Health ~~Local Health Unit Administrator~~ within 48 hours of when the results were obtained or as soon as possible, except as otherwise provided in these regulations.

3.4.2 ~~The Director or designee~~ Local Health Unit or Section personnel may contact the patient or the potential contacts so identified from laboratory reports only after consulting with the attending practitioner, when the practitioner is known and when said consultation will not delay the timely control of the a communicable disease. See Section 7.42 regarding similar requirements for sexually transmitted diseases.

3.4.3 Laboratories identifying salmonella or shigella organisms in the stool specimens shall forward cultures of these organisms or the stool specimens themselves to the Public Health Laboratory for confirmation and serotyping.

3.4.4 Reporting of antibiotic resistant organisms

Any person in charge of a clinical or hospital laboratory, or other facility in which a laboratory examination of any specimen derived from a human body and submitted for microbiologic examination yields a non-susceptible species of microorganism as listed in Appendix II, will report the infected person's name, address, date of birth, race, sex, site of isolation, date of isolation and MIC/Zone diameter to the Division of Public Health. In addition, the number of susceptible and non-susceptible isolates of any of these organisms shall be reported monthly to the Division of Public Health.

3.5 Confidentiality

Information identifying persons or institutions submitted in reports required in Sections 3.1 - 3.4 shall be held confidential to the extent permitted by law.

3.6 Information in Reports

Information included in reports required in Sections 3.1-3.4 shall contain sufficient information to contact the patient and/or the patient's attending physician. When available, the name, address, telephone number, ~~age~~ date of birth, race, gender, and disease of the person ill or infected; the date of onset of illness; the name, address, and telephone number of the attending physician; and any pertinent laboratory information, shall be provided.

Section 4. Reports by Division Director or designee Unit Administrator to the Section Chief

4.1 Surveillance/Investigation Case Reports for Individual Cases

~~Each Division Director or designee Unit Administrator shall submit a surveillance/investigation case report to the Section Chief for each individual case of those diseases on the notifiable disease list when requested by the Section. Surveillance/Investigation case reports shall be submitted promptly as soon as the case investigation is complete. Such reports shall be made on the required forms provided through the Section.~~

4.2 Outbreak Reports and Special Reports

~~If investigation or reports by the Division Director or designee Unit Administrator confirms an outbreak or an epidemic of a notifiable disease or other disease condition or if the Division Director or designee Unit Administrator is informed of the occurrence or suspicion of the occurrence of any single case of a notifiable disease which has significant epidemic potential, the Local Health Unit Administrator shall report such occurrence or suspicion immediately by telephone to the Section Chief. The Local Health Unit Administrator, Section Chief, or either of their designated representatives may ask for an investigation involving~~

~~several disciplines within the Division of Public Health.~~

4.3 Reports of Morbidity

~~The Local Health Unit Administrator shall forward all individual reports of disease containing the information specified in Section 3.6 to the Section. Such reports shall be made in a manner and on forms specified by the Section.~~

Section 5. Investigation of Case

5.1 Action to Be Taken

Upon being notified of a case or suspected case of a notifiable disease or an outbreak of a notifiable disease or other disease condition in persons or animals, the ~~Local Health Unit Administrator~~ Director of the Division or designee shall may take action as required permitted in these Rules, and additionally as ~~he deems~~ deemed necessary to protect the public health. If the nature of the disease and the circumstances warrant, ~~he~~ the Director of the Division or designee shall may make or cause to be made an examination of the patient to verify the diagnosis, make an investigation to determine the source of infection, and take other appropriate action to prevent or control the spread of the disease. These actions may include, but shall not be limited to, confinement on a temporary basis until the patient is no longer infectious, and obligatory medical treatment in order to prevent the spread of disease in the community.

5.2 Suspected Source Outside County but Within Delaware

~~If the disease is one in which identification of the source of infection is important, and if the source of the infection is thought to be outside the county in which the case is reported but within Delaware, the Local Health Unit Administrator shall notify within 24 hours by telephone or in writing the Local Health Unit Administrator in whose county it is thought the source of infection is located.~~

5.3 Suspected Source in Another State or Country

~~5.3.1 If the source of infection is thought to be outside Delaware, the Local Health Unit Administrator shall notify the Section Chief. The Section Chief shall notify within 24 hours by telephone or in writing the Director of the State Health Agency in whose jurisdiction it is thought the source of the infection is located.~~

~~5.3.2 If the source of infection is thought to be in another country, the report shall be made to the Section Chief for transmittal to the Centers for Disease Control (CDC).~~

5.4 Exposed Persons Outside Jurisdiction

~~Notification as described in Sections 5.2 and 5.3 shall be given if there are believed to be exposed persons requiring identification and follow-up outside the jurisdiction of the Local Health Unit Administrator in which~~

~~the case was reported.~~

~~5.5~~ 5.2 Examination of Patient

Any person suspected of being afflicted with any notifiable disease shall be subject to physical examination and inspection by any designated representative of the Division of Public Health, except that a duly authorized warrant or court order shall be presented to show just cause in instances where the suspect refuses such examination and inspection. Such examination shall include the submission of bodily specimens when deemed necessary by the ~~Local Health Unit Administrator, the Section Chief, or their designated representatives~~ Division Director or designee.

~~5.6~~ 5.3 Sensitive Situations

~~5.6.1~~ 5.3.1 No person known to be infected with a communicable disease or suspected of being infected with a communicable disease shall engage in sensitive situations as defined in Part II of these regulations until ~~determined~~ judged by the ~~Local Health Unit Administrator, the Section Chief, or either of their designated representatives~~ Division Director or designee to be either free of such disease or that the public health is no longer a threat to public health, incapable of transmitting the infection. Such action shall be in accord with accepted public health practice and reasonably calculated to abate the potential public health risk.

~~5.6.2~~ 5.3.2 When, pursuant to Section ~~5.6.1~~ 5.3.1, it is necessary to require that a person not engage in a sensitive situation because that person is infected or suspected of being infected with a communicable disease, the ~~Local Health Unit Administrator or his designated representative~~ Division Director or designee shall provide, in writing, instructions specifying the nature of the restrictions and conditions necessary to terminate the restrictions. These written instructions shall be provided to the person infected or suspected of being infected with a communicable disease and to that person's employer or other such individual responsible for the sensitive situation.

~~5.6.3~~ 5.3.3 The ~~Local Health Unit Administrator~~ Division Director or designee shall have the authority to exclude from attendance in a child care facility any child or employee suspected of being infected with a communicable disease that, in the opinion of the ~~Local Health Unit Administrator, Division Director or designee~~ significantly threatens the public health. In addition, no person shall attend or be employed in a child care facility who has the following symptoms:

(a) unusual diarrhea, severe coughing, difficult or rapid breathing, yellowish skin or eyes, pinkeye, or an untreated louse or scabies infestation;

(b) fever (100°F by oral thermometer or

101°F by rectal thermometer or higher) accompanied by one of the following: unusual spots or rashes, sore throat or trouble swallowing, infected skin patches, unusually dark tea-colored urine, gray or white stool, headache and stiff neck, vomiting, unusually cranky behavior, or loss of appetite.

(c) any other symptoms which, in the opinion of the ~~Local Health Unit Administrator or his designated representative, Division Director or designee~~ suggest the presence of a communicable disease that significantly threatens the public health. Exclusion from a childcare facility in this case shall be effective upon written notification pursuant to Section 5.6.2.

Section 6. Quarantine

6.1 Establishment

When quarantine of humans is required for the control of any notifiable disease or other disease or condition, ~~the Division Director or designee or the Director of Public Health or their designated representatives~~ shall have the authority to initiate procedures to establish a quarantine.

6.2 Requirements

6.2.1 The ~~Local Health Unit Administrator~~ Division Director or designee shall ensure that provisions are made for proper observations of such quarantined persons as frequently as necessary during the quarantine period.

6.2.2 Quarantine orders shall be in effect for a time period in accord with accepted public health practice.

6.3 Transportation

6.3.1 Transportation or removal of quarantined persons may be made only with prior approval of the ~~appropriate Division Director or designee~~ Local Health Unit Administrator, the Section Chief, or either of their designated representatives.

6.3.2 Transportation or removal of quarantined persons shall be made in accordance with orders issued by the ~~Division Director or designee~~ Local Health Unit Administrator, the Section Chief, or either of their designated representatives.

6.3.3 Quarantine shall be resumed immediately upon arrival of quarantined person at point of destination for the period of time in accord with accepted public health practices.

6.4 Disinfection

6.4.1 Concurrent disinfection is required of infectious or potentially infectious secretions or excretions of any quarantined person or animal or of objects contaminated by such secretions or excretions. The collection, storage and disposal, of such contaminated matter

and disinfection procedures shall be approved by the Division Director or designee Local Health Unit Administrator, the Section Chief or either of their designated representatives.

6.4.2 Disinfection shall also be carried out at the termination of the period of quarantine and shall be applied to the quarter vacated. The disinfection procedures shall be as approved by the Division Director or designee Local Health Unit Administrator, the Section Chief, or either of their designated representatives.

Section 7. Control of Specific Communicable Diseases

7.1 Vaccine Preventable Diseases

7.1.1 All preschool children who are enrolled in a child care facility must be age-appropriately vaccinated against diseases prescribed by the Division Director. For those diseases so prescribed, the most current recommendations of the federal Center's for Disease Control and Prevention's Advisory Committee on Immunization Practices' (ACIP) shall determine the vaccines and vaccination schedules acceptable for compliance with this regulation. ~~have attained 18 months of age who are enrolled in a child care facility must have documented proof of receiving a minimum of: 4 doses of Diphtheria, Tetanus, Pertussis (DTP) or Diphtheria, Tetanus (DT) Vaccine; and 3 doses of Oral Polio Vaccine (TOPV) or 3 doses of Inactivated Polio Vaccine (IPV); and, 1 dose each of Measles, Mumps and Rubella Vaccines given after the age of 15 months (Measles, Mumps & Rubella (MMR) is the preferred vaccine to meet this requirement); and Hib Conjugate Vaccine (HbCV) in a schedule determined by the American Immunization Practices Advisory Committee.~~

7.1.2 All preschool children ~~less than 18 months of age who are enrolled in child care facilities must have documented proof of being immunized according to the following schedule.~~

<u>Age</u>	<u>Immunizations Received</u>
2 months	1 dose each of DTP, (or DT), and TOPV (or IPV)
4 months	2nd dose of DTP, (or DT), and TOPV (or IPV)
6 months	3rd dose of DTP (or DT), TOPV not required.
15 months	4th dose of DTP, (or DT), 3rd dose of TOPV (or 3rd dose of IPV), 1 dose each of Measles, Mumps and Rubella Vaccine (MMR is the preferred vaccine to meet this requirement), Hib Conjugate Vaccine (HbCV) in a schedule determined

by the American Immunization Practices Advisory Committee.

Any child entering private school must ~~have documented proof of receiving~~ be age-appropriately vaccinated against diseases prescribed by the Division Director, a minimum of the following vaccines, appropriate for their age, prior to enrolling in school. For those diseases so prescribed, the most current recommendations of the federal Center's for Disease Control and Prevention's Advisory Committee on Immunization Practices' (ACIP) shall determine the vaccines and vaccination schedules acceptable for compliance with this regulation. This provision pertains to all children between the ages of 2 months and ~~21~~ 48 years entering or being admitted to a Delaware private school for the first time including, but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from public schools. ~~4 doses of DTP, DT (or Td vaccine), of which the first dose should be given at 6 weeks of age and the second and third dose given 4-8 weeks after the preceding dose. A fourth dose is given at 15 months along with MMR and TOPV. Although the regulations require four doses of DTP, the following exceptions apply: (1) a child who received a fourth dose prior to the fourth birthday must have a fifth dose; (2) a child who received the first dose of Td(Adult) at or after age seven may meet this regulation with only three doses of Td(Adult).~~

~~4 doses of TOPV (or 4 doses of IPV); of which the first dose should be given at 6 weeks of age and the second dose given 4-8 weeks after the preceding dose. A third dose is given at 15 months along with MMR and DTP. Although the regulation requires four doses of TOPV (or 4 doses of IPV), if the third primary dose of TOPV or IPV is administered on or after the fourth birthday, a fourth dose is not required.~~

~~2 doses of Measles vaccine. The first dose should be given at 15 months of age or older. The second dose should be administered between four and six years of age. MMR can be provided to meet this requirement.~~

~~1 dose of Mumps and Rubella Vaccine given after the age of 15 months. MMR can be provided to meet this requirement.~~

~~Until September 1, 1991, the above requirements shall apply except that only 1 dose of measles vaccine given after the age of 15 months shall be required.~~

7.1.3 Acceptable documentation of the receipt of immunization ~~vaccination~~ as required by Sections 7.1.1-7.1.2 shall include either ~~only~~ a medical record signed by a physician, or a valid immunization record issued by the State

of Delaware or another State, which specifies the vaccine given and the date of administration.

~~7.1.4 Immunization requirements for children attending public school can be found in Title 14, Section 131 of the Delaware code.~~

7.1.4 Immunization requirements pursuant to sections 7.1.1-7.1.2 shall be waived for:

(a) children whose physicians have submitted, in writing, that a specific immunizing agent would be detrimental-harmful to that child; and,

(b) children whose parents or guardians present a notarized document that immunization is against their religious beliefs.

7.1.5 Child care facilities and private schools (grades K-12) shall maintain on file an immunization record for each child. The facility will also be responsible to report to the Division Director or designee on an annual basis the immunization status of its enrollees.

7.1.6 Parents whose children present immunization records which show that immunizations are lacking will be allowed 14 (or such time as may be appropriate for a particular vaccination) to complete the required age-appropriate doses of vaccine for their children. ~~In which to obtain the required doses of vaccine for their children.~~ In instances where more than 14 days will be necessary to complete the age-appropriate immunization schedule, an extension those days, upon certification by a physician, may be allowed in order to obtain the required immunizations. Extension of the 14-day allowance because of missed appointments to receive needed immunizations shall not be permitted.

7.1.7 When a child's records are lost and the parent states that the child has completed his/her series of immunizations, or a child has been refused admission or continued attendance at a child care facility or private school for lack of acceptable evidence of immunization as specified in this regulation, a written certification must be provided by a health care provider who has administered the necessary age-appropriate immunizations to the child according to the current ACIP immunization schedule. ~~licensed physician, nurse practitioner or public health official that the child has received at least one (1) dose of DTP_ DT (or Td vaccine), one dose of TOPV (or IPV), one dose of Measles, Mumps, and Rubella vaccines, along with Hib Conjugate vaccine, if required by the child's age.~~

7.1.8 It is the responsibility of the child care facility or private school to exclude a child prior to admission or from continued attendance who has failed to document required immunizations pursuant to this section ~~7.1.1 7.1.3 and 7.1.8 7.1.9.~~

7.1.9 Upon the occurrence of a case or suspect case of one of the vaccine preventable diseases specified in section 7.1.10, any child not immunized against that disease shall be excluded from the premises, until the ~~Local Health Unit Administrator or his designated representative~~ Division Director or designee has determined that the disease risk to the unimmunized child has passed. Such exclusion shall apply to all those in the facility who are admitted under either medical or religious exemption as well as to those previously admitted who have not yet received vaccine against the disease which has occurred. If, in the judgment of the ~~Local Health Unit Administrator~~ Division Director or designee, the continued operation of the facility presents a risk of the spread of disease to the public at large, he/she shall have the authority to close the facility until the risk of disease occurrence has passed.

7.1.10 All full-time students of post-secondary educational institutions and all full and part-time students in such educational institutions if engaged in patient-care related curriculums (included but not limited to nursing, dentistry and medical laboratory technician-technology), shall be required to show evidence of immunity to measles, rubella and mumps prior to enrollment starting September 1, 1991 by the following criteria:

1. Measles immunity:
 - (a) persons born ~~prior to~~ before January 1, 1957; or
 - (b) physician documented history of measles disease; or
 - (c) serological confirmation of measles immunity; or
 - (d) a documented receipt from a physician or health facility that two doses of measles vaccine were administered after 12 months of age. ~~with at least one immunization after 15 months of age.~~
2. Rubella immunity:
 - (a) persons born ~~prior to~~ before January 1, 1957; except women who could become pregnant; or
 - (b) laboratory evidence of antibodies to rubella virus; or
 - (c) a documented receipt from a physician or health facility that rubella vaccine was administered on or after 12 months of age.
3. Mumps immunity:
 - (a) persons born ~~prior to~~ before January 1, 1957; or
 - (b) physician diagnosed history of mumps disease; or
 - (c) laboratory evidence of immunity; or
 - (d) a documented receipt from a

physician or health facility that mumps vaccine was administered on or after 12 months of age.

7.1.11 Immunization requirements pursuant to section 7.1.10 shall be waived for:

(a) A student whose licensed physician certifies that such immunization may be detrimental to the student's health;

(b) A student who presents a notarized document that immunization is against their religious beliefs.

~~(a) A student who presents a notarized document that immunization is against their religious beliefs;~~

~~(b) A licensed physician who certifies that such immunization may be detrimental to the student's health.~~

7.1.12 The student health service, the admissions office and the office of the university or college registrar are jointly responsible for implementing Section 7.1.10 through student notification of immunization requirements, the collection and verification of documented vaccine histories, identification and notification of students not in compliance and imposition of sanctions for non-compliance.

7.1.13 Students who cannot show evidence of immunity to measles pursuant to 7.1.10 and who cannot show documented receipt of ever having received measles vaccine shall be permitted to enroll on the condition that 2 doses be administered within 45 days or at the resolution of an existing medical contraindication. However, measles vaccine shall not be given closer than 30 days apart. Students who cannot show evidence of immunity to rubella and/or mumps or who have had only 1 dose of measles vaccine shall be permitted to enroll on the condition that ~~required~~ measles, mumps and rubella immunizations be obtained within 14 days or at the resolution of an existing medical contraindication.

~~7.1.12.4 The term post-secondary institution means and includes states universities, private colleges, technical and community colleges, vocational technical schools and hospital nursing schools.~~

7.1.14 The Division Director may maintain a registry of the immunization status of persons vaccinated against any vaccine preventable diseases (hereafter called an "immunization registry").

7.1.14.1 Physicians and other health care providers who give immunizations shall report information about the immunization and the person to whom it was given for addition to the immunization registry in a manner prescribed by the Division Director or designee.

7.1.14.2 The Division Director or designee

may disclose information from the immunization registry without a patient's, parent's, or guardian's written release authorizing such disclosure to the following:

(a) The person immunized, or a parent or legal guardian of the person immunized, or persons delegated in writing by same.

(b) Employees of public agencies or research institutions, however only when it can be shown that the intended use of the information is consistent with the purposes of this section.

(c) Health records staff of school districts and child care facilities.

(d) Persons who are other than public employees who are entrusted with the regular care of those under the care and custody of a state agency including but not limited to operators of day care facilities, group, residential care facilities and adoptive or foster parents.

(e) Health insurers, however only when the person immunized is a client of the health insurer.

(f) Health care professionals or their authorized employees who have been given responsibility for the care of the person immunized.

7.1.14.3 If any person authorized in subsection 7.1.14.2 discloses information from the immunization registry for any other purpose, it is an unauthorized release and such person may be subject to civil and criminal penalty.

7.2 Ophthalmia Neonatorum

See 16 Del. C. §803 and the ~~State Board of Health~~ Department of Health and Social Services regulations promulgated thereunder entitled "Regulations Governing Treatment of the Eyes of Newborns".

7.3 Sexually Transmitted Diseases (STDs)

7.3.1 ~~The following diseases~~ Appendix I lists STDs regarded to cause significant morbidity and mortality, can be screened, diagnosed and treated, or are of major public health concerns such that surveillance of the disease occurrence is in the public interest, and therefore shall be designated as sexually transmitted and reportable pursuant to Title 16 Del. Code, Chapter 7. For the purposes of this section, a suspect is any person (a) having positive or clinical findings of a STD; or (b) in whom epidemiologic evidence indicates an STD may exist, or is identified as a sexual contact of an STD case, and is provided treatment for the STD on that basis.

~~7.3.1.1 Class A: STDs or suspected STDs or laboratory evidence suggestive of STDs to be reported individually.~~

~~Acquired Immune Deficiency Syndrome (AIDS), (only if satisfying the case definitionn of the federal~~

Centers for Disease Control)

Chancroid

~~Chlamydia trachomatis infections-~~

~~Chlamydia trachomatis infections of newborns~~

~~Neisseria gonorrhoea infections (gonorrhoea and related conditions)~~

~~Granuloma inguinale~~

~~Hepatitis B~~

~~Herpes (congenital only)~~

~~Lymphogranuloma venereum~~

~~Pelvic Inflammatory Disease (only gonococcal and/or chlamydial)~~

~~Syphilis~~

~~7.3.1.2 Class B: STDs or suspected STDs or laboratory evidence suggestive of STDs to be reported by number only in demographic categories (for example, age and sex) or methods prescribed and furnished by the Division of Public Health, and from health care professionals or health facilities specified by the Section-~~

~~Herpes (genital)~~

~~Human Immunodeficiency virus (HIV)*~~

~~Human papillomavirus (genital warts)~~

~~*Tests which employ an ELISA technique to detect antibodies shall be reported only if confirmed with a Western Blot or other confirmatory test.~~

~~7.3.1.3 Class C: STDs or suspected STDs or laboratory evidence suggestive of STDs to be reported immediately by telephone or other rapid means of communication.~~

~~Congenital syphilis~~

7.3.2 Reporting of STDs

7.3.2.1 A physician or any other health care professional who diagnoses, suspects or treats a ~~Class A or Class C reportable~~ STD and every administrator of a health facility or state, county, or city prison in which there is a case of a ~~Class A or Class C reportable~~ STD shall report such case to the Division of Public Health ~~specifying~~. Unless reportable in number only as specified in Appendix I, reports of Class A and Class C provided under this rule shall specify the infected person's name, address, age date of birth, gender and race as well as the date of onset, name and stage of disease, type and amount of treatment given and the name and address of the submitting health professional. Reports of Class A diseases shall be placed into the United States mail, telephoned, or otherwise routed to the appropriate agency of the Division of Public Health within one working day of diagnosis, suspicion or treatment. Reports of Class C disease shall be telephoned within one working day of diagnosis,

~~suspicion or treatment.~~

7.3.2.2 Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopic, cultural, serological, or other evidence suggestive of a ~~Class A or Class C reportable~~ STD shall notify the Division of Public Health. Unless reportable in number only as specified in Appendix I, reports provided under this rule shall specify Reports of Class A diseases shall be placed in the United States mail, telephoned, or otherwise routed to the appropriate agency of the Division of Public Health within one working day of identification of evidence suggestive of a STD. Reports shall include the name, age date of birth, race, gender and address of the persons from whom the specimen was obtained, laboratory findings, and the name and address of the physician and that of the processing clinical laboratory.

7.3.2.3 All facilities obtaining blood from human donors for the purpose of transfusion or manufacture of blood products shall report Human Immunodeficiency Virus (HIV) ~~as a Class A STD consistent with 7.3.2.2~~ Tests which employ an ELISA technique to detect antibodies shall be reported only if confirmed with a Western Blot or other confirmatory test.

7.3.2.4 Reports required by this Section for STD's designated with the letter "T" in Appendix I shall be made by telephone, fax, or other rapid electronic means. Reports required by this Section for STD's designated with the letter "N" in Appendix I shall be made at the request of the Division of Public Health, in number only, and in demographic categories specified by the Division of Public Health. All other reports required by this Section for STD's listed in Appendix I shall be placed into the United States mail, faxed, telephoned, or otherwise routed to the Division of Public Health within one working day of diagnosis, suspicion, or treatment.

7.3.2.5 Reports of HIV infection shall be reportable by mail only in special double envelopes which will be provided by the Division of Public Health or by another method approved by the Division of Public Health, which assures the confidentiality of the information reported.

7.3.2.6 All reports and notification made pursuant to this section are confidential and protected from release except under the provisions of Title 16 Del. Code, §710, and §711 and §1203. From information received from laboratory notifications, the Division of Public Health may contact attending physicians. The Division of Public Health shall inform the attending physician, if the notification

indicates the person has an attending physician, before contacting a person from whom a specimen was obtained. However, if delays resulting from informing the physician may enhance the spread of the STD, or otherwise endanger the health of either individuals or the public, the Division of Public Health may contact the person without first informing the attending physician.

7.3.2.7 Any laboratory that examines specimens for the purpose of finding evidence of an STD shall permit the Division of Public Health to examine the records of said laboratory in order to evaluate compliance with this section.

7.3.3 Reporting the Identity of Sexual or Needle Sharing Partners of STD Infected Patients ~~Privilege to Disclose the Identity of HIV Infected Patients and Their Partners~~

7.3.3.1 Any physician, or any other licensed health care personnel acting on the orders of a physician, (hereafter referred to as provider), diagnosing or caring for an ~~HIV~~ STD infected patient ~~may~~ shall disclose the identity of the ~~patient~~ or the patient's sexual or needle-sharing partner(s) to the Division of Public Health so that the partner(s) may be notified of his or her risk of infection, provided that:

a. The patient is reasonably suspected of being infected with an STD and

b. The provider does not know that the partner has been adequately informed of the risk, been offered testing, or advised of the risk management practices appropriate to the disease.

~~a. The patient's condition satisfies the Centers for Disease Control definition of AIDS, or has an HIV infection as evidenced by a positive antibody test which is confirmed by Western Blot, or based upon other tests accepted by prevailing medical opinion, the patient is considered to be infected with HIV;~~

b. The provider knows of an identifiable partner at risk of infection; and

~~e. The provider believes there is a significant risk of harm to the partner; and~~

~~d. The provider believes that the partner does not suspect that he or she is at risk; and~~

~~e. Reasonable efforts have been made to counsel the patient pursuant to 16 Del. C. Section 1202(e), urging the patient to notify the partner, and the patient has refused or is considered to be unlikely to notify the partner; and~~

f. The provider has made reasonable efforts to inform the patient of the intended disclosure and to give the patient the opportunity to express a preference as to

~~whether the partner be notified by the provider, the patient, or the Division.~~

~~7.3.3.2 Any provider diagnosing or caring for an HIV infected patient may also disclose the identity of the patient or the patient's sexual or needle-sharing partner to the Division so that the partner may be notified of his or her risk of infection, when:~~

~~a. The patient requests the provider to make such notification for the purposes of obtaining assistance in the notification of a partner; or~~

~~b. The patient does not pose a threat to an identifiable partner but, in the professional judgment of the provider based upon stated intended acts, the patient may be dangerous to the general population. In this instance the conditions specified in Sections 7.3.3.1(a), 7.3.3.1(e) and 7.3.3.1(f) shall apply. Disclosure shall be for the purpose of providing appropriate counseling to the patient.~~

7.3.3.3 Procedures for disclosing information pursuant to this section shall be specified by the Division. Such procedures shall (a) include the requirement that, prior to the Division identifying and notifying a partner, reasonable efforts be made by the Division to counsel the patient and urge the patient's voluntary notification of a partner; (b) specify Division employees permitted to receive the disclosed information; and (c) describe the manner in which partners will be notified pursuant to these regulations.

7.3.3.4 ~~The provider will prepare and maintain contemporaneous records of compliance with each element of these regulations.~~

7.3.3.5 ~~Nothing in this section shall constitute a duty upon the provider to disclose the identity of the patient or the patient's sexual or needle-sharing partner to the Division for the purpose of notifying a partner of the risk of HIV infection. A cause of action shall not arise under this section for the failure to make such disclosure.~~

7.4 Tuberculosis

7.4.1 ~~Any persons suspected of having infectious tuberculosis shall have a tuberculin skin test, an X-ray examination or laboratory examinations of sputum, gastric contents or other body discharges as may be required by the Local Health Unit Administrator, the Section Chief or either of their designated representatives to determine whether said patient represents an infectious case of tuberculosis.~~

7.4.1 Any person afflicted with or suspected of being afflicted with tuberculosis disease and in need of hospitalization and unable to pay the cost, shall be hospitalized at public expense wherever and whenever facilities are available and provided that private or third party funds are not available for this purpose.

7.4.2 Reporting Tuberculosis

7.4.2.1 Physicians, pharmacists, nurses, hospital administrators, medical examiners, morticians, laboratory administrators, and others who provide health care services to a person with diagnosed, suspected or treated tuberculosis (TB) shall report such a case to the Division of Public Health specifying the infected person's name, address, date of birth, race, gender, date of onset, site of disease, prescribed anti-TB medications, and, in the case of laboratory administrators, the name and address of the submitting health professional. A report shall be telephoned into the Division of Public Health within two working days of the provision of service or laboratory finding.

7.4.2.2 Any person who is in charge of a clinical or hospital laboratory or other facility in which a laboratory examination of sputa, gastric contents, or any other specimen derived from a human body yields microscopic, cultural, serological or other evidence suggestive of tubercle bacilli shall notify the Division of Public Health by telephone within two working days of the occurrence.

7.4.2.3 Any provider who has knowledge about a person with multiple drug-resistant tuberculosis (MDR-TB), even if the confirmed or suspected TB cases had been previously reported, shall report the occurrence to the Division of Public Health within two days of the occurrence.

7.4.2.4 Persons with TB who have demonstrated an inability or an unwillingness to adhere to a prescribed treatment regimen, who refuse medication, or who show other evidence of not taking anti-TB medications as prescribed, shall be reported to the Division of Public Health within two days of the occurrence.

7.4.3 Diagnostic Examinations

7.4.3.1 Any persons suspected of having infectious tuberculosis shall have a Mantoux tuberculin skin test, a chest radiograph, and laboratory examinations of sputum, gastric contents or other body discharges as may be required by the Division Director or designee to determine whether said patient represents an infectious case of tuberculosis.

7.4.3.2 The Division Director or designee shall determine the names of household and other contacts who may be infected with tuberculosis and cause them to be examined for the presence of tuberculosis disease.

~~7.4.4 The Local Health Unit Administrator, the Section Chief or either of their designated representatives shall determine the names of household and other contacts who may be infected with tuberculosis and shall encourage them to be examined for the presence of tuberculosis infection.~~

7.4.4 Clinical Management

7.4.4.1 In addition to fulfilling the reporting requirements of 7.4.1, providers shall manage persons with active TB disease by following one of three courses of action:

a. they shall immediately refer the client to the Division of Public Health for comprehensive medical and case management services; or

b. they shall provide comprehensive assessment, treatment, and follow-up services (including patient education, directly observed therapy and contact investigation) to the client and his/her contacts consistent with current American Thoracic Society and the Centers for Disease Control and Prevention (ATS/CDC) guidelines; or

c. they shall initiate appropriate medical treatment and refer the client to the Division of Public Health for coordination of community services and case management including directly observed therapy (DOT).

If the health care provider chooses (b) or (c) above, then the Division Director or designee may ask the health care provider for information about the care and management of the patient, and the health care provider shall assure that the requested information is communicated.

7.4.4.2 Patients with infectious tuberculosis who are dangerous to public health may be required by the ~~State Board of Health~~ Division Director or designee to be hospitalized, isolated, or otherwise quarantined. Whenever facilities for adequate isolation and treatment of infectious cases are available in the home and patient will accept said isolation, it shall be left to the discretion of the ~~Division Director or designee~~ Local Health Unit Administrator, the Section Chief, or either of their designated representatives as to whether these or other facilities shall be used.

Section 8. Preparation for Burial.

See 16 ~~Del. C.~~ Chapter 31 and ~~State Board of Health~~ Department of Health and Social Services regulations promulgated thereunder, entitled "Regulations Concerning Care and Transportation of the Dead".

Section 9. Disposal of Infectious Articles, Remains

No person shall dispose of articles, or human or animal remains known or suspected to be capable of infecting others with a communicable disease in such a manner whereby exposure to such infectious agents may occur. See also "Regulations Concerning Care and Transportation of the Dead", Section 11 ("Disposition of Amputated Parts of Human Bodies").

Section 10. Diseased Animals.**10.1 Importation and Sale**

No person shall bring into this state or offer for sale domestic or wild animals infected or suspected to be infected with a disease communicable from animals to man.

10.2 Notification

It shall be the duty of persons having custody of care of animals infected or suspected to be infected with a disease transmitted from animals to man to notify the Division Director or designee ~~Local Health Unit Administrator~~ of the infection.

Section 11. Notification of Emergency Medical Care Providers of Exposure to Communicable Diseases.**11.1 Definitions**

For the purposes of this section, the following definitions shall apply.

a. "Emergency medical care provider" - fire fighter, law enforcement officer, paramedic, emergency medical technician, correctional officer, ambulance attendant, or other person who serves as employee or volunteer of an ambulance service and/or provides pre-hospital emergency medical service.

b. "Receiving medical facility" - hospital or similar facility that receives a patient attended by an emergency medical care provider for the purposes of continued medical care.

c. "Universal precautions" - those precautions, including the appropriate use of hand washing, protective barriers, and care in the use and disposal of needles and other sharp instruments, that minimize the risk of transmission of communicable diseases between patients and health care providers. Universal precautions require that all blood, body fluids, secretions, and excretions of care providers use appropriate barrier precautions to prevent exposure to blood and body fluids of all patients at all times.

11.2 Universal Precautions**11.2.1 Didactic Instruction**

Education and training with respect to universal precautions shall be a mandatory component of any required training and any required continuing education for all emergency medical care providers who have patient contact. Training shall be appropriately tailored to the needs and educational background of the person(s) being trained. Training shall include, but not be limited to, the following:

a. Mechanisms and routes of transmission of viral, bacterial, rickettsial, fungal, and mycoplasmal human pathogens.

b. Proper techniques of hand washing, including the theory supporting the effectiveness of hand

washing, and guidelines for waterless hand cleansing in the field.

c. Proper techniques and circumstances under which barrier methods of protection (personal protective equipment) from contamination by microbial pathogens are to be implemented. The instruction is to include the theory supporting the benefits of these techniques.

d. The proper techniques of disinfection and clean-up of spills of infectious material. This instruction is to include the use of absorbent, liquid, and chemical disinfectants.

e. Instruction regarding the reporting and documentation of exposures to infectious agents and the requirement for employers to have an exposure control plan.

f. The proper disposal of contaminated needles and other sharps. The instruction is to include information about recapping needles and using puncture-resistant, leak-resistant containers.

g. First aid and immediate care of wounds which may be incurred by an emergency medical care provider.

11.2.2 Practical or Laboratory Instruction

Practical sessions addressing the field application of the above didactic instruction must be part of the curriculum. The practical sessions shall provide a means of hands-on experience and training in the proper use of personal protective equipment, hand-washing disinfection, clean-up of infectious spills, handling and disposal of contaminated sharps, and the proper completion of reporting forms.

11.2.3 Approval of Curricula

Any provider of mandatory education and training and continuing education pursuant to this section must submit a curriculum for approval by the Division of Public Health and shall not utilize curricula that are not regarded by the Division of Public Health to be in substantial compliance with 11.2.1 and 11.2.2.

11.3 Communicable Diseases**11.3.1 Communicable Disease Defined**

Exposure to patients infected with the following communicable disease agents shall warrant notification to an emergency medical care provider pursuant to this section:

Human Immunodeficiency Virus (HIV)
Hepatitis B Virus
Hepatitis C Virus
Meningococcal disease
Haemophilus influenzae
Measles

Tuberculosis

Uncommon or rare pathogens

11.3.2 Infection Defined

A patient shall be considered infected with a communicable disease when the following conditions are satisfied:

11.3.2.1 Blood-borne pathogens

a. HIV - ELISA and western blot (or other confirmatory test accepted by prevailing medical opinion) tests must be positive.

b. Hepatitis B - positive for hepatitis B surface antigen.

c. Hepatitis C - (1) IgM anti-HAV negative, and (2) IgM anti-HBc negative or HBsAg negative, and (3) serum aminotransferase level more than two and one half times the upper limit of normal; or anti-HcB positive.

11.3.2.2 Air-borne pathogens

a. Meningococcal disease -compatible clinical findings and laboratory confirmation through isolation of Neisseria meningitides from a normally sterile site.

b. Haemophilus influenzae -compatible clinical findings of epiglottitis or meningitis and laboratory confirmation through isolation of Haemophilus influenzae from a normally sterile site or from the epiglottis.

c. Measles - compatible clinical findings with or without laboratory confirmation by one of the following methods: (1) presence of the measles virus from a clinical specimen, or (2) four-fold rise in measles antibody level by any standard serologic assay, or (3) positive serologic test for measles IgM antibody.

d. Tuberculosis - compatible clinical findings of pulmonary disease and identification of either acid-fast bacilli in sputum or the pathogen by culture.

11.3.2.3 Uncommon or rare pathogens

Infection with uncommon or rare pathogens determined by the Division of Public Health on a case-by-case basis.

11.3.3 Exposure Defined

11.3.3.1 Blood-borne pathogens

Exposure of an emergency medical care provider to a patient infected with a blood-borne pathogen as defined in 11.3.2.1 shall include a needle-stick or other penetrating injury with an item contaminated by a patient's blood, plasma, pleural fluid, peritoneal fluid, or any other body fluid or drainage that contains blood or plasma. Contact of these fluids with mucous membranes or non-intact skin of the emergency medical care provider or extensive contact with intact skin shall also constitute exposure.

11.3.3.2 Air-borne pathogens

Exposure of an emergency medical care provider to a patient infected with an air-borne pathogen as defined in 11.3.2.2 shall be as follows:

a. Meningococcal disease and haemophilus influenza - Close contact with an infected patient's oral secretions or sharing the same air space with an infected patient for one hour or longer without the use of an effective barrier such as a mask.

b. Measles - Sharing confined air space with an infected patient, regardless of contact time.

c. Tuberculosis- Sharing confined air space with an infected patient, regardless of contact time.

11.3.3.3 Uncommon or rare pathogens

The Division of Public Health shall determine definition of exposure to an uncommon or rare pathogen on a case-by-case basis.

11.3.4 Ruling on infection and exposure

When requested by the emergency medical care provider or receiving medical facility, the Division of Public Health shall investigate and issue judgment on any differences of opinion regarding infection and exposure as otherwise defined in 11.3.

11.4 Request for Notification

11.4.1 Every employer of an emergency medical care provider and every organization which supervises volunteer emergency medical care providers must register the name(s) of a designated officer who shall perform the following duties. The designated officer shall delegate these duties as may be necessary to ensure compliance with these regulations.

a. receive requests for notification from emergency medical care providers;

b. collect facts relating to the circumstances under which the emergency medical care provider may have been exposed;

c. forward requests for notification to receiving medical facilities;

d. report to the emergency medical care provider findings provided by the receiving medical facility; and

e. assist the emergency medical care provider to take medically appropriate action if necessary.

11.4.2 Receiving medical facilities must register with the Division of Public Health the name or office to whom notification requests should be sent by an emergency medical care provider and who is responsible for ensuring compliance with this section.

11.4.3 If an emergency medical care provider desires to be notified under this regulation, the officer

designated pursuant to 11.4.1 shall notify the receiving medical facility within 24 hours after the patient is admitted to or treated by the facility on a form that is prescribed or approved by the State Board of Health.

11.5 Notification of Exposure to Air-borne Pathogens

11.5.1 Notwithstanding any requirement of 11.4.3, a receiving medical facility must make notification when an emergency medical care provider has been exposed to an air-borne communicable disease pursuant to 11.3.2.2 and 11.3.3.2. Such notification shall occur as soon as possible but not more than 48 hours after the exposure has been determined and shall apply to any patient upon whom such a determination has been made within 30 days after the patient is admitted to or treated by the receiving medical facility.

11.5.2 To determine if notification is necessary pursuant to this section, a receiving medical facility must review medical records of a patient infected with an air-borne communicable disease to determine if care was provided by an emergency medical care provider. If medical records do not so indicate, the receiving medical facility shall assume that no notification is required.

11.6 Notification of Exposure when Requested

11.6.1 When a request for notification has been made pursuant to 11.4.3, the receiving medical facility shall attempt to determine if the patient is infected with a communicable disease and if the emergency medical care provider has or has not been exposed. Information provided on the request for notification and medical records and findings in possession of the receiving medical facility shall be used to make this determination. If a determination is made within 30 days after the patient is admitted to or treated by the receiving medical facility, the receiving medical facility shall notify the officer designated pursuant to 11.4.1 as soon as possible but not more than 48 hours after the determination. The following information shall be provided in the notification:

- a. The date that the patient was attended by the emergency medical care provider;
- b. Whether or not the emergency medical care provider was exposed;
- c. If the emergency medical care provider was exposed, the communicable disease involved.

11.6.2 If, after expiration of the 30-day period and because of insufficient information, the receiving medical facility has not determined that the emergency medical care provider has or has not been exposed to a communicable disease, the receiving medical care facility shall so notify the officer designated pursuant to Section

11.4.1 as soon as possible but not more than 48 hours after expiration of the 30-day period. The following information shall be provided in the notification:

- a. The date that the patient was attended by the emergency medical care provider;
- b. That there is insufficient information to determine if an exposure has occurred;

11.6.3 The receiving medical facility shall provide to the Division of Public Health a copy of each form completed pursuant to 11.4 which shall include information about whether or not the patient is infected, and if the emergency medical care provider is considered by the receiving medical facility to have been exposed.

11.7 Manner of Notification

A receiving medical facility must make a good faith effort, which is reasonably calculated based upon the health risks, the need to maintain confidentiality, and the urgency of intervention associated with the exposure, to expeditiously notify the officer designated pursuant to 11.4.1. If notification is by mail, and if, in the judgment of the receiving medical facility the circumstances warrant, the receiving medical facility shall ensure by telephone or other appropriate means that the designated officer of the emergency medical care provider has received notification.

11.8 Transfer of Patients

If, within the 30-day limitation defined in 11.5.1 and 11.6.1 a patient is transferred from a receiving medical facility to a second receiving medical facility, the receiving medical facility must provide the second facility with all requests for notification made by emergency medical care providers for that patient. The second receiving medical facility must make notification to the officer designated pursuant to 11.4.1 if the facility determines within the remaining part of the 30-day period that the patient is infected and shall otherwise comply with these regulations.

11.9 Death of Patient

If, within the 30-day limitation defined in 11.5.1 and 11.6.1, a patient is transferred from a receiving medical facility to a medical examiner, the receiving medical facility must provide the medical examiner with all requests for notification made by emergency medical care providers for that patient. The medical examiner must make notification to the designated officer if the medical examiner determines that the patient is infected with a communicable disease, and shall otherwise comply with these regulations.

11.10 Testing of Patients for Infection

Nothing in this regulation shall be construed to authorize or require a medical test of an emergency medical care provider or patient for any infectious disease.

11.11 Confidentiality

PROPOSED REGULATIONS

All requests and notifications made pursuant to these regulations shall be used solely for the purposes of complying with these regulations and are otherwise confidential.

Section 12. Enforcement

12.1 Authorization

The Department of Health and Social Services or the Director of the Division of Public Health or their designated representatives are authorized to enforce these regulations to accomplish the following:

12.1.1 To insure compliance of persons who refuse to submit themselves or others for whom they are responsible, including their animals, to necessary inspection, examination, treatment, sacrifice of the animal, or quarantine.

12.1.2 To insure coordination of actions of individuals, local authorities, or state authorities in the control of communicable disease.

12.1.3 To insure the reporting of notifiable diseases or other disease conditions as required in these Rules.

12.2 Penalties

Except as otherwise provided by the Delaware Code or this regulation, failure to comply with the requirements of this regulation will be subject to prosecution pursuant to 16 Del. C., §107. The Department of Health and Social Services may seek to enjoin violations of this regulation.

APPENDIX I NOTIFIABLE DISEASES

Acquired Immune Deficiency Lymphogranuloma Venereum (S) Syndrome (AIDS) (S)	
Anthrax (T)	Malaria
Amebiasis	Measles (T)
	Meningitis (aseptic)
Botulism (T)	Meningitis (bacterial)
Brucellosis	Meningitis (all types other than meningococcal)
Campylobacteriosis	Meningococcal Meningitis (T)
Chancroid (S)	Meningococcal Disease (other)
Chlamydia trachomatis infection (S)	Mumps (T)
Cholera (N)(T)	Pelvic Inflammatory Disease (resulting from gonococcal and/ or chlamydial infections) (S)
Cryptosporidiosis	Pertussis (T)
Cyclosporidiosis	Plague (T)
Diphtheria (T)	Poliomyelitis (T)
	Psittacosis
E. Coli 0157:H7 infection (T)	Rabies (man, animal) (T)
Encephalitis	Reye Syndrome

Ehrlichiosis	Rocky Mountain Spotted Fever
Foodborne Disease Outbreaks (T)	Rubella (T)
Giardiasis	Rubella (congenital) (T)
Gonococcal Infections (S)	Salmonellosis
Granuloma Inguinale (S)	Shigellosis
	Streptococcal disease (invasive group A)
Hansen's Disease (Leprosy)	Streptococcal toxic shock syndrome (STSS)
Hantavirus infection (T)	Hemolytic uremic syndrome (HUS)
Hepatitis A (T)	Streptococcus pneumoniae (drug-resistant invasive disease)
Hepatitis B (S)	Syphilis (S)
Hepatitis C & unspecified	Syphilis (congenital) (T) (S)
Herpes (congenital) (F) (S)	Tetanus
Herpes (genital) (N) (S)	Toxic Shock Syndrome
Histoplasmosis	Trichinosis
Human Immunodeficiency Virus (HIV) (N)(S)	Tuberculosis (T)
Human papillomavirus (genital warts) (N) (S)	Tularemia
	Typhoid Fever (T)
Influenza (N)	Vaccine Adverse Reactions
	Varicella (N)
Lead Poisoning	Waterborne Disease Outbreaks (T)
Legionnaires Disease	Yellow Fever (T)
Leptospirosis	
Lyme Disease	

(T) report by rapid means.

(N) report in number only when so requested

For all diseases not marked by (T) or (N):

(S) – sexually transmitted disease, report required in 1 day

Others – report required in 2 days

APPENDIX II DRUG RESISTANT ORGANISMS REQUIRED TO BE REPORTED

Enterococci resistant to Vancomycin
Pseudomonas aeruginosa resistant to Amikacin, Gentamicin
and Tobramycin
Staphylococcus aureus resistant to methicillin
Staphylococcus aureus intermediate or resistance to
Vancomycin (MIC >8ug/ml)

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Sections 222 - 223 (16 Del.C. 222-223)

NOTICE OF PUBLIC HEARING

The Division of Public Health of the Department of Health and Social Services will hold a public hearing to discuss proposed revision of the Delaware Regulations defining Metabolic Disorders and establishment of Case Review Committee, and establishment of Insurance Providers directory of benefits for these disorders. These proposed regulations describe the revised definitions for Metabolic Disorders, the rationale for the establishment of a Case Review Committee to review all cases diagnosed with a metabolic disorder, ensuring formula is available for those citizens without insurance coverage, and to establish a directory outlining insurance providers coverage and contact department to expedite engagement for clients.

This public hearing will be held in Room 309, Jesse S. Cooper Building, Federal and Water Streets, Dover, Delaware on June 24, 1999 at 2:00 p.m.

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

Jo Ann Baker
Division of Public Health
P.O. Box 637
Dover, DE 19903
(302) 739-3111

Anyone wishing to present their oral comments at this hearing should contact Jo Ann Baker, Hearing Officer, by June 14, 1999. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by June 30, 1999 to:

Jo Ann Baker
Division of Public Health
P.O. Box 637
Dover, DE 19903

Summary of Proposed Regulations for PKU

These regulations provide that certain expenses for specialty formula, in the on-going treatment of inherited metabolic disorders, shall be covered through the Delaware Health and Social Services, Specialty Formula Fund, as payee of last resort.

Inherited metabolic disorders, if undetected and untreated, can result in severe mental retardation, and possibly death, in infancy. Universal screening and milk product substitution in infancy is now a standard of medical

care. If a child diagnosed with an inherited metabolic disorder amenable to dietary treatment is not able to maintain a strict dietary regime throughout its life the individual will likely be developmentally delayed.

1. Revise the definition for metabolic disorders.
2. Establish a Review Committee to review all cases diagnosed and ensure specialty formula availability based on established criteria.
3. Establish a Directory to include insurance provider benefits for metabolic disorders and the point of contact for each. This is to be coordinated by the Newborn Screening Program at the Division of Public Health and will expedite the process for newly diagnosed cases and other citizens.
4. Increase the current Formula Fund to \$50,000 from the current amount of \$30,000.

**REGULATIONS FOR TITLE 16, CHAPTER 2
RELATING TO BIRTH DEFECTS**

Delaware code 201 provides for the assistance with the cost of treatment of children with birth defects. Inherited Metabolic Disorders are one such birth defect for which a fund has been established to assist with the cost of treatment.

I. Purpose

Inherited metabolic disorders, if undetected and untreated, can result in severe mental retardation, and possibly death, in infancy. Universal screening and milk product substitution is now a standard of medical care. If a child diagnosed with an inherited metabolic disorder amenable to dietary treatment is not able to maintain a strict dietary regime throughout life the individual will likely be developmentally delayed.

The Specialty Formula Fund ("Fund") provides that certain expenses for specialty formula, in the on-going treatment of inherited metabolic disorders, may be covered through the Department of Health and Social Services, Division of Public Health, Specialty Formula Fund.

The purpose of the Fund is to assist families in meeting the high cost of special or metabolic formulas, required to treat inherited metabolic disorders. The Division of Public Health will work to coordinate services and reduce obstacles families encounter regarding information and resource referral.

Supporting individuals with special health care needs can place economic constraints on families. The cost of special formula may be prohibitive for some families. In situations where special formula has been prescribed by a physician, and not covered by insurance, there is justification to provide economic assistance under the Fund.

II. Definitions

- 1) "INHERITED METABOLIC DISORDER," means a disorder caused by an inherited abnormality of body

chemistry, which includes those disorders screened for by the state's Newborn Screening Program located within the Division of Public Health.

2) "SPECIALITY FORMULA" means a milk product substitution that is intended for the therapeutic dietary treatment of inherited metabolic disorders for which nutritional requirements are established by medical evaluation.

3) "CASE REVIEW PANEL" means a group composed of individuals with knowledge of inherited metabolic disorders, whose purpose is to review each newly diagnosed case involving the special formula fund.

4) "SPECIALITY FORMULA FUND" means funds provided to the Division of Public Health by the General Assembly, for prescribed specialty formula for women of child bearing age and children with inherited metabolic disorders.

III. Eligibility

1) Any Delaware woman of child bearing age or child diagnosed with an Inherited Metabolic Disorder, that warrants the prescription of a specialty formula may be eligible to receive assistance through the Specialty Formula Fund if uninsured or if current insurance benefit does not include this coverage. The assistance will be based on the current Department of Health and Social Services *Ability to Pay Fee Schedule* (see attached), less the average cost of formula for a normal newborn/infant or citizen using soy based milk products annually. The Fee Schedule is adjusted annually with the revised federal poverty guidelines.

2) The Division of Public Health may provide assistance from the Fund to a woman of child bearing age or child diagnosed with an Inherited Metabolic Disorder, if:

(a) The specialty formula is prescribed as medically necessary for the therapeutic treatment of an Inherited Metabolic Disorder; and

(b) The specialty formula is administered under the direction of a physician; and

(c) The client's insurer does not provide benefits to cover prescribed formula for inherited metabolic disorder or there are special circumstances as determined by the Division of Public Health, Case Review Panel.

IV. Application

The Division of Public Health will:

(1) Staff the Case Review Panel; and

(2) Review and refer non-compliant woman of child bearing age, parents/guardians of children with an inherited metabolic disorder to appropriate agencies for follow-up; and

(3) Determine, on a case by case basis, any assistance to be provided to a woman of child bearing age or child from this fund.

V. Roles/Responsibilities

1) The Division of Public Health will appoint a Case Review Panel to make recommendations to assist the Division of Public Health in determining the assistance provided to a woman of child bearing age or child from this fund. This group will also act as a case management team for women of child bearing age, children and their families, if necessary, with public and private providers of health care and/or insurance providers. The members may have a background in metabolic disease. The panel may include a Geneticist, Nutritionist, Newborn Screening Program staff member, a Physician who treats metabolic disorders, and one or more community member(s). The Genetics Director will chair the Case Review Panel and the Division of Public Health will provide staff.

The Case Review Panel will meet on a regular basis to review cases and make recommendations to the Division of Public Health. All current cases will be reviewed within the first six months of initiation of the Case Review Panel. The Case Review Panel will convene, as needed, to review newly diagnosed cases.

VI. Authorization for Payment

1) The Division of Public Health may authorize assistance prior to the review of the Case Review Panel in cases of immediate need based on physician prescription.

2) The Division of Public Health may provide assistance based on the physician's prescription, recommendation of the Case Review Panel, the calculation of the quantity of formula needed, economic need, and the availability of appropriated funds.

3) Assistance under this fund is limited to the appropriation of the General Assembly for this purpose.

4) The Division of Public Health will reevaluate each case every year or if health benefit coverage changes.

5) Women of child bearing age or the parent or guardian of a child receiving assistance from the Fund are obligated to contact the Division of Public Health, immediately, if any changes in status or eligibility occur.

VII. Referrals

1. The Division of Public Health will accept referrals from specialty hospitals, institutions, other state agencies, primary care physicians, other health care professionals, self referrals, or referrals from the family.

2. Referrals should include the following information: client's name, parent or guardian's name, address, phone number, social security number of client, diagnosis, formula prescription type and amount per month, feeding schedule, client's age, financial information, and any pertinent medical data.

DIVISION OF SOCIAL SERVICES

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

Public Notice

Delaware Health and Social Services is proposing changes to regulations contained in the Division of Social Services Manual Section 2023 and 9059. These changes are initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512. Written materials and suggestions by interested persons for related to this proposal must be forwarded by June 30, 1999, to the Director, Division of Social Services, P. O. Box 906, New Castle, DE 19720.

SUMMARY OF REGULATIONS:

- Allows individuals suspected of committing an intentional Program violation to waive their rights to Administrative Disqualification Hearing;
- Allows individuals accused of committing an intentional Program violation to sign a disqualification consent agreement to avoid further prosecution;
- Clarifies the treatment of JTPA on-the-job training payments; and
- Disregards funds in an individual development account under the TANF block grant program.

NATURE OF PROPOSED REVISIONS:

2023.3 Disqualification Penalties

Individuals found to have committed intentional Program violation either through an administrative disqualification hearing, ~~or~~ by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, will be ineligible to participate in the Program for:

1. A period of one year (12 months) for the first violation;
2. A period of two years (24 months) for the second violation; or for the first time found guilty of selling and purchasing illegal drugs with food stamps;
3. Permanently for the third violation; or for the second time found guilty of selling and purchasing illegal drugs with food stamps; or for the first time found guilty of selling and purchasing firearms, ammunition or explosives with food stamps, or for the first time convicted of

trafficking in Food Stamp benefits valued at \$500 or more.

COMMENT PERIOD

Any person who wishes to make petitions for reconsideration or revision thereof, such petitions must be forwarded by June 30, 1999 to the Director, Division of Social Services, P. O. Box 906, New Castle, DE 19720.

2023.6 Waived hearings

Accused individuals have the option to waive their rights to an administrative disqualification hearing (ADH). Household members suspected of intentional Program violations are provided with a written Notice of Waiver of Disqualification hearing for either the Food Stamp Program or appropriate Cash Assistance program. The waiver notice tells the accused individual:

- They are suspected of committing an IPV
- They will be scheduled for an ADH;
- They have the option of waiving their rights to the ADH;
- The date they have to sign and return the waiver to avoid having a hearing scheduled;
- They can admit or not admit to the evidence presented;
- They must have the head of household sign the form if not the same person;
- The remaining household members, if any, must repay any overissuances;
- They will be disqualified from participating in the program and for how long;
- The disqualified individual's income will be considered in calculating the household's benefits; and
- That failure to repay the amount owed, if any, could result in sending the matter to court for appropriate action.

Someone other than the eligibility worker, such as a supervisor, will review the evidence against the household member suspected of committing fraud before giving the person the option of signing the waiver.

If the waiver is signed, the imposition of the disqualification penalties follows the same procedures listed in 2023.5.

No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty imposed. A fair hearing cannot change the disqualification penalty. The household member can seek relief in a court having appropriate jurisdiction.

(Current section 2023.6 becomes 2023.7)

2023.8 Disqualification Consent Agreements for Deferred Adjudication

A determination of guilt is not always obtained from a court because the accused individual either met the terms of a court order or is not prosecuted because the individual met the terms of an agreement with the prosecutor. For these cases of deferred adjudication, the individual is allowed to sign a disqualification consent agreement to avoid further prosecution.

The disqualification consent agreement tells the accused individual:

- The consequences of signing a disqualification consent agreement;
- They must have the head of household sign the form if not the same person;
- They will be disqualified from participating in the program and for how long, even though they were not found guilty of civil or criminal misrepresentation or fraud;
- The remaining household members must repay any overissuances, unless the claim has been repaid as part of the terms of the agreement;
- The disqualified individual's income will be considered in calculating the household's benefits; and
- That failure to repay the amount owed, if any, could result in sending the matter to court for appropriate action.

If the waiver is signed, the imposition of the disqualification penalties follows the same procedures listed in 2023.5.

(Current Section 2023.7 becomes 2023.9 and 2023.8 becomes 2023.10)

9059 Income Exclusions

7. P.L. 97-300, the Job Training Partnership Act (JTPA), 10/13/82. Section 142(b) provides that allowances, earnings and payments to individuals participating in programs under JTPA shall not be considered as income. Subsequently P. L. 99-198, the Food Security Act of 1985, 12/85, amended section 5(1) of the Food Stamp Act to require counting as income on-the-job training payments provided under section 204(5) of Title II of the JTPA except for dependents less than 19 years old. Section 702(b) of P.L. 102-367, the Job Training Reform Amendments of 1992, further amended the Food Stamp Act (by changing the reference) to exclude on-the-job training payments received

under the Summer Youth Employment and training Program. This means that currently only on-the-job training payments to (1) youths, other than dependents under 19, in year-round programs and (2) adults can be counted. All other JTPA income is excluded.

23. P.L. 104-193, section 103(a), dated 8/22/96, amended Section 404(h) of Part A of Title IV of the Social Security Act to provide that for the purpose of determining eligibility to receive, or the amount of, any benefit authorized by the Food Stamp Act, funds (including interest accruing) in an individual development account under the TANF block grant program shall be disregarded with respect to any period during which such individual maintains or makes contributions into such an account.

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 general policy and practitioner manual.

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 June 30, 1999.

REVISION:

General Policy

Non-Covered Services

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

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

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

through a HCBS waiver program).

Practitioner Manual

VIII. SPECIFIC CRITERIA FOR PODIATRISTS

The DMAP reimburses for routine foot care ONLY for recipients who are diagnosed as having diabetes or circulatory/vascular disorders of the lower extremities.

The following codes define routine foot care:

11719 Trimming of nondystrophic nails, any number

11720 Debridement of nails(s) by any method(s); one to five

11721 Debridement of nail(s) by any method(s); six or more

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 eligibility manual.

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 June 30, 1999.

Division of Social Services Eligibility Manual

15110 A BETTER CHANCE, DELAWARE'S TANF PLAN

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, amended title IV-A of the Social Security Act to repeal the Aid to Families with Dependent Children (AFDC) program. The AFDC program provided an entitlement to cash assistance for eligible families with dependent children. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) replaces AFDC with a program of block grants to States for Temporary Assistance for Needy Families (TANF). Under TANF, States have broad flexibility to provide assistance to needy families. Delaware implemented

its TANF program, A Better Chance, on March 10, 1997.

15110.1 Medicaid Eligibility

Before the passage of PRWORA, anyone receiving cash assistance under AFDC was automatically entitled to Medicaid. Under the new law, persons receiving assistance under the block grant (TANF) are not automatically entitled to Medicaid. A new Medicaid eligibility group for low income families with children is established at Section 1931 of the Social Security Act added by section 114 of PRWORA. These families will receive Medicaid if they meet the AFDC eligibility criteria in effect as of 7/16/96. The eligibility criteria for this new group is described in the section, "Low Income Families with Children under Section 1931".

Section 1931 also gives States more flexibility in determining Medicaid eligibility. ~~Delaware has used the authority in Section 1931 to keep the rules for A Better Chance and for Medicaid consistent and use a single application form to determine eligibility. This means that any family eligible for and receiving cash assistance under A Better Chance is also eligible for Medicaid under Section 1931 without having to complete a separate Medicaid eligibility determination.~~

Delaware has used the authority in Section 1931 to ensure that any family eligible for and receiving cash assistance under A Better Chance is also eligible for Medicaid under Section 1931 without having to complete a separate Medicaid eligibility determination.

15120 LOW INCOME FAMILIES WITH CHILDREN UNDER SECTION 1931

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, Section 114, established a new Medicaid eligibility group for low income families with children at Section 1931 of the Social Security Act. Coverage for this mandatory categorically needy group of families with children is effective March 10, 1997, the date that Delaware's TANF plan was approved.

Section 1931 defines the basic criteria for determining Medicaid eligibility based upon AFDC eligibility criteria. The criteria includes income and resource standards and methodologies as in effect on July 16, 1996, and deprivation and specified relative rules that were in effect on that date. Section 1931 gives states flexibility to change these criteria. ~~Delaware has amended its Medicaid state plan to provide that the income, resource, and family composition rules used to determine eligibility under this group are the same as the rules used to determine eligibility under ABC.~~

Families who are eligible for Medicaid under Section 1931 may be receiving ABC cash assistance or may be Medicaid only families.

15120.2 Financial Eligibility

~~Follow ABC income and resource standards and methodologies (disregards, exclusions, allocations)~~

ABC rules on income standards and methodologies (disregards, exclusions, allocations) apply to Section 1931 Medicaid except as provided in this section.

For Section 1931 Medicaid, there are two income tests to determine financial eligibility. The first test is a gross income test and the second is a net income test. For the gross income test, compare the family's gross income to 185% of the applicable standard of need. For the net income test, compare the family's net income to the applicable standard of need.

Financial eligibility for both applicant and recipient families will be calculated using the 30 and 1/3 disregard if applicable. This disregard allows the deduction of \$30 plus 1/3 of the remaining earned income after the standard allowance for work connected expenses is subtracted.

The \$30 plus 1/3 disregard is applied to earned income for four (4) consecutive months. If Medicaid under Section 1931 or employment ends before the fourth month, the earner is eligible for the disregard for four (4) additional months upon reapplication or re-employment.

When an earner's wages are so low (\$90 or less in the month) that the income is zero before any part of the \$30 plus 1/3 disregard can be applied, that month does not count as one of the four (4) consecutive months and the earner is eligible for the disregard for four (4) additional months.

After the \$30 plus 1/3 disregard has been applied for four (4) consecutive months, the 1/3 disregard is removed from the budget. The \$30 disregard continues to be deducted from earned income for eight (8) consecutive months. The \$30 disregard is not repeated if an individual stops working or 1931 Medicaid ends before the completion of the eight (8) consecutive months. If 1931 Medicaid ends and the family reapplies, the \$30 disregard from earned income is continued until the end of the original eight (8) consecutive months.

Unlike the \$30 plus 1/3 disregard which is dependent upon the family having sufficient earned income and being 1931 Medicaid recipients, the \$30 disregard is for a specific time period. This time period begins when the \$30 plus 1/3 disregard ends and is not dependent upon the family having earned income or 1931 Medicaid.

When an earner has received the \$30 and 1/3 disregard in four (4) consecutive months and the \$30 deduction has been available for eight (8) consecutive additional months, neither disregard can be applied to earned income until the individual has not received the 30 and 1/3 disregard for twelve (12) consecutive months.

All earned income is disregarded for the second and third months of eligibility.

Any diversion assistance provided does not count as income.

Resources are not counted for Medicaid under Section

1931.

15150.1 AFDC/TANF Related Deeming

Any individual who is denied or loses Medicaid under Section 1931 based on the budgeting of stepparent, grandparent, or sibling income ~~or resources~~ may be eligible for Medicaid.

Follow all rules for Medicaid under Section 1931 (~~same as A Better Chance rules~~) except for the deeming of income ~~or resources~~ from grandparents, stepparents, or siblings.

15160 ACUTE CARE PROGRAM

Medicaid coverage is available to individuals in acute care hospitals who would be eligible for ~~ABC and~~ Medicaid under Section 1931 if they were not hospitalized. These individuals will be determined eligible only after the patient has been in the hospital for 30 consecutive days. For example, if an individual enters the hospital on April 24, DSS need not consider eligibility under this program unless the individual is still hospitalized on May 23 (and has been continuously hospitalized since April 24).

15160.1 Eligibility Determination

Eligibility will be determined using ~~ABC and~~ the technical and financial criteria for Medicaid under Section 1931. There is no medical eligibility criterion.

DIVISION OF SOCIAL SERVICES

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

Public Notice

Division of Social Services
A Better Chance Program

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 Section 3002, 3031. These changes arise from Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (national welfare reform), as an option and was first announced in January 1995, as part of the original *A Better Chance (ABC)* waiver design.

SUMMARY OF PROPOSED REVISIONS:

- Revising language in the Work For Your Welfare provision that mandate that those on a forty-eight month time limit must enter Work for Your Welfare immediately if the case was closed and the family reapplies on or after 10/1/99, if the single adult is

not employed

- Providing an exception to the time limit for those persons employed for at least twenty hours per week.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P. O. Box 906, New Castle, DE, by June 30, 1999.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

PROPOSED REGULATIONS:3002.9 EXCEPTIONS TO THE TIME LIMIT COUNTER

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 calls for a maximum sixty (60) month lifetime limit on the receipt of Temporary Assistance to Needy Families (TANF) benefits. A family that has an employable adult will be able to receive cash benefits that do not count to the State's twenty-four (24) month or forty-eight (48) month time limit if:

- The adult is working for twenty (20) hours or more per week; and
- The countable income of the family is still below the need standard.

The Federal time limit would still apply in these cases. If the family reaches the Federal sixty (60) month time limit but has not reached the State twenty-four (24) month or forty-eight (48) month time limit the family will continue to receive ABC cash assistance.

3031 WORK FOR YOUR WELFARE

All two-parent households, who are without employment, must enter a Work For Your Welfare activity to qualify for benefits. Single adult recipients, who reach their 22nd month of benefit and are without employment, and all eligible applicants after 10/1/99, must enter a Work For Your Welfare activity to qualify for benefits. Work for Your Welfare is defined as a work experience program in which participants work to earn their benefits. In addition, DSS requires each participant to complete 10 hours of job search activity per week. The failure to complete job search as required will result in a progressive 1/3 sanction. For two parent households, one parent must participate in the work for your welfare program in order to earn benefits. The second parent, unless exempt, must also participate in

required employment related activities as defined by DSS and the DSS contractor.

For single adult recipients that have a forty-eight month time limit, if their ABC case is closed and they reapply for ABC on or after 10/1/99, they must immediately enter Work For Your Welfare if they are not employed at least twenty hours per week. This applies even if the family has not reached its 22nd month of ABC receipt.

Currently DSS operates the work for your welfare program under contract with a work for your welfare services provider. The provider assumes responsibility for the assessment, placement and monitoring of all work for your welfare participants in unsalaried work assignments. The work assignments are with public or nonprofit organizations. In return for their services, participants earn the amount of the benefit they are eligible to receive.

Work for your welfare is not preferable to participants obtaining unsubsidized employment. Though the work for your welfare assignment should be a safe assignment, it should not be more attractive than unsubsidized employment.

DSS is to ensure that no participants placed in work for welfare activities displace regular paid employees of any of the organizations providing the placements.

Since placements are not voluntary, DSS expects participants to accept assignments unless the assignment represents an unreasonable health and safety risk (e.g., the participant has a health condition, which would be aggravated by the assignment).

Participants cannot appeal their assignments to work for your welfare work sites.

3031.3. INITIATING WORK FOR YOUR WELFARE - ONE PARENT FAMILIES

3031.3.1 Families That Have A Forty-Eight (48) Month Time Limit:

For single adult recipients that have a forty-eight month time limit, if their ABC case is closed and they reapply for ABC on or after 10/1/99, they must immediately enter Work for Your Welfare if they are not employed at least twenty hours per week.

For other single parent families with a forty-eight month time limit DSS will alert them to report to the work for your welfare contractor in the 22nd month of their receipt of benefits. The contractor will schedule participants for an interview for assessment and placement in a work for welfare activity. Participants' failure to keep their scheduled interview with the contractor will result in the progressive 1/3 penalty for an employment and training activity.

Participants whose cases are closed can only have benefits restored once they have agreed to and have cooperated for two weeks with their work for your welfare

assignment. If a participant fails to cooperate by not completing any portion of this two weeks of his/her work for your welfare placement, DSS will not restore benefits.

Participants are to begin their work for your welfare assignment on the 12th of the 23rd month of benefit receipt. Participants will have until the 11th of their 24th month to complete their work for your welfare monthly assignment in order to receive a benefit for their 25th month. Otherwise, DSS will reduce benefits for the 25th month based on any hours not worked.

FOR EXAMPLE: Mary Jones is a single parent with one child receiving benefits. September 1998 is her 22nd month of ABC benefit receipt. On Post Adverse Action day in August, Mary's October benefit as well as her work for your welfare requirement is calculated. A letter is generated to Mary informing her that she must participate in work for your welfare beginning in October. The letter also informs her of the required hours per day she must complete, and that she will have from October 12th until November 11th to complete her assignment if she is to get benefits in December. If Mary does not complete any of her work for your welfare hours, she receives no benefit for December and her case closes. In order for her to start receiving benefits again, Mary would have to agree to go to her assigned work for your welfare work site, and cooperate by completing her assigned hours for up to two weeks. If she fails to do this, her case remains closed.

INSURANCE DEPARTMENT

Statutory Authority: 18 Delaware Code,
Sections 311, 2304(16) and 2312
(18 Del.C. 311, 2304(16) & 2312)

NOTICE OF PUBLIC HEARING

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Thursday, June 24th at 4:00 p.m. in Room A116, Delaware Technical & Community College, Stanton Campus, 400 Stanton-Christiana Road, Newark, DE.

The purpose of the Hearing is to solicit comments from the insurance industry and the general public on proposed Insurance Department Regulation 82, Standards of Payment for Multiple Surgical Procedures.

The hearing will be conducted in accordance with the

Delaware Administrative Procedures Act, 29 Del. C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Department of Insurance no later than Friday, June 18th, 1999 and should be addressed to Fred A. Townsend, III, Deputy Insurance Commissioner, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or those intending to provide oral testimony must notify Fred A. Townsend, III at 302.739.4251, ext. 157 or 800.282.8611 no later than Friday, June 18th, 1999.

Regulation No. 82

Standards of payment for Multiple Surgical Procedures

Section

1. Authority
2. Definitions
3. Scope
4. Purpose
5. Procedure for Payment
6. General Business Practice
7. Penalty
8. Causes of Action and Defenses
9. Effective Date

§1. Authority.

This regulation is adopted by the Commissioner pursuant to 18 *Del. C.* §§311, 2304(16) and 2312. It is promulgated in accordance with 29 *Del. C.* Chapter 101.

§ 2. Definitions.

For the purpose of this regulation, the following definitions shall apply:

a. Health insurer: health insurance companies, health maintenance organizations, health service corporations and any other entity providing a plan of health insurance or benefits subject to state insurance regulations.

b. Health Care Provider: any entity or individual licensed, certified or otherwise permitted by law to provide health care in the ordinary course of business, practice or profession.

c. Policyholder or Certificate Holder: a person covered under such policy or a representative designated by such person and entitled to services provided in the policy.

§3. Scope.

This regulation shall apply to all health insurers as defined in Section 2 above, and shall apply to all contracts

for insurance issued by these entities.

§4. Purpose.

The purpose of this regulation is to ensure that health insurers provide proper payment to health care providers when more than one surgical service is performed on the same patient, by the same physician, on the same day.

§5. Procedure for payment of multiple surgical services.

When more than one surgical service is performed on the same patient, by the same physician and on the same day, insurers shall make payment to the providers as follows:

- One hundred per cent (100%) of the fee schedule for the procedure which has the highest regular fee schedule amount; and
- For each additional procedure, performed through the same incision or separate incisions, as set forth in the National Correct Coding Manual established by Administar Federal under contract with the Health Care Financing Administration, not less than fifty per cent (50%) of the fee schedule amount
- For unrelated surgical procedures (e.g., partial thyroid removal and a hernia repair), one hundred per cent (100%) of the fee schedule for each procedure performed on multiple body parts.

§6. General Business Practice.

a. Within a 36 month period, three instances of a health insurer's failure to pay a claim or bill for services promptly, as defined in section 5 above, shall give rise to a rebuttable presumption that the insurer is in violation of 18 *Del. C.* §2304(16)(f).

b. The 36 month period established in paragraph "a." above shall be measured based upon the date the complaints are received at the Department. Each claim or bill, or portion of a claim or bill, pertaining to a single medical treatment or procedure provided to an individual policyholder that is processed in violation of this regulation shall constitute an "instance" as described in paragraph "a." above.

§7. Penalties.

In addition to the imposition of penalties in accordance with 18 *Del. C.* §2312(b), any health insurer that fails to adhere to the standards contained in this regulation shall be required to pay to the health care provider or claimant, in full settlement of the claim or bill for health care services, the amount of the claim or bill plus interest at the maximum rate allowable to lenders under 6 *Del. C.* §2301(a). This interest shall be computed from the date the claim or bill for services first became due.

§8. Causes of Action and Defenses.

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a health insurer or its representative based upon a violation of 18 *Del. C.* §2304(16). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 *Del. C.* §2304(16).

§9. Effective Date.

This regulation shall become effective 120 days from the date signed by the Commissioner

INSURANCE DEPARTMENT

Statutory Authority: 18 Delaware Code,
Sections 311, 2304(16) and 2312
(18 **Del.C.** 311, 2304(16) & 2312)

NOTICE OF PUBLIC HEARING

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Thursday, June 24th at 4:00 p.m. in Room A116, Delaware Technical & Community College, Stanton Campus, 400 Stanton-Christiana Road, Newark, DE.

The purpose of the Hearing is to solicit comments from the insurance industry and the general public on proposed Insurance Department Regulation 83, Standards of Payment for Assistants at Surgery.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del. C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Department of Insurance no later than Friday, June 18th, 1999 and should be addressed to Fred A. Townsend, III, Deputy Insurance Commissioner, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or those intending to provide oral testimony must notify Fred A. Townsend, III at 302.739.4251, ext. 157 or 800.282.8611 no later than Friday, June 18th, 1999.

Regulation No. 83

Standards of payment for Assistants at Surgery

Section

1. Authority
2. Definitions
3. Scope
4. Purpose
5. Procedure for Payment

6. General Business Practice
7. Penalty
8. Causes of Action and Defenses
9. Effective Date

§1. Authority.

This regulation is adopted by the Commissioner pursuant to 18 *Del. C.* §§311, 2304(16) and 2312. It is promulgated in accordance with 29 *Del. C.* Chapter 101.

§ 2. Definitions.

For the purpose of this regulation, the following definitions shall apply:

a. *Health insurer*: health insurance companies, health maintenance organizations, health service corporations and any other entity providing a plan of health insurance or benefits subject to state insurance regulations.

b. *Health Care Provider*: any entity or individual licensed, certified or otherwise permitted by law to provide health care in the ordinary course of business, practice or profession.

c. *Policyholder or Certificate Holder*: a person covered under such policy or a representative designated by such person and entitled to services provided in the policy.

d. *Assistant at Surgery*: a physician, nurse practitioner, clinical nurse specialist, certified surgical technician, certified first surgical assistant, or physician assistant who is licensed and actively assists the physician in charge of a case in performing a surgical procedure.

§3. Scope.

This regulation shall apply to all health insurers as defined in Section 2 above, and shall apply to all contracts for insurance issued by these entities.

§4. Purpose.

Some surgical procedures require a primary surgeon and an assistant surgeon. Federal law sets forth guidelines for the payment, under Medicare Part B, for the services of assistants at surgery. No such guidelines exist in Delaware law, and in many cases health insurers will not pay for such services. The purpose of this regulation is to require that health insurers make payment for the services of assistants at surgery in the same manner as provided for under Medicare Part B.

§5. Guidelines for payment for the services of assistants at surgery.

a. A health insurer shall be required to make payment for the professional services of assistants at surgery. Such payment shall be made in the same manner set as forth in the Balanced Budget Act of 1997 and applicable publications issued by the Health Care Financing Administration (HCFA), including but not limited to

HCFA's regulations, the Medicare Part B Physician/Supplier Handbook, and Medicare Part B newsletters.

b. Payment for the services of an assistant at surgery shall be made only to the surgical assistant's employer if such employer is neither a hospital or ambulatory surgical center.

§6. General Business Practice.

a. Within a 36 month period, three instances of a health insurer's failure to pay a claim or bill for services promptly, as defined in section 5 above, shall give rise to a rebuttable presumption that the insurer is in violation of 18 *Del. C.* §2304(16)(f).

b. The 36 month period established in paragraph "a." above shall be measured based upon the date the complaints are received at the Department. Each claim or bill, or portion of a claim or bill, pertaining to a single medical treatment or procedure provided to an individual policyholder that is processed in violation of this regulation shall constitute an "instance" as described in paragraph "a." above.

§7. Penalties.

In addition to the imposition of penalties in accordance with 18 *Del. C.* §2312(b), any health insurer that fails to adhere to the standards contained in this regulation shall be required to pay to the health care provider or claimant, in full settlement of the claim or bill for health care services, the amount of the claim or bill plus interest at the maximum rate allowable to lenders under 6 *Del. C.* §2301(a). This interest shall be computed from the date the claim or bill for services first became due.

§8. Causes of Action and Defenses.

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a health insurer or its representative based upon a violation of 18 *Del. C.* §2304(16). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 *Del. C.* §2304(16).

§9. Effective Date.

This regulation shall become effective 120 days from the date signed by the Commissioner

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**

**DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

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

REGISTER NOTICE

Brief Synopsis of the Subject, Substance and Issues:

The Department of Natural Resources and Environmental Control, in accordance with 7 *Del. C.* §6010, is proposing to revise Regulation No. 3 - Ambient Air Quality Standards, Section 11.2, in the Regulations Governing the Control of Air Pollution. This amendment adds both a primary and a secondary air quality standard for fine particulate matter.

Possible Terms of the Agency Action:

The Regulation has no expected sunset.

Statutory Basis or Legal Authority to Act:

7 *Del C.* Section 6010

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

None

Notice Of Public Comment:

The Secretary of The Department of Natural Resources and Environmental Control is proposing to revise Regulation No. 3 - Ambient Air Quality Standards, Section 11.2, in the Regulations Governing the Control of Air Pollution. This amendment adds both a primary and a secondary air quality standard for fine particulate matter. A public hearing to consider this proposal will be held on July 8, 1999, at the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE, at 6:00 PM.

The proposed revised regulations are available for public inspection at The Department of Natural Resources and Environmental Control, Air Quality Management Office, 156 South State Street, Dover, Delaware. For additional information please call Ray Malenfant at (302) 739-4791.

Regulation No. 3 - AMBIENT AIR QUALITY
STANDARDS

Section 11 - PM₁₀ and PM_{2.5} Particulates

11.1 The Primary and Secondary Ambient Air Quality Standards for Particulate Matter, measured as PM₁₀ are:

- a.
- b.

11.2 The Primary and Secondary Ambient Air Quality Standards for Particulate Matter, measured as PM_{2.5} are:

a. ~~{Reserved}~~ 65 micrograms per cubic meter (Fg/m³) 24-hour average concentration. The 24-hour primary and secondary PM_{2.5} standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, as found in the Federal Register dated July 18, 1997, on page 38757 -38758, is less than or equal to 65 Fg/m³.

b. ~~{Reserved}~~ 15.0 micrograms per cubic meter (Fg/m³) annual arithmetic mean concentration. The annual primary and secondary PM_{2.5} standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix N, as found in the Federal Register dated July 18, 1997, on page 38756 - 38757, is less than or equal to 15.0 Fg/m³.

**DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

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

REGISTER NOTICE

Brief Synopsis of the Subject, Substance and Issues:

The Department of Natural Resources and Environmental Control, in accordance with 7 Del. C. §6010, is proposing to add a new regulation, Regulation No. 40 - National Low Emissions Vehicle Program, to the Regulations Governing the Control of Air Pollution. This new regulation finalizes Delaware's commitment to participate in this federal program, and derive all the emission reductions from that program. The letter of submittal to EPA of this regulation is also considered as an exhibit to this proposal.

Possible Terms of the Agency Action:

The Regulation has no expected sunset.

Statutory Basis or Legal Authority to Act:

7 Del C. Section 6010

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

None

Notice Of Public Comment:

The Secretary of The Department of Natural Resources and Environmental Control is proposing to add a new regulation, Regulation No. 40 - National Low Emissions Vehicle Program, to the Regulations Governing the Control of Air Pollution. This new regulation finalizes Delaware's commitment to participate in this federal program, and derive all the emission reductions from that program. The letter of submittal to EPA of this regulation is also considered as an exhibit to this proposal. A public hearing to consider this proposal will be held on July 8, 1999, at the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE, at 6:00 PM.

The proposed revised regulations are available for public inspection at The Department of Natural Resources and Environmental Control, Air Quality Management Office, 156 South State Street, Dover, Delaware. For additional information please call Ray Malenfant at (302) 739-4791.

State of Delaware Proposal to Finalize Its Commitment to the National Low Emission Vehicle (NLEV) Program

Upon its adoption by Secretary's Order, this regulation will be submitted to the US EPA as a Revision to the State of Delaware Implementation Plan (SIP) for the Attainment and Maintenance of the National Ambient Air Quality Standard for Ozone, and Incorporated in The Delaware Regulations Governing the Control of Air Pollution.

To accomplish the requirements set forth in 40 CFR Part 86, Subpart R, for the NLEV program, Delaware is proposing to adopt the appropriate portions of the CFR language, verbatim, in the regulation below, as Exhibit A, and include the balance of the required CFR language in the letter of submittal, as Exhibit B. Since the federal regulatory language included in Exhibit B must also be verbatim, that proposal letter must also be subjected to the same public process as the regulation in order to satisfy the federal State Implementation Plan (SIP) requirements of Section 110 of the Clean Air Act.

Exhibit A

The State of Delaware herein proposes the following regulation to The Delaware Regulations Governing the Control of Air Pollution.

Regulation No. 40
Delaware's National Low Emission Vehicle (NLEV)
Regulation

Section 1 - Applicability

The environmental benefits of this regulation will be realized in all counties in the State of Delaware.

Section 2 - Definitions

The following terms, when used in this regulation, shall have the following meanings:

"NLEV Program" or "National Low Emission Vehicle Program" means a federally enforceable, voluntary nationwide clean car program designed to reduce smog and other pollution from new motor vehicles and that would achieve emission reductions from new motor vehicles in the Ozone Transport Region equivalent to or greater than would be achieved by the adoption of the CAL-LEV Program by all the OTC states.

Section 3 - Program Participation

(a) For the duration of Delaware's participation in NLEV, manufacturers may comply with NLEV or equally stringent mandatory Federal standards in lieu of compliance with any program, including the provisions of this subchapter and including any mandates for sales of ZEVs, adopted by the State pursuant to the authority provided in §177 of the Clean Air Act (CAA), 42 U.S.C. §7401 et seq., applicable to passenger cars, light-duty trucks up through 6,000 pounds GVWR, and/or medium-duty vehicles from 6,001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, §1900, incorporated herein by reference.

(b) Delaware's participation in NLEV extends until the commencement of model year 2006, except as provided in 40 C.F.R. §86.1707. If, no later than December 15, 2000, the EPA does not adopt standards at least as stringent as the NLEV standards provided in 40 C.F.R. Part 86, subpart R, that apply to new motor vehicles in model year 2004, 2005 or 2006, the State's participation in NLEV extends only until the commencement of model year 2004, except as provided

in 40 C.F.R. §86.1707.

(c) If a covered manufacturer, as defined at 40 C.F.R. 86.1702, opts out of the NLEV program pursuant to the EPA NLEV regulations at 40 C.F.R. '86.1707, the transition from NLEV requirements to any State Clean Air Act '177 Program applicable to passenger cars, light-duty trucks up through 6000 pounds GVWR, and/or medium-duty vehicles from 6001 to 14,000 pounds GVWR if designed to operate on gasoline, as these categories of motor vehicles are defined in the California Code of Regulations, Title 13, Division 3, Chapter 1, Article 1, §1900, incorporated herein by reference will proceed in accordance with the EPA NLEV regulations at 40 C.F.R. §86.1707.

Exhibit B

The State of Delaware herein proposes the following
Submittal Letter from the Department of Natural Resources
and Environmental Control to EPA Submitting Delaware's
National Low Emission Vehicle (NLEV) Regulation

Mr. W. Michael McCabe (3RA00)
Regional Administrator
EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Dear Mr. McCabe:

I am pleased to submit the attached as revisions to Delaware's State Implementation Plan (SIP) for the Attainment and Maintenance of the National Ambient Air Quality Standard for Ozone. This submission fulfills Delaware's commitment to be included in the National Low Emission Vehicle (NLEV) Program.

As you will remember, both Governor Carper and then Secretary Tulou made written commitments to Administrator Browner by letter on January 14, 1998, indicating Delaware's strong interest and support in the NLEV program. This action completes that commitment, by utilizing the Clean Air Act Section 110 SIP process. A notice of the hearing was published 30 or more days prior to the public hearing, a complete proposal was published in the Delaware Register on [add date in final letter], and a public hearing was held on [add date in final letter] to accept public comment on the proposed regulation, the commitments and the agreement. A certification statement that the Section 110 process was followed, copies of the legal advertisements published in the newspapers, and the full contents of the proposal in the Delaware Register are included.

In addition, this letter will serve to fulfill the additional commitment requirements of the federal NLEV Rule by detailing the commitments and agreement below.

Commitments

(a) The State commits to support NLEV as an acceptable alternative to the State's Section 177 Program for the duration of the State's participation in NLEV.

(b) The State recognizes that its commitment to NLEV is necessary to ensure that NLEV remain in effect.

(c) The State is submitting this SIP revision in accordance with the applicable Clean Air Act requirements at §110 and EPA regulations at 40 C.F.R. Part 86 and 40 C.F.R. Parts 51 and 52.

Agreement to Forbear Adoption of Replacement Programs

For the duration of Delaware's participation in NLEV, the State intends to forbear from adopting and implementing a ZEV mandate effective prior to model year 2006. Notwithstanding the previous sentence, if, no later than December 15, 2000, the US EPA does not adopt standards at least as stringent as the NLEV standards provided in 40 C.F.R. Part 86, subpart R that apply to new motor vehicles in model year 2004, 2005, or 2006, the State intends to forbear from adopting and implementing a ZEV mandate effective prior to model year 2004.

As always, feel free to contact me or Darryl D. Tyler, Program Administrator, (302) 739-4791 if you have any questions concerning the enclosed documents.

Sincerely,
Nicholas A. Di Pasquale
Secretary

DIVISION OF WATER RESOURCES

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

Proposed Amendments to the State of Delaware Surface Water Quality Standards

REGISTER NOTICE

Brief Synopsis of the Subject, Substance and Issues:

On February 26, 1993, the State of Delaware adopted revised Surface Water Quality Standards regulations and

submitted the promulgated revisions to the U.S. Environmental Protection Agency (EPA). In an April 13, 1998, letter, EPA notified the State of Delaware that certain provisions of the promulgated regulations were inconsistent with the Clean Water Act (CWA) and EPA regulations. Those provisions were disapproved. In an enclosure to the April 13, 1998 letter, EPA described their objections to the provisions, provided the regulatory basis for the disapproval, and identified changes that must be made in order to meet the requirements of the CWA. To ensure compliance with the CWA and EPA regulations, the State of Delaware, in accordance with 7 Del. C. §6010, is proposing amendments to the Table of Contents, Sections 2, 5.3, 5.4, 5.5, 5.6, 8.2, 9.3, 10, 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 12.1 and Table 1 of the State of Delaware Surface Water Quality Standards.

Possible Terms of the Agency Action:

N/A

Statutory Basis or Legal Authority to Act:

7 Del.C. Section 6010

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

Regulations Governing the Control of Water Pollution

Notice Of Public Comment:

The Department of Natural Resources and Environmental Control, Division of Water Resources, will hold a public hearing on July 1, 1999, beginning at 2:00 p.m., in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to receive testimony on the proposed amendments to the State of Delaware Surface Water Quality Standards.

The proposed amendments are published here today. For additional information, or to request copies of the State of Delaware Surface Water Quality Standards, proposed amendments, or the EPA April 13, 1998 letter, please contact Betty Turner, Watershed Assessment Section, at 302-739-4950 (FAX: 302-739-6140; e-mail: bturner@state.de.us).

The procedures for public hearings are established in 7 Del. C. § 6006 and 29 Del. C. §10117. Inquiries regarding the public hearing should be directed to R. Robert Thompson at 302-739-4403. Statements and testimony may be presented orally or in written form at the hearing. It is requested that those interested in presenting statements register in advance by mail with the Hearing Officer. The deadline for inclusion of written comments in the hearing record is the conclusion of the hearing. Written statements may be presented prior to the hearing and should be addressed to: R. Robert Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

Prepared By:

John Schneider, Watershed Assessment Section, 739-4590

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A. INTRODUCTION and BACKGROUND

On February 26, 1993, the State of Delaware adopted revised Surface Water Quality Standards regulations and submitted the promulgated revisions to the U.S. Environmental Protection Agency (EPA). In an April 13, 1998, letter, EPA notified the State of Delaware that certain provisions of the promulgated regulations were inconsistent with the Clean Water Act (CWA) and EPA regulations. Those provisions were disapproved. In an enclosure to the April 13, 1998 letter, EPA described their objections to the provisions, provided the regulatory basis for the disapproval, and identified changes that must be made in order to meet the requirements of the CWA. To ensure compliance with the CWA and EPA regulations, the State of Delaware, in accordance with 7 Del. C. §6010, is proposing amendments to the Table of Contents, Sections 2, 5.3, 5.4, 5.5, 5.6, 8.2, 9.3, 10, 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 12.1 and Table 1 of the State of Delaware Surface Water Quality Standards.

B. PROPOSED AMENDMENTS TO THE STATE OF DELAWARE SURFACE WATER QUALITY STANDARDS

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

SECRETARY'S ORDER NO. 93-0089

Date of Issuance: February 26, 1993

Re: Adoption of Revisions to Surface Water Quality Standards

I. Background

A public hearing was held on April 22, 1992, to receive comments on proposed revisions to the February 2, 1990 version of Delaware's Surface Water Quality Standards. The revisions proposed fell into two categories. The first category included proposed additions and deletions resulting from settlement negotiations between DNREC and twenty NPDES permit holders who had filed administrative appeals immediately upon DNREC's promulgation of the February 2, 1990 version of the Surface Water Quality Standards. The second category of revisions included additions and deletions proposed unilaterally by DNREC to Sections 3, 5, and 9 of the Standards.

II. Findings

1. Proper notice of the public hearing was provided as required by law.
2. As justified by the record and discussed in the Hearing Officer's Report, all of the proposed additions and deletions resulting from the aforementioned settlement negotiations should be adopted, with a single exception. The definition for the term "minimum analytical level" which appears in Section 2 should be modified because it includes a quantitative standard for interlaboratory precision and bias that cannot be met in all situations. The modified definition that the Department proposes for the final rule retains all of the critical features of the definition originally agreed upon between DNREC and the appellants.
3. Several comments were received on the unilateral revisions DNREC proposed for Section 3 (Antidegradation). These comments can be addressed by revising the definition of the term "degradation" and making clarifying changes to Sections 3.1 and 3.2.
4. The regulated community (including several of the appellants), environmental groups, and the U. S. Environmental Protection Agency all voiced strong opposition to Section 5.5 (Modifications to Water Quality Based Effluent Limitations). This section was unilaterally proposed by the Department. In light of the broad-based opposition, all interests are best served by withdrawing this section from current consideration.

5. Commenters on Section 5.6 and 5.8 consistently expressed their opposition to inclusion of the phrase, "to the satisfaction of the Department". Neither the intent nor the force of Sections 5.6 or 5.8 are adversely affected by the absence of the objectional phrase. Therefore, the Department has agreed to remove the phrase from these two sections in the final version of the Standards. Several additional comments on Section 5.8 were received and carefully considered. It was determined that a modification to the language proposed at the April 22 hearing was necessary to satisfactorily address these comments. The final language proposes to add flexibility to this section by changing a mandatory requirement on applicants to demonstrate compliance with water quality standards to an optional analysis of standards compliance. The final language more accurately reflects actual Department operating procedures on this matter and in no way interferes with the Department's authority to request additional information of an applicant to help the Department make decisions on particular permit applications.

6. The U. S. Environmental Protection Agency commented on many sections of the proposed revisions to Delaware's Standards. The most serious of these comments was that EPA considers the proposed revisions to Sections 5.3, 5.4, 5.5, 5.7, 5.8, and possibly 5.6, as modifications to the State of Delaware Regulations Governing the Control of Water Pollution. The Department does not disagree with EPA that the sections in question could function in the Regulations Governing the Control of Water Pollution. In fact, the Department fully intends to propose revisions to the Regulations Governing the Control of Water Pollution in the near future that include provisions equivalent to Sections 5.3, 5.4, 5.6, 5.7 and 5.8 of the Standards. However, this fact does not preclude Delaware from including the sections in question in its Surface Water Quality Standards. The record from the April 22, 1992 hearing clearly shows that these provisions arose in conjunction with administrative appeals of the February 2, 1990 version of Delaware's Surface Water Quality Standards, not the Regulations Governing the Control of Water Pollution. It was logical, and a matter of administrative necessity, that the Department resolve the dispute through the Standards program. Beyond these reasons, DNREC considers the sections in question to be policies that directly affect the application and implementation of its Standards. Federal regulations (40 CFR Part 131.13) provide States the discretion to include such policies directly in their water quality standards, subject to EPA review and approval. In sum, there is no basis in the record, legal or otherwise, not to include these provisions in the final version of Delaware's Surface Water Quality Standards, except in the case of Section 5.5 which was discussed in Finding 4 above.

7. The changes discussed in Findings 2 through 6

above do not alter the balance of interests achieved during settlement negotiations. The final rule is both protective of Delaware's surface waters and provides sufficient flexibility for those who must comply.

8. Although revision of the Standards consistent with this Order will provide final resolution of a complex dispute, many questions remain in the minds of the regulated community concerning several Standards related issues. Questions include the extent of future monitoring, field investigation, and mathematical modeling needed to demonstrate compliance with the Standards. In response to these questions, the Department should endeavor to develop guidance on these topics as a key component of its overall water quality standards program.

III. Changes Ordered

Section 2: Definitions

Degradation: Any adverse change in water quality or existing uses.

Minimum Analytical Level: The lowest concentration of a substance that can be quantified within specified limits of interlaboratory precision and accuracy under routine laboratory operating conditions in the matrix of concern.

Section 3: Antidegradation

3.1 Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Degradation of water quality in such a manner that results in reduced number, quality, or river or stream mileage of existing uses shall be prohibited. Degradation shall be defined for the purposes of this section as a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols.

3.2 Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected. In the case of waters of exceptional recreational or ecological significance, existing quality shall be maintained or enhanced. Limited degradation may be allowed if the Department finds, after full satisfaction of public participation provisions of 7 Del. Code Sections 6004 and 6006 and the intergovernmental coordination provisions of the State's continuing planning process as required in 40 CFR Part 130, that allowing lower water quality is necessary to accommodate important social or economic development, or would result in a substantial net environmental or public health benefit, in the area in which the waters are located. In allowing such degradation or lower water quality, the Department shall assure water

quality adequate to protect existing uses fully. Further, the Department shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost effective and reasonable best management practices for nonpoint source control.

Section 5: Exceptions, Modifications and Conditions

~~5.5 Delete Proposed Text in its Entirety and Renumber 5.6, 5.7, 5.8, and 5.9 as 5.5, 5.6, 5.7, and 5.8, Respectively.~~

~~5.5 Temporary sources of pollution, including but not limited to stream or ditch installation, improvement, maintenance, or stabilization projects, dredge operations, and waste site remediation projects, may be permitted even if degradation may be expected to occur. Permission may be granted provided that the applicant can demonstrate that after a minimal period of time the number, quality, and river or stream mileage of designated uses, and the degree of attainment of water quality standards, will return or be restored to conditions equal to or better than those existing just prior to the temporary source of pollution.~~

~~5.7 Any person who shall apply for a permit to discharge to the waters of the State shall have the opportunity to submit an analysis to the Department at the time of application to demonstrate that said discharge will not cause, have the reasonable potential to cause, or contribute to an excursion of the receiving stream's water quality standards. The Department shall consider any analysis submitted by the applicant and also conduct its own analysis in making a determination whether the discharge causes, has the reasonable potential to cause, or contributes to an excursion of standards. The Department's review of analyses submitted by applicants as well as analyses the Department conducts on its own shall consider the information and factors listed in Section 5.6 of these Standards. Analyses performed under Section 5.7 shall be conducted in concert with the requirements of Section 3, as applicable. A public hearing, pursuant to 7 Del. Code, Sections 6004 and 6006, may be held to gather public comment on any analysis submitted by an applicant in conjunction with Section 5.7.~~

IV: ~~Order~~

~~It is hereby ordered that the Delaware Surface Water Quality Standards be revised to reflect the changes proposed at the April 22, 1992 hearing along with the modifications presented in the previous section of this Order. The revised Standards, attached hereto, are effective as of the signature date below.~~

Date Edwin H. Clark, II
Secretary

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL SURFACE WATER QUALITY STANDARDS

Section 1: Intent

1.1 It is the policy of the Department to maintain within its jurisdiction surface waters of the State of satisfactory quality consistent with public health and public recreation purposes, the propagation and protection of fish and aquatic life, and other beneficial uses of the water.

1.2 Where conflicts develop between stated surface water uses, stream criteria, or discharge criteria, designated uses for each segment shall be paramount in determining the required stream criteria, which, in turn, shall be the basis of specific discharge limits or other necessary controls.

1.3 Where existing facilities operating under a permit from this Department are required to reduce pollution concentrations or loadings due to the implementation of these surface water quality standards, a reasonable schedule for compliance may be granted in accordance with standards or requirements established in applicable statutes and regulations.

1.4 The Department intends to develop an agency-wide program to assess, manage, and communicate human health cancer risks from the major categories of environmental pollution under its jurisdiction. As a result of this activity, it may be necessary to adjust the upper bound worst case risk management level stated in Section 9.3(b)(i).

Section 2: Definitions

Acute: Involving a stimulus severe enough to rapidly induce an adverse response; in toxicity tests, an adverse response observed in 96 hours or less is typically considered acute. An acute effect is not always measured in terms of lethality; it can measure a variety of short term adverse effects.

Additive effect: The total effect of a mixture of pollutants which is equal to the arithmetic sum of the effects of the individual pollutants in the mixture.

Agriculture: The use of land and water in the production of food, fiber and timber products.

Antagonistic effect: The total effect of a mixture of pollutants which is less than the arithmetic sum of the effects of the individual pollutants in the mixture.

~~**Antidegradation Statement:** Any provision or policy that has as its basis the prevention of deterioration of water quality or designated uses.~~

Average: Unless otherwise noted, the arithmetic mean of a representative group of samples for a specified parameter. Representativeness shall be determined through application of appropriate statistical techniques to data collected at times of critical ambient conditions, as determined on a parameter-by-parameter basis.

Best Management Practice (BMP): BMPs are methods, measures or practices that are determined by the Department to be reasonable and cost-effective means for a person to meet certain, generally nonpoint source, pollution control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during or after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

Best scientific judgement: Findings, conclusions, or recommended actions which result from the application of logical reasoning and appropriate scientific principles and practices to available and relevant information on a particular situation.

Bioavailability: A measure of the physicochemical access of a pollutant to an organism.

Biodegradation: The biological decomposition of natural or synthetic organic materials by microorganisms.

Carcinogen: A substance that increases the risk of benign or malignant neoplasms (tumors) in humans or other animals. Carcinogens regulated through these Standards include but may not be limited to those toxic substances classified as Group A or Group B carcinogens as defined in 51 FR 185 (9/24/86).

Chronic: Involving a stimulus that produces an adverse response that lingers or continues for a relatively long period of time, often one-tenth of the life span or more. Chronic should be considered a relative term depending on the life span of the organism. A chronic effect can be lethality, growth or reproductive impairment, or other longer term adverse effect.

Clean Water Act: 33 U.S.C. 1251 et. seq., as amended.

Cold water fish use: Protection of fish species (such as from the family Salmonidae) and other flora and fauna indigenous to a cold water habitat.

Complete mix: The concentration of a discharged pollutant varies by no more than 5% over the cross-sectional area of the receiving water at the point of discharge.

Conservation plan: A conservation plan is a record of land user decisions affecting land use and conservation treatment of natural resources including soil, water, air, plant, and animal resources. It is comprised of resource management systems which are groups of interrelated conservation practices (BMPs) and management measures formulated to protect, restore, or improve the resource base. Conservation plans are usually developed with the assistance of conservation districts using district BMP standards (ref: Field Office Technical Guide, USDA Soil Conservation Service).

Control structure: A dam, weir or other structure placed by man to regulate stream flow and/or create an impoundment.

Critical flow: A statistically determined minimum flow, which has a defined duration and recurrence interval.

Degradation: Any adverse change in water quality or existing uses.

Department: Delaware Department of Natural Resources and Environmental Control.

Designated uses: Categories of surface water utilization as defined in Section 10.

Diadromous: Describes fish which migrate to and from marine water and freshwater for the purpose of spawning.

Discharge length scale: The square root of the cross-sectional area of any discharge outlet.

Dispersion: A physical mixing process which results in the scattering of particles or dissolved materials in the water column.

Early life stages: Life stages for fish which include all embryonic and larval stages, and all juvenile forms to 30 days following hatching.

Ephemeral: Describes a stream which contains flowing water only for short periods following precipitation events.

Excavated waters: Waters of the State which are wholly human-created. Such waters shall include but not be limited to upland basins with surface outlets, drainage and tax ditches which are ephemeral, and dug ponds.

Existing use: Any use of any waters of the State which has, or likely has, occurred, or the water quality at any time has been satisfactory to support, on or after November 28, 1975.

Fish, aquatic life and wildlife: All animal and plant life found in Delaware, either indigenous or migratory, regardless of

life stage or economic importance.

Foam: Frothy, generally stable, whitish mass of bubbles formed on or in the water upon agitation of the water.

Fresh water: Waters of the State which contain natural levels of salinity of 5 parts per thousand or less.

Fresh water flow: That flow which represents the amount of water passing a measurement point in a non-tidal system.

Hydrolysis: A reaction of a chemical with water which results in the cleavage of a chemical bond.

Indigenous: Native, or naturally growing, existing, or produced.

Industrial Water Supply: Any water that is protected for use for industrial purposes, including non-contact cooling water.

Intake water: Water used by a facility from surface water, groundwater, commercial, or other sources.

Intermittent: Describes a stream which contains flowing water for extended periods during a year, but does not carry flow at all times.

Lethal concentration (LC): The point estimate of the toxicant concentration that would be lethal to a given percentage of test organisms during a specific period. ~~Toxicant concentration producing death of test organisms. Expressed as LC₅₀, it means the concentration (expressed in mg/L or percent effluent as appropriate) killing 50% of exposed organisms over a specified period of time (reference: Technical Support Document for Water Quality Based Toxics Control, U.S. EPA, September, 1985).~~

Marine water: Waters of the State which contain natural levels of salinity in excess of 5 parts per thousand.

Minimum Analytical Level: The lowest concentration of a substance that can be quantified within specified limits of interlaboratory precision and accuracy under routine laboratory operating conditions in the matrix of concern.

NPDES: National Pollutant Discharge Elimination System as provided in the Clean Water Act.

Natural conditions: Water quality characteristics found or expected in the absence of human-induced pollution due to point or nonpoint sources. ~~Water quality characteristics which would exist in the absence of point source discharges and with all non-point sources employing best management practices. For purposes of Section 11.5 (ERES Waters) natural conditions shall be determined for specific stream~~

~~basins through the adoption of pollution control strategies pursuant to Section 11.5(d).~~

Net advective flow: That flow which represents the difference between the amount of water passing a point in a tidal system on a flood tide and the subsequent ebb tide. It is approximately equal to the freshwater input to the system upstream of that point.

Normal Corrosion: An electrochemical reaction that results in the dissolution or removal of metal from a solid metal surface. For specific applications considered by the Department, normal corrosion rates shall be as published by the National Association of Corrosion Engineers (Reference: Corrosion Data Survey - Metals Section, National Association of Corrosion Engineers, 1985, as updated from time to time) or, for applications not specifically addressed in the above reference, such other reliable data.

Normal Erosion: The progressive loss of original material from a solid surface due to mechanical interaction between that surface and a fluid, a multi-component fluid or an impinging liquid or solid particle. (Reference: Standard Practice for Liquid Impingement Erosion Testing, ASTM Designation G73-82, 1987; or other authoritative source for materials or conditions not covered by the referenced standard).

Nuisance condition: Any condition that, as a result of pollutant addition to a stream, causes unreasonable interference with the designated uses of the waters or the uses of the adjoining land areas.

Nuisance species: Any species of fish, other animal, or plant living in or near the water, the presence of which causes unreasonable interference with the designated uses of the waters or the uses of adjoining land areas. Nuisance species include but are not limited to filamentous and blue-green algae.

Nutrient: Any element or compound essential as a raw material for organism growth and development, including but not limited to nitrogen and phosphorus.

One-hour average: The arithmetic average of the samples collected during a continuous one-hour period.

Overenrichment: Excessive addition of nutrients to a water body, resulting in deterioration of designated uses of the waters.

Perennial: Describes a freshwater stream which contains flowing water at all times.

Person: Any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation), association, state, municipality, commission, political subdivision of a state, or any interstate body.

Photolysis: A light-catalyzed degradation reaction that occurs when light strikes certain chemicals.

Pollutant: Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil and product chemicals, and industrial, municipal, and agricultural waste discharged into water.

Practicable: Available and capable of being done after taking into consideration cost and existing technology, as well as logistics in light of overall facility operations or project purposes.

Primary contact recreation: Any water-based form of recreation, the practice of which has a high probability for total body immersion or ingestion of water (examples include but are not limited to swimming and water skiing).

Propagation: Reproduction of fish, aquatic life and wildlife within their natural environment.

Public water supply: Any waters of the State designated as public water supply in Section 10.

Regulatory mixing zone: A designated, mathematically defined portion of a receiving water body, in close proximity to a discharge, in which initial dilution, dispersion, and reaction of discharged pollutants occur. See Section 6 for details on use of term.

Risk management level: That level above which an assessed risk is unacceptable from a public health perspective.

Scientifically Reasonable Request: Any request that is based upon material, substantial, and relevant information and would be accepted as reasonable by most persons trained and competent in the subject of the request.

Scum: A thin layer of impurities which forms on the surface of waters of the State.

Secondary contact recreation: A water-based form of recreation, the practice of which has a low probability for total body immersion or ingestion of water (examples include but are not limited to wading, boating, and fishing).

Sedimentation: The movement of solid particles and adsorbed chemicals toward the bottom of the water column under the influence of gravity.

Shellfish: Any species of fresh, brackish or salt water mollusk that is commonly considered to be edible. Typical edible mollusks include but are not limited to clams, mussels, oysters, scallops, and whelks.

Stream basin: A specified drainage area from which (in most cases) all waters exit through a single outlet.

Surface water: Water occurring generally on the surface of the earth.

Synergistic effect: The total effect of a mixture of pollutants which is greater than the arithmetic sum of the effects of the individual pollutants in the mixture.

Systemic toxicant: A toxic substance that has the ability to cause health effects within the body at sites distant from the entry point due to its absorption and distribution. Systemic toxicants are believed to have threshold concentrations or levels below which no health effects occur.

Tidal: Surface waters characterized by periodic rise and fall due to gravitational interactions between the sun, moon, and earth.

Toxic substance: Any substance or combination of substances including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformities in such organisms or their offspring.

Toxicity: The ability to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformities in organisms or their offspring.

Toxicity test: The means to determine the toxicity of a chemical or effluent using living organisms. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent.

True daily mean: The mean value for a parameter which accurately accounts for diurnal variations over one 24-hour period.

Volatilization: The loss of a chemical from the water column

due to mass exchange across the air-water interface.

Water distribution piping and appurtenances: Pipes and piping systems, along with integral components thereof, which are used to convey water from one point to another.

Water pollution: Man-made or human-induced alteration of the chemical, physical, biological or radiological integrity of surface waters of the State.

Waters of the State:

(1) All surface waters of the State including but not limited to:

(a) Waters which are subject to the ebb and flow of the tide, including but not limited to estuaries, bays, and the Atlantic Ocean;

(b) All interstate waters, including interstate wetlands;

(c) All other waters of the State, such as lakes, rivers, streams (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sandflats, wetlands, sloughs, or natural or impounded ponds;

(d) All impoundments of waters otherwise defined as waters of the State under this definition;

(e) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (a)-(d);

(2) Waste and stormwater treatment systems, including but not limited to treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds which otherwise meet the requirements of subsection (1) of this definition) are not waters of the State.

Waters of exceptional recreational or ecological significance (ERES): Waters which are important, unique, or sensitive from a recreational and/or ecological perspective, but which may or may not have excellent water quality. Such waters shall normally have regional significance with respect to recreational use (fishing, swimming and boating), or have significant or widespread riverine, riparian, or wetland natural areas.

Water quality: The physical, chemical, and biological characteristics of water with respect to its suitability for a particular use. For the purposes of these Standards, water quality shall be assessed in terms of chemical composition, biological integrity, and physical habitat.

Water-Quality Based: Generally refers to requirements for pollution control that are in excess of technology-based minimum requirements, including but not limited to those listed in Sections 301(b) and 306 of the Clean Water Act. Such controls are designed to reduce pollutants to a level that will allow water quality standards to be attained where said standards would not be attained through application of the

technology-based controls.

Water quality criterion: An element of water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular designated use.

Water quality standard: A rule or limit defined herein which consists of a designated use or uses for waters of the State and water quality criteria for such waters based upon such designated uses.

Wetlands: Wetlands are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Section 3: Antidegradation Policy Statement

3.1 Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Degradation of water quality in such a manner that results in reduced number, quality, or river or stream mileage of existing uses shall be prohibited. Degradation shall be defined for the purposes of this section as a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols.

3.2 Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected. In the case of waters of exceptional recreational or ecological significance, existing quality shall be maintained or enhanced. Limited degradation may be allowed if the Department finds, after full satisfaction of public participation provisions of 7 Del. Code Sections 6004 and 6006 and the intergovernmental coordination provisions of the State's continuing planning process as required in 40 CFR Part 130, that allowing lower water quality is necessary to accommodate important social or economic development, or would result in a substantial net environmental or public health benefit, in the area in which the waters are located. In allowing such degradation or lower water quality, the Department shall assure maintenance of water quality adequate for full protection of existing uses. Further, the Department shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

3.3 Where high quality waters constitute an outstanding National resource, such as waters of National parks and wildlife refuges, existing quality shall be maintained and protected.

3.4 In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Water Quality Act of 1987.

3.5 The hearing requirement imposed by Subsections 3.2 above shall not be construed to impose a requirement for an additional public hearing where such a hearing is otherwise held pursuant to law, provided the requirements of this section are hereby met.

Section 4: General Stream Criteria

4.1 All surface waters of the State (except as detailed in Sections 8 and 12) shall meet the following minimum criteria:

(a) Waters shall be free from substances that are attributable to wastes of industrial, municipal, agricultural or other human-induced origin. Examples include but are not limited to the following:

(i) Floating debris, oil, grease, scum, foam, or other materials on the water surface that may create a nuisance condition, or that may in any way interfere with attainment and maintenance of designated uses of the water,

(ii) Settleable solids, sediments, sludge deposits, or suspended particles that may coat or cover submerged surfaces and create a nuisance condition, or that may in any way interfere with attainment and maintenance of designated uses of the water,

(iii) Any pollutants, including those of a thermal, toxic, corrosive, bacteriological, radiological, or other nature, that may interfere with attainment and maintenance of designated uses of the water, may impart undesirable odors, tastes, or colors to the water or to aquatic life found therein, may endanger public health, or may result in dominance of nuisance species.

4.2 Certain waters of the State are subject to natural variations in salinity such that those waters meet the definition of fresh at some times and marine at other times. For such waters, the more stringent of fresh or marine water quality criteria or standards as detailed throughout this document shall apply at all times unless otherwise specified by the Department.

Section 5: Exceptions, Modifications and Conditions

A. Exceptions and Modifications

5.1 Request for Removal of Designated Uses: The Department shall consider scientifically reasonable requests for removal of designated uses that are not existing uses for

all or part of specific waters of the State. A request for removal of designated uses shall be deemed a scientifically reasonable request if it demonstrates that it is based upon a sound scientific rationale, supported by substantial scientific and technical evidence and analysis, as to the existence of one or more of the factors listed below. If the Department finds any request for removal to be frivolous or to be flawed as to the methods used to obtain evidence or perform analysis to such an extent that the validity of the conclusions would be challenged by most persons trained and competent in the use and interpretation of the technical or scientific methods employed, it may dismiss such request for removal without further action. If the Department determines that a scientifically reasonable request has been made, it shall make a preliminary determination as to the proposed change and hold a public hearing in accordance with 7 Del. Code Section 6006. Removals of designated use completed under this Section are deemed to be duly adopted components of the State of Delaware Surface Water Quality Standards. The Department shall consider the following factors relative to requests for removal of designated uses that are not existing uses:

(a) Where concentrations of substances existing under natural conditions prevent the attainment of the designated use;

(b) Where lack of water from natural, ephemeral, intermittent or low flow conditions or water levels, inclusive of existing or proposed discharge flows, prevents the attainment of the designated use;

(c) Human-caused conditions or sources of pollution prevent the attainment of the designated use and cannot be remedied or would cause more net environmental damage to correct than to leave in place. Evaluations conducted pursuant to this factor shall take account of both short-term and long-term effects on the environment;

(d) Dams, diversions or other types of permitted or otherwise legal hydrologic modifications prevent the attainment of the designated use;

(e) Physical conditions related to the natural features of the water body, and related to water quality, that prevent attainment of the fish and aquatic life propagation designated use;

(f) Controls more stringent than those required by Sections 301 (b) and 306 of the Clean Water Act would result in substantial and widespread adverse economic and social impact.

5.2 Request for Modification of Water Quality Criteria: The Department shall consider scientifically reasonable requests for modification of water quality criteria contained herein for portions of specific waters of the State. A request for modification shall be deemed to be a scientifically reasonable request if it is based upon a sound rationale, and supported by substantial scientific evidence and analysis. This evidence and analysis must demonstrate

the existence of site-specific differences in the chemical, physical, or biological characteristics of the surface water, and must propose alternate site-specific water quality criteria. Scientific studies for the development of these alternate criteria shall be designed and conducted in accordance with the guidelines set forth in the Water Quality Standards Handbook, (U.S. EPA, 1983) or other scientifically defensible methodologies approved by the Department. If the Department finds any request for modification to be frivolous, to be flawed as to the methods used to obtain evidence and to perform analysis to such an extent that the validity of the conclusions would be challenged by most persons trained and competent in the use and interpretation of the technical and scientific methods employed, or to contain reasonable evidence that a reduction in the number, quality, or river or stream mileage of designated uses would occur, it may dismiss such request for modification without further action. If the Department determines that a scientifically reasonable request has been made, the Department shall make a preliminary determination as to the proposed change and shall hold a public hearing in accordance with 7 Del. Code Section 6006. If the Department determines that a scientifically reasonable request has been made pursuant to this Section and such request could result in a change in discharge limits, then the public hearings for the discharge limitation change and the criteria modification shall be held concurrently. In such case, the Department shall provide separate public notices for the discharge limitation change and the criteria modification. Criteria modification completed under this Section are deemed to be duly adopted components of the State of Delaware Surface Water Quality Standards.

5.3 Exception for Pollutants in Facility's Intake Water: For the purpose of establishing discharge limitations, a facility shall not be deemed responsible for the exceedance of surface water quality criteria contained herein where the quality of a facility's intake water causes or would be expected to cause such exceedance in the receiving waters, provided that the discharger demonstrates, based upon sound rationale and supported by substantial scientific and technical evidence and analysis, that the following conditions (a) through (d), and (e) if applicable, exist:

(a) In the absence of pollutants in the facility's intake water, there would be no violation of the surface water quality criteria in the receiving waters; and

(b) No other activity, condition or method of operation, or materials used or produced at the facility which results in the introduction of pollutants into the facility's discharge significantly contributes to the violations of surface water quality criteria. Such activities, conditions or methods of operation, or materials used or produced at the facility include entrainment of pollutants previously discharged or disposed by the facility but exclude pollutants qualifying for exception under Section 5.4 hereof; and

(c) Upon statistically rigorous analysis of intake water and outfall data representative of various operating conditions and influences over time, no significant difference is found between the intake water concentrations/loadings and the outfall concentrations/loadings of pollutants for which violations of surface water quality criteria are noted; and

(d) No practicable alternative intake water of sufficient quality and quantity is available to the facility; and, if applicable-

(e) Where a significant percentage of the discharged water is comprised of water purchased from a water utility, water pumped from wells, or water pumped from a stream basin different from that receiving the discharge, the facility must demonstrate that no adverse impact on designated uses may reasonably be expected to occur as a result of the discharge.

5.4 Exception for Pollutants Corroded and Eroded from Water Distribution Piping and Appurtenances: For the purpose of establishing discharge limitations, a facility shall not be deemed responsible for the exceedance of surface water quality criteria contained herein where normal corrosion and erosion associated with the facility's piping and appurtenances causes or would be expected to cause such exceedance in the receiving water, provided that the discharger demonstrates, based upon sound rationale and supported by substantial scientific and technical evidence and analysis, all of the following:

(a) In the absence of pollutants corroded and eroded from the facility's water distribution piping and appurtenances, there would be no violation of the surface water quality criteria in the receiving water; and

(b) The normal corrosion and erosion associated with the intake water used by the facility is sufficient to cause the violation. For purposes of this determination, annual average intake water characteristics shall be used in assessing normal corrosion and erosion; and

(c) No other activity, condition or method of operation, or materials used or produced at the facility, which results in the addition to erosion and corrosion based pollutants into the facility's discharge, significantly contributes to the violations of surface water quality criteria in the receiving waters. Such activities, conditions or methods of operation, or materials used or produced at the facility include entrainment of pollutants previously discharged or disposed by the facility but exclude pollutants qualifying for exception under Section 5.3 hereof; and

(d) No practicable alternative water supply of statistically significant lower corrosivity or erosiveness is available to the facility; and

(e) No practicable alternative piping or appurtenances are available to the facility.

5.5 Temporary sources of pollution, including but not limited to stream or ditch installation, improvement,

~~maintenance, or stabilization projects, dredge operations, and waste site remediation projects, may be permitted even if degradation may be expected to occur. Permission may be granted provided that the applicant can demonstrate that after a minimal period of time the number, quality, and river or stream mileage of designated uses, and the degree of attainment of water quality standards, will return or be restored to conditions equal to or better than those existing just prior to the temporary source of pollution.~~

B. Conditions

~~5.6 The Department shall consider the information and factors listed below in determining whether a discharge causes, has the reasonable potential to cause, or contributes to an excursion of the numeric criteria set forth in these standards. Furthermore, the development of discharge limitations based upon the listed numerical criteria, or the modification thereof, shall appropriately reflect these factors.~~

~~(a) Readily available and existing physical, chemical, and biological data on the discharge and receiving water including, but not limited to, the ambient background concentration of pollutants in the receiving water and the documented condition of the natural species community in the receiving water;~~

~~(b) The relative contribution of point and nonpoint sources of pollution;~~

~~(c) Instream dilution and dispersion of the discharged pollutant(s) in the receiving water;~~

~~(d) Variability of the pollutant(s) in the discharge;~~

~~(e) Fate mechanisms of discharged pollutants within the receiving water including, but not limited to, volatilization, photolysis, hydrolysis, sedimentation, and biodegradation;~~

~~(f) Bioavailability of the discharged pollutant(s) in the receiving water as well as synergistic or antagonistic interactions; and~~

~~(g) Analytical detectability of the pollutant(s) in the discharge. Where information is available which shows that reliable quantification at concentrations less than the criteria contained herein using analytical methods required by permit, regulation, or otherwise approved by the Department is not feasible, Minimum Analytical Levels (MAL) will be used as an interim measure by the Department to determine compliance with the criteria.~~

5.73 Any person who shall apply for a permit to discharge to the waters of the State shall have the opportunity to submit an analysis to the Department at the time of application to demonstrate that said discharge will not cause, have the reasonable potential to cause, or contribute to an excursion of the receiving stream's water quality standards. The Department shall consider any analysis submitted by the applicant and also conduct its own analysis in making a determination whether the discharge

causes, has the reasonable potential to cause, or contributes to an excursion of standards. The Department's review of analyses submitted by applicants as well as analyses the Department conducts on its own shall consider the information and factors listed in Section 5.6 of these Standards. Analyses performed under Section 5.7 shall be conducted in concert with the requirements of Section 3, as applicable. A public hearing, pursuant to 7 Del. Code, Sections 6004 and 6006, may be held to gather public comment on any analysis submitted by an applicant in conjunction with Section 5.7.

5.84 Consistency with Other State and Federal Requirements: Nothing in Section 5 relieves or reduces the obligation of any person to comply with other applicable provisions of these Standards, federal or state laws and regulations.

Section 6: Regulatory Mixing Zones

The following requirements shall apply to regulatory mixing zones:

6.1 Applicability: In instances where the Department determines, based upon engineering calculations or field studies, that complete mix (as defined herein) of effluent with its receiving water is not expected to occur, the Department may allocate a designated portion of the receiving water to provide for mixing of the effluent and the receiving water. This area shall be defined as a regulatory mixing zone and shall be determined on a case-by-case basis taking into account critical flows, outfall configuration and receiving stream characteristics. A mixing zone will not be allocated in instances where the Department determines that complete mix of effluent and receiving water occurs at the point of discharge, in which case, the critical flows as provided in Section 8 shall be applied in determining if the applicable criteria are met.

6.2 Location: Regulatory mixing zones shall not impinge upon areas of special importance, including but not limited to drinking water supply intakes, nursery areas for aquatic life or waterfowl, approved or conditional shellfish areas, or heavily utilized primary contact recreation areas. Zones shall not be located in such a manner as to interfere with passage of fishes or other organisms. Shore-hugging plumes should be avoided to the maximum extent practicable. In areas where multiple discharges are located in proximity, overlapping discharge plumes may occur. In such instances, the size limitations derived under Section 6.4 may be reduced to preclude acute toxicity in the overlap areas, or to ensure an adequate zone of passage for fish.

6.3 Outfall Design: Outfalls shall be designed to provide maximum protection for humans, aquatic life, and wildlife. Surface discharges to shallow near-shore areas shall be discouraged in preference to submerged outfalls located in deep offshore areas or other alternative discharge configurations which achieve Water Quality Standards.

6.4 Size: Size of the zone shall be no larger than is necessary to provide for mixing of effluent and receiving water. The following are the maximum size limitations that shall apply:

(a) Mixing zones for non-thermal pollutants shall be designed as follows:

(i) Rivers: During critical stream flow, as detailed in Section 8 of these standards, the maximum distance to the edge of the mixing zone shall be described by:

$$x_m \leq (u W^2) / (6H \sqrt{g H S})$$

where x_m = maximum mixing zone length,

u = flow velocity for critical flow as detailed in Section 8.2© or Section 8.3,

W = width of river,

H = depth of river,

g = acceleration due to gravity, and

S = slope of river surface.

(ii) Lakes: Because of the shallow depth and small size of Delaware lakes, regulatory mixing zones shall be prohibited in these waters.

(iii) Tidal waters: For mean low water slack tide conditions, the maximum horizontal distance from the edge of the outfall structure to the edge of the mixing zone shall be no greater than twenty-five percent (25%) of the width of the tidal water at the point of discharge.

(b) Mixing zones for thermal (temperature) pollutants shall be defined as those waters between the point of discharge and the point at which the receiving water temperature criteria are met as defined in Section 11, subject to criteria (I) through (v) below. For non-tidal freshwater, mixing zones shall be designed using the critical stream flow specified in Section 8.1 or 8.3.

(i) The greatest offshore extension of the mixing zone shall not exceed 50 percent of the width of the waterbody at the point of discharge.

(ii) Thermal mixing zone cross-sectional area as measured in a vertical plane perpendicular to the receiving water flow shall not occupy more than 25 percent (25%) of the cross-sectional area of the receiving water as measured from the point of discharge to the opposite shore.

(iii) In areas where multiple discharges are located in proximity, overlapping discharges may occur. In such instances, the above size limitations shall apply to the cumulative influence of the multiple discharges.

(iv) Because of the shallow depth and small size of Delaware lakes, thermal mixing zones shall be prohibited in those waters.

(v) As an alternative to (b)(i) through (b)(iv) above, the size of the thermal mixing zone may be

determined on a site-specific basis. This determination must be based upon a sound rationale and be supported by substantial biological, chemical, physical, and engineering evidence and analysis. Any such determination must show to the Department's satisfaction that no adverse changes in the protection and propagation of balanced indigenous populations of fish, aquatic life, and wildlife, may reasonably be expected to occur. A satisfactory showing made in conformance with Section 316(a) of the Water Quality Act of 1987 shall be deemed as compliance with the requirements of this paragraph.

6.5 In-Zone and Boundary of Zone Water Quality Requirements:

(a) Regulatory mixing zones shall not be used for, or considered as, a substitute for minimum treatment technology required by the Clean Water Act or other applicable State and Federal laws or regulations.

(b) Regulatory mixing zones shall be free of the following:

(i) Materials which result in the accumulation of toxic substances in sediment, aquatic life, or food chains at levels that may be harmful to the health of humans or aquatic life;

(ii) Materials in concentrations that may settle to form deposits which smother benthic organisms, may exert significant dissolved oxygen demand, or may create a nuisance condition;

(iii) Floating debris, oil, scum, foam, and other matter in concentrations that may cause a nuisance condition;

(iv) Substances in concentrations that produce color, odor, taste, or turbidity that may lead to significant disruption of public water supply treatment systems, or may cause a nuisance condition; or

(v) Substances in concentrations that may result in a dominance of nuisance species, or may affect species diversity.

(c) No acute aquatic life criterion, as detailed in Section 9 of this document, may be exceeded at any point greater than one-tenth of the distance from the edge of the outfall structure to the boundary of the regulatory mixing zone as defined above.

(d) No acute aquatic life criterion, as detailed in Section 9 of this document, may be exceeded at any point greater than fifty (50) times the discharge length scale in any horizontal direction from the edge of the outfall structure.

(e) No acute aquatic life criterion, as detailed in Section 9 of this document, may be exceeded at any point greater than five (5) times the average water depth in the regulatory mixing zone in any horizontal direction from the edge of the outfall structure.

(f) No chronic aquatic life criterion, as detailed in Section 9 of this document, may be exceeded beyond the boundary of the regulatory mixing zone as defined above.

Section 7: Nutrients

Nutrient overenrichment is recognized as a significant problem in some surface waters of the State. It shall be the policy of this Department to minimize nutrient input to surface waters from point and human induced non-point sources. The types of, and need for, nutrient controls shall be established on a site-specific basis. For lakes and ponds, controls shall be designed to eliminate overenrichment. For tidal portions of the stream basins of Indian River, Rehoboth Bay, and Little Assawoman Bay, controls needed to attain submerged aquatic vegetation growth season (approximately March 1 to October 31) average levels for dissolved inorganic nitrogen of 0.14 mg/L as N, for dissolved inorganic phosphorus of 0.01 mg/L as P, and for total suspended solids of 20 mg/L shall be instituted. The specific measures to be employed by existing NPDES facilities to meet the aforementioned criteria shall be as specified in Section 11.5 (d) of these standards. Nutrient controls may include, but shall not be limited to, discharge limitations or institution of best management practices.

Section 8: Critical Flows

8.1 For all waters of the State, all water quality standards and criteria, except those for toxic substances, shall not apply at those times when the freshwater flow or net advective flow falls below that value that is equal to the flow of 7-day duration with recurrence interval of 10 years (generally known as the 7Q10 or the Q7-10). However, at all times all waters shall be free of materials and substances as listed in Section 6.5(b).

8.2. For all waters of the state, water quality criteria for toxic substances as specified in Section 9 shall not apply at those times when the freshwater or net advective flow falls below the following values:

(a) The harmonic mean flow 50th percentile, or median flow, for compounds which bear the abbreviation "CA" for human carcinogen;

(b) The flow of 30-day duration with recurrence interval of 5 years (generally known as the 30Q5 or Q30-5), for compounds which bear the abbreviation "ST" for human systemic toxicant;

(c) The flow of 7-day duration with recurrence interval of 10 years (generally known as the 7Q10 or the Q7-10), for compounds having a chronic toxicity criterion; and

(d) The flow of 1-day duration with recurrence interval of 10 years (generally known as the 1Q10 or the Q1-10), for compounds having an acute toxicity criterion.

8.3. These critical flows shall also be used as design flows for developing water quality-based discharge limitations for the referenced groups of parameters. The Department shall consider scientifically reasonable requests for seasonally adjusted flows or the use of dynamic modeling techniques for this purpose on a case-by-case basis.

8.4. Nothing in Section 8 shall be construed as allowing any reduction in efficiency of, or suspension of, required pollution control practices, whether applied to point or nonpoint sources, during periods when flows are less than those specified for suspension of standards applicability in Sections 8.1-8.3.

Section 9: Toxic Substances

9.1 Applicability: Criteria set forth in this section apply to all surface waters of the State, except as provided in Section 6, Regulatory Mixing Zones, Section 8, Critical Flows, and Section 12, Criteria for Low Flow Waters.

9.2 General Provisions:

(a) Waters of the State shall not exhibit acute toxicity to fish, aquatic life, and wildlife, except in special cases applying to regulatory mixing zones as provided in Section 6.

(b) Waters of the State shall not exhibit chronic toxicity to fish, aquatic life, and wildlife, except in regulatory mixing zones as provided in Section 6, at flows less than critical flows as provided in Section 8, or in low flow waters as provided in Section 12.

(c) Waters of the State shall be maintained to prevent adverse toxic effects on human health resulting from ingestion of chemically contaminated aquatic organisms and drinking water.

(d) The Department may consider synergistic, antagonistic, and additive impacts of combinations of toxicants to fish, aquatic life, and wildlife, and human health in assessing aggregate environmental impacts and mandating point and nonpoint source controls.

9.3 Specific Numerical Criteria:**(a) Aquatic Life Criteria:**

(i) Numerical criteria for the protection of aquatic life are established in Table 1 for all toxic substances for which adequate aquatic life toxicity information is available. All criteria for metals in Table 1 are in the total recoverable form, except as specifically footnoted for cyanide. For toxic substances where the relationship of toxicity is defined as a function of pH or hardness, numerical criteria are presented as an equation based on this relationship. Appropriate pH or hardness values for such criteria shall be determined on a case-by-case basis by the Department.

(ii) For toxic substances for which specific numerical criteria are not listed in Table 1, concentrations shall not exceed those which are chronically toxic (as determined from appropriate chronic toxicity data or calculated as 0.1 of LC₅₀ values) to representative, sensitive aquatic organisms, except as provided in Section 6, Regulatory Mixing Zones, Section 8, Critical Flows, or Section 12, Criteria for Low Flow Waters. Concentrations so determined shall be applied as four-day average concentrations not to be exceeded more than once in any

three-year period.

(b) Human Health Criteria

(i) Numerical criteria for the protection of human health are established in Table 2 for all toxic substances for which adequate toxicity information is available. Water quality criteria appearing in Table 2 for pollutants identified as carcinogens have been established at an upper bound worst case risk management level of one excess cancer in a population of one million (1×10^{-6}) over a 70 year lifetime. Criteria listed under the column header "Fish and Water Ingestion" apply only to surface waters of the State designated as Public Water Supply Sources in Section 10 of these Standards. Criteria listed under the column header "Fish/Shellfish Ingestion" apply only to marine surface waters of the State. Criteria listed under the column header "Fish Ingestion Only" apply to all fresh surface waters of the State not designated as Public Water Supply sources in Section 10 of these Standards.

(ii) For compounds in Table 2 which are considered as both systemic toxicants and human carcinogens, criteria based on both human health concerns are presented. In determining pollution control requirements, the more stringent criterion, after consideration of critical (design) flows in Section 8, shall be utilized.

*** PLEASE NOTE THAT TABLES 1 & 2 ARE AT THE END OF THE PROPOSED REGULATION.**

Section 10. Stream Basins & Designated Uses

The designated uses applicable to the various stream basins represent the categories of beneficial use of waters of the state which must be maintained and protected through application of appropriate criteria.

*** PLEASE NOTE THAT CHART DESIGNATING STREAM BASINS & DESIGNATED USES AND FIGURE 1 ARE AT THE END OF THE PROPOSED REGULATION.**

Section 11: Surface Water Quality Criteria

11.1 General Criteria for Fresh Waters

The following criteria shall apply outside approved regulatory mixing zones unless otherwise specified:

<u>INDICATOR</u>	<u>UNITS OF MEASURE</u>	<u>CRITERIA</u>
Temperature	Fahrenheit Degrees	(a) Maximum increase above natural conditions shall be 5°F.
		(b) No human-induced increase of the true daily mean temperature above

Dissolved Oxygen mg/L

82°F shall be allowed.

(c) No human-induced increase of the daily maximum temperature above 86°F shall be allowed.

(d) The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish

(a) Average for the June-September period shall not be less than 5.5 mg/L unless below this value due solely to natural conditions. When the average is below 5.5 mg/L due to natural conditions, the average shall not be lowered more than 0.5 mg/L due to human-induced changes.

(b) Minimum shall not be less than 4.0 mg/L unless below this value due solely to natural conditions. When the minimum is below 4.0 mg/L due to natural conditions, the average shall not be lowered more than 0.5 mg/L due to human-induced changes.

~~(c) In cases where natural conditions prevent attainment of these criteria, allowable reduction in dissolved oxygen levels as a result of human activities shall be determined through application of the requirements of Sections 3 and 5 of these Standards.~~

(d) The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.

pH Standard Units

(a) Shall be between 6.5 and 8.5 unless outside this range due

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solely to natural conditions. Where within this range, maximum human-induced change from background shall be 0.5 Standard Units; pH which results from human-induced change must remain within this range.

(b) Where pH is below 6.5 or above 8.5 due solely to natural conditions, it shall not be lowered (where below 6.5) or raised (where above 8.5) more than 0.3 Standard Units due to human-induced changes.

the treated water;

(B) Significant disruption of the treatment processes at the treatment facility; or

(C) Concentrations of toxic substances in the treated water that may be harmful to human health. The requirements of Section 9 shall apply.

(b) Cold Water Fisheries (put-and-take)

The criteria given in this section shall apply only during that period of the year designated for put-and-take trout fishing for each stream (see Section 10). The following criteria shall apply outside approved regulatory mixing zones unless otherwise specified.

Alkalinity	mg/L as CaCO ₃	Shall not be less than 20 mg/L unless due solely to natural conditions. If less than 20 mg/L due solely to natural conditions, no reduction due to human-induced changes is allowed.
Phenol	mg/L	Shall not exceed 0.3 mg/L.
4-chloro, 3-methylpheno 2-chlorophenol	lmg/L ug/L	Shall not exceed 3.0 mg/L Shall not exceed 0.1 ug/L
2,4- dichlorophenol	ug/L	Shall not exceed 0.3 ug/L
2,4- dimethylphenol	mg/L	Shall not exceed 0.4 mg/L
Pentachloro- phenol	mg/L	Shall not exceed 0.03 mg/L
Turbidity	Nephelometric or Formazin Turbidity Units	Shall not exceed natural levels by more than 10 units.

<u>INDICATOR</u>	<u>UNITS OF MEASURE</u>	<u>CRITERIA</u>
Temperature	Fahrenheit Degrees	(a) Maximum increase above natural conditions shall be 5°F. (b) No human-induced increase of the true daily mean temperature above 75°F, shall be allowed.
Dissolved Oxygen	mg/L	(a) Average shall not be less than 6.5 mg/L <u>unless below this value due solely to natural conditions. When the average is below 6.5 mg/L due to natural conditions, no reduction due to human-induced change is allowed.</u> (b) Minimum shall not be less than 5.0 mg/L <u>unless below this value due solely to natural conditions. When the minimum is below 5.0 mg/L due to natural conditions, no reduction due to human-induced change is allowed.</u>

11.2 Additional Criteria for Other Fresh Water Designated Uses

(a) Public Water Supply

Streams with a designated use of public water supply shall provide waters of acceptable quality for use for drinking, culinary or food processing purposes after application of approved treatment equivalent to coagulation, filtration, and disinfection (with additional treatment as necessary to remove naturally occurring impurities). The untreated waters are subject to the following limitations:

(i) Waters shall be free from substances (except natural impurities) that, alone or in combination with other substances, result in:

(A) Unacceptable levels of taste or odor in

11.3 General Criteria for Marine Waters

The following criteria shall apply outside approved regulatory mixing zones unless otherwise specified:

Temperature	Fahrenheit Degrees	(a) Maximum increase above natural conditions shall be 4°F from October through May. Temperature rise during June through September shall be limited by the following conditions: (i) No human-induced increase
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		<p>of the true daily mean temperature above 84°F shall be allowed; and</p> <p>(ii) No human- induced increase of the daily maximum temperature above 87°F shall be allowed.</p> <p>(b) The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.</p>		<p>range due solely to natural conditions. Where within this range, maximum human-induced change from background shall be 0.5 Standard Units; pH which results from human-induced change must remain within this range.</p> <p>(b) Where pH is below 6.5 or above 8.5 due solely to natural conditions, it shall not be lowered (where below 6.5) or raised (where above 8.5) more than 0.3 Standard Units due to human-induced changes.</p>						
Dissolved Oxygen	mg/L	<p>(a) Average for the June-September period shall not be less than 5.0 mg/L <u>unless below this value due solely to natural conditions. When the average is below 5.0 mg/L due to natural conditions, the average shall not be lowered more than 0.5 mg/L due to human-induced changes.</u></p> <p>(b) Minimum shall not be less than 4.0 mg/L <u>unless below this value due solely to natural conditions. When the minimum is below 4.0 mg/L due to natural conditions, the average shall not be lowered more than 0.5 mg/L due to human-induced changes.</u></p> <p>(c) In cases where natural conditions prevent attainment of these criteria, allowable reduction in dissolved oxygen levels as a result of human activities shall be determined through application of the requirements of Sections 3 and 5 of these Standards.</p> <p>(d) The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.</p>	<p>Alkalinity mg/L as CaCO3</p> <p>Phenol mg/L</p> <p>4-chloro, mg/L</p> <p>3-methylphenol</p> <p>2-chlorophenol ug/L</p> <p>2,4-dichlorophenol ug/L</p> <p>2,4-dimethylphenol mg/L</p> <p>Pentachlorophenol mg/L</p> <p>Turbidity Nephelometric or Formazin Units</p>	<p>Shall not be less than 20 mg/L unless due solely to natural conditions. If less than 20 mg/L due solely to natural conditions, no reduction due to human-induced changes is allowed.</p> <p>Shall not exceed 0.3 mg/L. Shall not exceed 3.0 mg/L2</p> <p>Shall not exceed 0.1 ug/L</p> <p>Shall not exceed 0.3 ug/L</p> <p>Shall not exceed 0.4 mg/L</p> <p>Shall not exceed 0.03 mg/L</p> <p>Shall not exceed natural levels by more than 10 units.</p>						
<p>11.4 Additional Criteria for Other Marine Water Designated Uses</p> <p>(a) Harvestable shellfish waters (refer to Section 10)</p> <p>Harvestable shellfish waters are waters from which shellfish may be taken and consumed; such waters are approved for shellfish harvesting by the State Board of Health. The following criteria shall apply:</p>										
<table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;"><u>INDICATOR</u></th> <th style="text-align: left;"><u>UNITS OF MEASURE</u></th> <th style="text-align: left;"><u>CRITERIA</u></th> </tr> </thead> <tbody> <tr> <td>Total coliform</td> <td>MPN/100 mL</td> <td>The coliform median</td> </tr> </tbody> </table>					<u>INDICATOR</u>	<u>UNITS OF MEASURE</u>	<u>CRITERIA</u>	Total coliform	MPN/100 mL	The coliform median
<u>INDICATOR</u>	<u>UNITS OF MEASURE</u>	<u>CRITERIA</u>								
Total coliform	MPN/100 mL	The coliform median								
pH	Standard Units	<p>(a) Shall be between 6.5 and 8.5 unless outside this</p>								

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MPN of the water shall not exceed 70/100 mL, nor shall more than 10% of the samples have an MPN in excess of 330/100 mL for a 3 decimal dilution test (or 230/100 mL where the 5 tube decimal test is used). These criteria shall be verified through sampling of those portions of the shellfish area most probably exposed to fecal contamination for those tidal and climatic conditions most likely to result in contamination of the shellfish area.

conditions, the average shall not be lowered more than 0.5 mg/L due to human-induced changes.

~~(c) In cases where natural conditions prevent attainment of these criteria, allowable reduction in dissolved oxygen levels as a result of human activities shall be determined through application of the requirements of Sections 3 and 5 of these Standards.~~

(d) The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.

(b) Delaware River/Bay (PA-DE line, RM 78.8 to Cape Henlopen, RM 0.0)

The following criteria shall apply outside approved regulatory mixing zones unless otherwise specified.

Temperature Fahrenheit
Degrees

Enterococcus Bacteria Colonies/100mL
The geometric average of a representative group of samples ~~taken under~~ conditions characterized by an absence of rainfall-induced runoff shall not exceed 10/100mL.

(a) Maximum increase above natural conditions shall be 4°F from October through May. Temperature rise during June through September shall be limited by the following conditions:

Dissolved Oxygen mg/L
(a) Minimum true daily mean shall not be less than 6.0 mg/L unless below this value due solely to natural conditions. When the average is below 6.0 mg/L due to natural conditions, the average shall not be lowered more than 0.5 mg/L due to human-induced changes. This criterion shall apply from RM 59.5 to RM 0.0 only.

(b) Minimum shall not be less than 5.0 mg/L unless below this value due solely to natural conditions. When the minimum is below 5.0 mg/L due to natural

(i) No human-induced increase of the true daily mean temperature above 84°F shall be allowed; and

(ii) No human induced increase of the daily maximum temperature above 86°F shall be allowed.

(b) The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.

(c) Lewes-Rehoboth Canal

Dissolved Oxygen mg/L (a) Average for the June-September period shall not be less than 3.0 mg/L unless below this value due solely to natural conditions. When the average is below 3.0 mg/L due to natural conditions, the average shall not be lowered more than 0.25 mg/L due to human-induced changes.

(b) Minimum shall not be less than 2.0 mg/L unless below this value due solely to natural conditions. When the minimum is below 2.0 mg/L due to natural conditions, no reduction due to human-induced change is allowed.

11.5 Criteria for Waters of Exceptional Recreational or Ecological Significance (ERES Waters)

(a) General Policy

(i) Designated ERES waters shall be accorded a level of protection and monitoring in excess of that provided most other waters of the State. These waters are recognized as special natural assets of the State, and must be protected and enhanced for the benefit of present and future generations of Delawareans.

(ii) ERES waters shall be restored, to the maximum extent practicable, to their natural condition. To this end, the Department shall, through adoption of a pollution control strategy for each ERES stream basin, take appropriate action to cause the systematic control, reduction, or removal of existing pollution sources, and the diversion of new pollution sources, away from ERES waters.

(iii) Discharges to ERES waters shall be avoided to the maximum extent practicable. In order to be permitted, a discharge must be the least environmentally damaging practicable alternative.

(iv) Prior to any public notice for a discharge permit required pursuant to 7 Del. Code Chapter 60, the Department shall make a determination that potential impacts have been avoided to the maximum extent practicable, and that remaining unavoidable impacts will be minimized to the extent appropriate and practicable. Findings shall be based upon appropriate factual determinations, evaluations, and tests with special emphasis on the persistence and permanence of the impacts. Under this provision impacts considered individually or

collectively include:

(A) Impacts of pollutants on human health and welfare;

(B) Impacts of pollutants on life stages of aquatic life and other wildlife dependent on aquatic ecosystems including, but not limited to, the transfer, concentration, and spread of pollutants or their by-products through biological, physical, and chemical processes;

(C) Impacts of pollutants on aquatic ecosystem diversity, productivity, and stability. Such impacts may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy; or

(D) Impacts on recreational, aesthetic, and economic values.

(v) Any applicant for a discharge permit required pursuant to 7 Del. Code Chapter 60 shall provide to the Department, as part of a complete application, a resource assessment tailored to the site performed by qualified professionals. Such assessments shall fully consider ecological functions and values in light of the policies set forth in these standards. Consideration shall be given to:

(A) Potential impacts on physical and chemical characteristics of the aquatic ecosystems which shall include, but not be limited to, substrates, substrate particulates/turbidity, water, current patterns, water circulation, normal water fluctuations, and salinity gradients;

(B) Potential impacts on biological characteristics of the aquatic ecosystem which shall include, but not be limited to, fish, crustaceans, mollusks and other organisms in the food web, other wildlife, and threatened or endangered species; and

(C) Potential effects on human use characteristics which shall include, but not be limited to, water supplies, recreational and commercial fisheries, water related recreation, aesthetics, parks, research sites, wildlife areas or public access areas.

(b) General Provisions

(i) In cases where natural conditions prevent attainment of applicable fresh or marine dissolved oxygen criteria, reduction in dissolved oxygen levels as a result of human activities shall be prohibited.

(ii) All point, and human induced nonpoint sources subject to control through use of best management practices or otherwise, shall be required to remove nutrients to the extent necessary to prevent excessive growth of photosynthetic organisms.

(iii) All point, and human induced nonpoint sources subject to control through use of best management practices or otherwise, shall be required to remove particulate matter to the extent necessary to minimize turbidity.

(iv) ERES waters shall not exhibit toxicity within aquatic habitats commonly used by native or

migratory aquatic, terrestrial, and avian species. Such habitats include, but may not be limited to, spawning sites, nursery areas, forage areas, and migratory pathways.

(v) ERES standards shall not apply in excavated waters. All other appropriate criteria shall remain in force for these waters.

(vi) The ERES criteria set forth in Section 11.5 supplement all other applicable requirements of these standards for ERES waters. Nothing in Section 11.5 relieves or reduces the obligation of any person to comply with other requirements of these Standards, federal or state laws and regulations.

(c) Pollution Prevention

(i) Existing Sources: For the purposes of this Section 11.5, an existing source shall be defined as a discharge for which a permit has been issued by the Department pursuant to 7 Del. Code Chapter 60 prior to January 1, 1991. In the case of a water body designated as ERES waters pursuant to Section 10 of the Standards, the Department shall not issue or reissue a permit for an existing source unless the applicant demonstrates a utilization of all economically feasible and reasonably available waste minimization practices and technologies, and the lack of feasible alternative production processes and disposal options.

The provisions of Subsections 11.5 (a)(iv), 11.5(a)(v), and 11.5 (c)(i) shall apply to existing sources on January 1, 1996, or upon adoption of a Pollution Control Strategy as provided in Section 11.5(d), whichever occurs first. In either event, the provisions of Section 11.5, including all requirements of the Pollution Control Strategy shall apply to existing sources.

(ii) Increased or New Sources: For the purposes of Section 11.5, new sources are those discharges for which a permit has not been issued pursuant to 7 Del. Code Chapter 60 prior to January 1, 1991, and increased sources are those discharges for which there is an increase in the ~~mass loading of any pollutant loading of concern~~ from any existing source. ~~For the purposes of Section 11.5, pollutants of concern are the following: oxygen-demanding substances (as may be measured by BOD and COD), nitrogen, phosphorous, bacteria, heat, and total suspended solids.~~ In the case of any waterbody designated as ERES waters pursuant to Section 10 of the Standards, the Department shall not issue or reissue a permit pursuant to 7 Del. Code Chapter 60 that allows an increase in or new source of pollutant loadings ~~of pollutants of concern~~ unless the applicant demonstrates:

(A) A need to discharge based upon a showing of the full utilization of measures, processes, methods, systems or techniques to eliminate the discharge altogether or minimize waste loadings through process changes, substitution of materials, enclosure of systems or other modifications. This can be demonstrated through the

full utilization of available waste minimization practices and technologies and the lack of feasible alternative production processes and disposal options; and

(B) That a proposed new discharge or any increase in loading of pollutants of concern of an existing discharge is consistent with the Pollution Control Strategy for the basin. Prior to adoption of a Pollution Control Strategy for a stream basin no increase in loadings of pollutants of concern shall be allowed to the stream basin from a surface water discharger unless the Secretary determines that:

(1) Such discharger offsets the increased surface water discharge of pollutants of concern within the stream basin to the maximum extent practicable in an acceptable manner;

(2) The increased loadings of pollutants of concern are necessary to prevent a substantial adverse economic or social impact at the community or regional level, and

(3) Water quality will be maintained to fully protect existing uses.

(d) Pollution Control Strategy

(i) For each stream basin designated as ERES waters pursuant to Section 10 of these standards, the Department shall develop a pollution control strategy. The strategy shall provide for the implementation of best management practices established pursuant to Subsection 11.5(e) of this section and shall include such additional requirements, measures, and practices as are necessary to:

(A) Prevent the violation of water quality standards;

(B) Protect all resources in the stream basin in a manner that allows for natural conditions to be maintained or restored; and

(C) Assure the protection and propagation of a balanced, indigenous population of fish, shellfish, aquatic vegetation, and wildlife, and provide for recreational activities in and on the water.

(ii) The strategy pursuant to this subsection shall, at a minimum:

(A) Provide an assessment of the nature, degree, and extent of pollution to waters within such stream basin, in terms of point source and non-point source contribution;

(B) Identify the aspects of the stream basin which are important, unique, or sensitive from a recreational or ecological perspective;

(C) Establish such additional indicators and criteria that satisfy the general policy and provisions established for such stream basins;

(D) Identify the means by which ERES standards will be achieved;

(E) Delineate, where appropriate, the specific point source effluent limits, best management

practices, and other controls that will be used to achieve water quality standards; and

(F) Indicate changes to be made to state plans for control of water pollution or resource management to assure implementation of the strategy.

(iii) The Department shall assure the opportunity for public participation in the development of the strategy required pursuant to this subsection and shall provide for public review and comment on the strategy in accordance with 7 Del. Code 6010.

(iv) The Department may, to the extent it deems appropriate, provide technical assistance to local governments in developing and implementing the strategy required pursuant to this subsection.

(v) The Department shall, to the extent it deems appropriate, pursue and coordinate implementation of any strategy developed pursuant to this subsection through priority application of its resources to ERES waters through its regulatory and non-regulatory programs.

(vi) The Department may, in accordance with 7 Del. Code 6010, adopt and require the use of specific combinations of methods, practices, and technologies which it deems to be most effective for controlling, reducing, or removing waste loadings to ERES waters. Such requirements shall be based upon the application of good engineering and environmental science practices and principles, achieve a high degree of reliability, and be appropriate for the categories of activity.

(e) Best Management Practices

The Department may adopt, pursuant to 7 Del. Code 6010, best management practices for selected sources of pollution to ERES waters. Best management practices identified by the Department pursuant to this subsection shall provide a standard for the control of the addition of pollutants which reflects the greatest degree of pollutant reduction achievable including, where practicable, a standard requiring no discharge of pollutants.

11.6 Criteria Governing Primary Contact Recreation

The criteria specified below are calculated using EPA's "Ambient Water Quality Criteria for Bacteria, 1986" (EPA 440/5-84-002, January, 1986). A statistically derived risk of highly credible swimming-associated gastroenteritis illness of 12.5 per 1000 swimmers (1.25%) has been utilized to calculate these criteria. The purpose of these criteria is to provide the Department with a basis to assess water quality trends and pollution control needs with regard to primary contact recreation in waters of the state. The criteria ~~are valid only under conditions characterized by the absence of rainfall-induced runoff, and~~ apply to enterococcus bacteria determined by the Department to be of human origin based on best scientific judgment using available information. Swimming in waters affected by runoff during runoff periods may present a risk of highly credible gastroenteritis illness in excess of 12.5 per 1000 swimmers, and is not

recommended. The following criteria shall apply:

Enterococcus Bacteria Colonies/100mL

For all fresh waters of the state, the geometric average of a representative group of samples ~~taken under conditions characterized by the absence of rainfall-induced runoff~~ shall not exceed 100/100 mL.

Enterococcus Bacteria Colonies/100mL

For all marine waters of the state, the geometric average of a representative group of samples ~~taken under conditions characterized by an absence of rainfall-induced runoff~~ shall not exceed 10/100 mL.

Section 12: Criteria for Low Flow Waters

12.1 A low flow water is one in which the 7Q10 freshwater inflow is less than 0.1 cfs. The following criteria shall apply to discharges into low flow waters:

(a) Where information is available for the receiving water which indicates that, because of low flow, ~~absent the discharge,~~ it would not support designated uses, then numeric criteria shall not apply ~~at the point of discharge~~. The numeric criteria shall then apply at the closest downstream point where uses could reasonably be expected to occur ~~in the absence of the discharge as determined by the Department~~.

(b) The discharge shall not add:

(i) Materials which result in the accumulation of toxic substances in sediment, aquatic life or food chains at levels that may be harmful to the health of humans or aquatic life;

(ii) Materials in concentrations that may settle to form deposits which smother benthic organisms, may exert significant dissolved oxygen demand, or may create a nuisance condition;

(iii) Floating debris, oil, scum, foam, and other matter in concentrations that may cause a nuisance condition;

(iv) Substances in concentrations that produce color, odor, taste or turbidity that may lead to significant disruption of a public water supply treatment systems, or may cause a nuisance condition; or

(v) Substances in concentrations that may result in a dominance of nuisance species, or may affect species diversity.

12.2 The applicant for discharge shall bear the burden of showing, to the satisfaction of the Department, that the provisions of 12.1 (a) and 12.1 (b) above are met.

12.3 Any application for new or increased discharge to a low flow water must include a thorough evaluation of alternate discharge configurations, including but not limited to water conservation, relocating the outfall to a more suitable location, conveying the wastewater to other available treatment facilities, or utilizing land treatment.

Alternatives which do not include discharge must be used wherever technologically feasible and cost-effective (notwithstanding other requirements of these or other applicable regulations).

Section 13: Separability

Should any section, paragraph, or other part of this document be declared invalid for any reason, the remainder shall not be affected.

TABLE 1

WATER QUALITY CRITERIA FOR PROTECTION OF AQUATIC LIFE

(All Values Are Listed or Calculated in Micrograms Per Liter)

Parameter	Fresh Acute Criterion	Fresh Chronic Criterion	Marine Acute Criterion	Marine Chronic Criterion
Aldrin	3.0	—	1.3	--
Aluminu	750.	87.	--	--
Arsenic (III)	360.	190.	69.	36.
Cadmium	$e^{(1.128[\ln(\text{Hd})]-3.828)}$	$e^{(0.7852[\ln(\text{Hd})]-3.490)}$	43.	9.3
Chlordane	2.4	0.0043	0.09	0.004
Chlorine	<u>19</u>	11.	<u>13</u>	7.5
Chlorpyrifos (Dursban)	0.083	0.041	0.011	0.0056
Chromium (III)	$e^{(0.8190[\ln(\text{Hd})]+3.688)}$	$e^{(0.8190[\ln(\text{Hd})]+1.561)}$	—	--
Chromium (VI)	16.	11.	1,100.	50.
Copper	$e^{(0.9422[\ln(\text{Hd})]-1.464)}$	$e^{(0.8545[\ln(\text{Hd})]-1.465)}$	2.9	--
Cyanide ¹	22.	5.2	1.0	--
DDT and Metabolites	1.1	0.0010	0.13	0.0010
Demeton	—	0.10	--	0.10
Dieldrin	2.5	0.0019	0.71	0.0019
Endosulfan	0.22	0.056	0.034	0.0087
Endrin	0.18	0.0023	0.037	0.0023
Guthion	--	0.01	—	0.01
Heptachlor	0.52	0.0038	0.053	0.0036
Hexachlorocyclohexane	2.0	0.08	0.16	--
Iron	--	1000.	--	--
Lead	$e^{(1.273[\ln(\text{Hd})]-1.460)}$	$e^{(1.273[\ln(\text{Hd})]-4.705)}$	140.	5.6

Malathion	--	0.1	--	0.1
Mercury (II)	2.4	0.012	2.1	0.025
Methoxychlor	--	0.03	--	0.03
Mirex	--	0.001	--	0.001
Nickel	$e^{(0.8460[\ln(\text{Hd})]+3.3612)}$	$e^{(0.8460[\ln(\text{Hd})]+1.1645)}$	75.	8.3
Total PCBs	2.0	0.014	10	0.03
Parathion	0.065	0.013	--	--
Pentachlorophenol	$e^{[1.005(\text{pH})-4.830]}$	$e^{[1.005(\text{pH})-5.290]}$	13.	7.9
Selenium	20	5.0	300.	71.
Silver	$e^{(1.72[\ln(\text{Hd})]-6.52)}$	0.12	2.3	--
Toxaphene	0.78	0.0002	0.21	0.0002
Zinc	$e^{(0.8473[\ln(\text{Hd})]+0.8604)}$	$e^{(0.8473[\ln(\text{Hd})]+0.7614)}$	95.	86.

Notes:

¹ Cyanide measured as free cyanide at the lowest pH occurring in the receiving water, or cyanide amenable to chlorination.

Specific numerical acute criteria as presented in this table are applied as one-hour average concentrations not to be exceeded more than once in any three-year period. Specific numerical chronic criteria as presented in this table are applied as four-day average concentrations not to be exceeded more than once in any three-year period.

ln = natural log base e

e = 2.71828

Hd = hardness is expressed as mg/L as CaCO₃

pH is expressed as Standard Units

Example calculation: Fresh acute criterion for silver at

hardness of 50 mg/L. Criterion in ug/L = e raised to the [1.72 ln(50) - 6.52] power. This is equal to e to the 0.21 power, or 1.23 ug/L.

TABLE 2
WATER QUALITY CRITERIA FOR PROTECTION OF
HUMAN HEALTH
(All Values Are Listed in Micrograms Per Liter Unless
Noted Otherwise)

	Freshwater Fish Ingestion Only	Fish and Water Ingestion	Marine/Estuarine Fish/Shellfish Ingestion	Human Health
Acrolei	1.0 mg/L	360.	140.	ST
Acrylonitrile	0.83	0.06	0.12	CA
Aldrin	0.17 ng/L	0.16 ng/L	0.02 ng/L	CA
Aldrin	0.086	0.080	0.012	ST
Antimony	5.4 mg/L	14.	760.	ST
Arsenic**		50. (MCL)		CA
Barium**		1.0 mg/L (MCL)		ST

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Benzene	89.	1.2	12.5	CA
Benzidine	0.67 ng/L	0.12 ng/L	0.09 ng/L	CA
Benzidine	460.	85.	64.	ST
Benzo (A) Pyrene (3,4 Benzopyrene)	0.037	0.0027	0.0053	CA
Beryllium	0.08	0.0038	0.011	CA
Beryllium	3.5 mg/L	170.	500.	ST
Bromoform (Tribromomethane)	266	5.6	37.4	CA
Bromoform (Tribromomethane)	34. mg/L	690.	4.7 mg/L	ST
Cadmium**		10.(MCL)		ST
Carbon Tetrachloride (Tetrachloromethane)	5.5	0.26	0.78	CA
Carbon Tetrachloride (Tetrachloromethane)	500.	23.	70.	ST
Chlordane	0.73 ng/L	0.72 ng/L	0.13 ng/L	CA
Chlordane	0.057	0.056	0.008	ST
Chlorobenzene	26.1 mg/L	680.	3.7 mg/L	ST
Chloroethyl Ether (Bis-2 Chloroalkyl Ether)	1.77	0.031	0.25	CA
Chloroform (Trichloromethane)	368.	5.7	52.	CA
Chloroform (Trichloromethane)	22. mg/L	340.	3.2 mg/L	ST
Chromium**		50. (MCL)		ST
Chromium (Hexavalent)	4.2 mg/L	170.	590.	ST
Chromium (Trivalent)	840. mg/L	34. mg/L	120. mg/L	ST
Cyanide	270. mg/L	700.	38. mg/L	ST
DDT and Metabolites	0.74 ng/L	0.73 ng/L	0.10 ng/L	CA
DDT and Metabolites	0.13	0.12	0.018	ST
Dibenzo (A,H) Anthracene Anthracene	0.037	0.0027	0.0053	CA
1,2 Dichlorobenzene	21.8 mg/L	2.8 mg/L	3.1 mg/L	ST
1,3 Dichlorobenzene	4.3 mg/L	410.	600.	ST
1,4 Dichlorobenzene**	24. mg/L	75. (MCL)	3.4 mg/L	ST
3,3 Dichlorobenzidine	0.025	0.011	0.0036	CA
1,2 Dichloroethane	123.	0.38	17.	CA

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1,1 Dichloroethylene	4.	0.058	0.56	CA
1,1 Dichloroethylene	20. mg/L	310.	2.8 mg/L	ST
1,2 Trans-dichloroethylene	130. mg/L	700.	19. mg/L	ST
Dichloromethane	2.0	4.7	277.	CA
Dichloromethane	810. mg/L	2.1 mg/L	110 mg/L	ST
2,4 Dichlorophenoxyacetic acid (2,4-D)**		100. (MCL)		ST
1,3 Dichloropropene	392.	0.19	5.5	CA
1,3 Dichloropropene	2.0 mg/L	10.0	280.	ST
Dieldrin	0.18 ng/L	0.17 ng/L	0.025 ng/L	CA
Dieldrin	0.14	0.13	0.02	ST
Diethylphthalate	148. mg/L* mg/L*	24.0 mg/L	21.0 mg/L	ST
Dimethylphthalate	3,700. mg/L	320. mg/L	530. mg/L	ST
2, 4 Dinitrotoluene	96.	0.94	13.	CA
2, 4 Dinitrophenol	13.0 mg/L	70.	1.9 mg/L	ST
Dioxin (2,3,7,8-TCDD)	0 .000017 ng/L	0.000016 ng/L	0.0000024 ng/L	CA
1, 2 Diphenylhydrazine	0.68	0.041	0.095	CA
Endosulfan	2.5	1.0	0.35	ST
Endrin**	1.0	0.2 (MCL)	0.14	ST
Ethylbenzene	35. mg/L	3.2 mg/L	5.0 mg/L	ST
Fluoranthene	67.	50.	9.4	ST
Fluoride**		1.8 mg/L (MCL)		ST
Heptachlor	0.27 ng/L	0.26 ng/L	0 .037 ng/L	CA
Heptachlor	0.60	0.58	0.084	ST
Hexachloroethane	11.	2.	1.6	CA
Hexachloroethane	150.	29.	22.	ST
Hexachlorobenzene	0.88 ng/L	0.85 ng/L	0.12 ng/L	CA
Hexachlorobenzene	1.2	1.2	0.17	ST
Hexachlorobutadiene	62.1	0.44	8.7	CA
Hexachlorobutadiene	2.0 mg/L*	69.	1.3 mg/L	ST
Hexachlorocyclohexane (Gamma-Lindane)	0.08	0.02	0.011	CA
Hexachlorocyclohexane (Gamma-Lindane) **	31.	4.0 (MCL)	4.4	ST
Hexachlorocyclohexane (Alpha)	0.016	0.0041	0.0023	CA

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Hexachlorocyclohexane (Beta)	0.058	0.014	0.0081	CA
Hexachlorocyclopentadiene	1.8 mg/L*	240.	1.8 mg/L*	ST
Isophorone	500. mg/L	5.2 mg/L	71. mg/L	ST
Lead**		50.(MCL)		CA
Mercury** (Inorganic)	7.1	2.0 (MCL)	1.5	ST
Methoxychlor**		100.(MCL)		CA
Nickel	5.7 mg/L	620.	810.	ST
Nitrate-Nitrogen**		10. mg/L (MCL)		ST
Nitrobenzene	2.2 mg/L	17.0	320.	ST
Nitrosodimethylamine-N	10.	0.68 ng/L	1.4	CA
Nitrosodiphenylamine-N	20.	5.3	2.8	CA
Nitrosodipropylamine-N	35.	0.005	4.9	CA
PCBs (1242,1254,1221, 1232, 1248, 1260, 1016)	0.056 ng/L	0.055 ng/L	0.0079 ng/L	CA
(Bis-2) Ethyl Hexyl Phthalate	7.4	1.9	1.	CA
(Bis-2) Ethyl Hexyl Phthalate	400.*	400.*	290.	ST
Di-N-Butyl Phthalate	13. mg/L*	2.8 mg/L	2.1 mg/L	ST
Selenium**	1.1 mg/L	10. (MCL)	160.	ST
Silver**	0. mg/L	50. (MCL)	5.7 mg/L	ST
1,1,2,2 Tetrachloroethane	13.5	0.17	1.9	CA
Tetrachloroethylene	4.3 mg/L	320.	610.	ST
Thallium	60.	14.	8.4	ST
Toluene	370. mg/L	10. mg/L	52. mg/L	ST
Total Trihalomethanes**		100.(MCL)		CA
Toxaphene	0.93 ng/L	0.91 ng/L	0.13 ng/L	CA
1,2,4 Trichlorobenzene	19. mg/L	680.	2.7 mg/L	ST
1,1,1 Trichloroethane**	200. mg/L	200. (MCL)	28. mg/L	ST
1,1,2 Trichloroethane	52.5	0.61	7.4	CA
1,1,2 Trichloroethane	11. mg/L	140.	1.5 mg/L	ST
Trichloroethylene	115.	3.1	16.	CA
2,4,6 Trichlorophenol	4.5	1.3	0.63	CA
2,4,5 Trichlorophenoxypropionic acid (2,4,5-TP-Silvex)**		10. (MCL)		ST
Vinyl Chloride	677.	2.1	95.	CA

NOTES:mg/L= milligrams per liter

ng/L = nanograms per liter

CA = carcinogen

ST = systemic toxicant

The columns labeled "Fish and Water Ingestion" shall apply only to waters of the State designated Public Water Supply sources in these standards.

The column labeled "Fish Ingestion Only" shall apply to all fresh waters of the State not designated Public Water Supply sources in this document.

The column labeled "Fish/Shellfish Ingestion" shall apply only to marine waters of the State.

* Calculated solubility of compound in water is less than criterion; therefore, solubility limit calculated at 25⁰ C and 1 atm is substituted.

** Values shown under header "Fish and Water Ingestion" are Primary Maximum Contaminant Levels (MCLs) as given in the State of Delaware Regulations Governing Public Drinking Water Systems as amended May 19, 1989.

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Basin boundaries to be used in determination of standards applicability are on file with the DNREC Division of Water Resources.

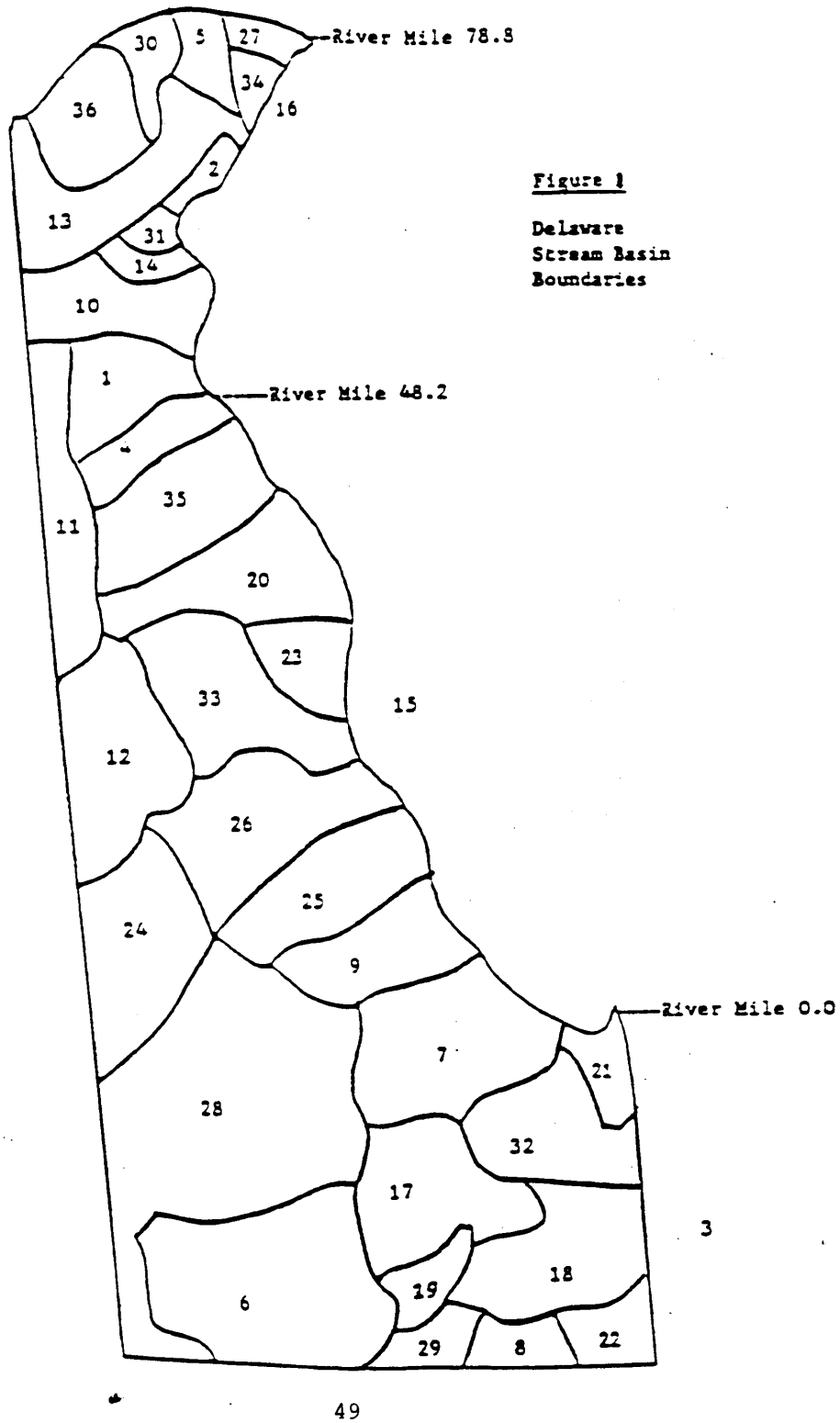


Figure 1
Delaware
Stream Basin
Boundaries

- (a) Designated use for freshwater segments only. does not include water explicitly associated with any other designated stream basis (e.g., Delaware Bay does not include St. Jones River).
- (b) Designated use from March 15 to June 30 on:
1. Beaver Run from PA/DE line to Brandywine.
2. Wilson Run Route 92 through Brandywine Creek State Park. (n) The Delaware Bay extends from River Mile 0.0 to 48.2 as shown on Figure 1.
- (c) Designated use from March 15 to June 30 on: Christina River from MD/DE line through Rittenhouse Park. (o) The Delaware River extends from River Mile 48.2 to 78.8 as shown in Figure 1.
- (d) Designated use for marine water segments only. x this designated water use to be protected throughout entire stream basin
- (e) Designated use year round on: Red Clay Creek from PA/DE line to the concrete bridge above Yorklyn - water uses not designated in the stream basin
- (f) Designated use year round on:
1. White Clay Creek from the PA/DE line to the dam at Curtis Paper. * waters of exceptional recreational or ecological significance
Designated use from March 15 to June 30 on:
2. Mill Creek from Brackenville Road to Route 7. ** includes shellfish propagation
3. Pike Creek from Route 72 to Henderson Road.
- (g) Designated use from PA/DE line to the dam at Curtis Paper.
- (h) Designated use from PA/DE line to Wilmington city line.
- (i) Goal use - not currently attained.
- (j) Parts of these waters are APPROVED shellfish harvesting areas. Information on areas where shellfish may be taken should be obtained from the Shellfish & Recreational Waters Branch, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control ~~Division of Public Health, Department of Health and Social Services, Dover, Delaware, or from Appendices to the Shellfish Regulations.~~
- (k) Includes Primehook Creek watershed.
- (l) Includes assorted minor watersheds not explicitly associated with any other designated stream basin.
- (m) The specific portions of the Atlantic Ocean and the Delaware Bay for which the ERES designation shall apply shall be delineated in the Pollution Control Strategy developed for each of those waterbodies. The ERES designation for the Atlantic Ocean and the Delaware Bay

STATE FIRE PREVENTION COMMISSION

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

DELAWARE STATE FIRE PREVENTION REGULATIONS

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 Del. C. §6603 and 29 Del. C. 101 on Tuesday, June 22, 1999, at 2:00 P.M. and 7:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following Regulations.

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904, or the Administrative Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located in the First Federal Plaza Building, 704 King Street, Suite 200, Wilmington, Delaware, 19801, and Road 321, Georgetown, Delaware, 19947.

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing, and the Commission will consider those responses received before 10: a.m. on June 22, 1999, or by

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offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charge for copies of the proposed changes.

Part 1, Annex A. This section is where we adopt by reference the various NFPA fire codes and standards. 51 of these are now more recent than we currently reference. Our intent is to change the "date of publication" referenced so that we are working off the most current standards.

513	1994	1998
650	1990	1998
651	1993	1998
654	1994	1997
664	1993	1998
780	1995	1997
1122	1994	1997
1124	1995	1998
1127	1995	1998
1962	1993	1998
1963	1993	1998

NFPA Code #	Current Referenced Date of Publication	Proposed Date of Publication
10	1994	1998
11	1994	1998
11a	1994	1998
12	1993	1998
12a	1992	1997
13	1996	1999
13R	1996	1999
17	1994	1998
17a	1994	1998
20	1996	1999
22	1996	1998
24	1995	1998
25	1995	1998
30b	1994	1998
37	1994	1998
40	1994	1997
52	1995	1998
54	1996	1999
55	1993	1998
58	1995	1998
59	1995	1998
70	1996	1998
72	1996	1999
79	1994	1997
88a	1995	1998
88b	1991	1997
90a	1996	1999
90b	1996	1999
96	1994	1998
220	1995	1999
221	1994	1997
231	1995	1999
231c	1996	1999
231d	1994	1998
303	1995	1998
306	1993	1997
480	1995	1998
490	1993	1998
496	1993	1998
501a	1992	1997

Part I, Annex B, Page 44-46, This section currently modifies NFPA 58 as it relates to bulk storage of LP Gas Systems. Our intent is to change one specific section (3-10.4.3.(a)(i)) which deals with water protection of LP tanks which employ a total product containment system plus an appendix note A-3-10.4.3 which is simply a clarification.

Current section 3-10.4.3(a)(i) reads: Non-automated water monitor nozzles of sufficient number and specification to saturate at least seventy-five percent (75%) of the total container surface, including the entire surface of each end of the container

Proposed section 3-10.4.3(a)(i) to read: Non-automated water monitor nozzle(s) of sufficient number and specification to saturate all areas of the tank which might be exposed to fire from piping, valves and pumps associated with filling or transfer operations (typically referred to as the "Business End" of the tank and including railroad tank car transfer points).

Current section A-3-10.4.3 reads: Total Product Containment System. A total product containment system includes emergency internal and shutoff valves having remote and thermal capability and pullaway protection, such installation in accordance with standards and specifications of the American Petroleum Institute (API).

Proposed section A-3-10.4.3 to read: Same as current with the following additional at the endsuch installation in accordance with standards and specifications of both the American Petroleum Institute (API) and NFPA 58.

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
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF LANDSCAPE ARCHITECTS**
Statutory Authority: 24 Delaware Code,
Section 205(a)(1) (24 **Del.C.** 205(a)(1))

for May 12, 1999. Notice of the hearing was published in the Delaware *Register of Regulations* at 2:10 *Del.R.* 1697-1698 (April 1, 1999) and in the *News Journal* and the *Delaware State News*, two newspapers of general circulation, all in accordance with 29 *Del.C.* §10115. The public hearing was held as noticed on May 12, 1999 and the Board deliberated on the proposed changes at its regular meeting immediately following the Public Hearing.

IN RE: |
ADOPTION OF RULES AND |
REGULATIONS |

Evidence and Information Submitted at Public Hearing

The Board received no comments in response to the notice of its intention to revise the Rules and Regulations. Additionally, no member of the public attended the May 12, 1999 Public Hearing.

ORDER ADOPTING RULES AND REGULATIONS

AND NOW, this 12th day of May, 1999, in accordance with 29 *Del.C.* §10118 and for the reasons stated hereinafter, the Board of Landscape Architecture of the State of Delaware (hereinafter "the Board") enters this Order adopting Rules and Regulations.

Findings of Fact and Conclusions

As outlined in the preceding sections, the public was given the required notice of the Board's intention to revise its regulations and an adequate opportunity to provide the Board with comments on the proposed changes. The Board further concludes that its consideration of the proposed Rules and Regulations is within the Board's authority to promulgate regulations under 24 *Del.C.* §205(a) and other specific statutory provisions, as follows:

The proposed change to Section 6 of the Regulations is a complete rewriting of the existing rule, which now allows a

Nature of the Proceedings

Pursuant to its authority under 24 *Del.C.* §205(a), the Board proposed to adopt changes and additions to its existing Rules and Regulations relating to the period of time in which licenses can be renewed after the end of the licensure period and to the deadline for submitting continuing education hours prior to the time for renewal.¹ The public hearing on the Board's proposal was scheduled

1. The Board's immediately prior Rules and Regulations were effective February 24, 1997.

licensee one year in which to renew a license after it expires. Section 210(b) of the Board's enabling statute¹ authorizes the Board to establish the time in which renewals may occur after a practitioner fails to renew. The proposed rule provides that renewal applications must be submitted on or before the end of the current licensing period. The proposal also adds a hardship exception which is not part of the current regulation; this exception allows licensees to request additional time to renew under certain conditions. The Board concludes that the proposed change is necessary to reduce the increasing number of late renewals presented to the Board and to allow the Board to more efficiently and promptly process renewal applications. The current one-year period for late renewals allows licensees to delay completing the required continuing education credits necessary for renewal and thus, rewards them for renewing their licenses well after the natural expiration date. The Board finds that eliminating the period for late renewals will encourage licensees to renew on time and help assure the public that each practitioner is current in their skills and meets minimum standards of competency. At the same time, the proposed hardship exception will afford practitioners who are faced with unusual or difficult circumstances additional time to complete their renewal requirements.

The Board also proposed to add a new subsection (c) to Rule 8. The new subsection would require licensees to submit proof of their continuing education hours by November 1 of the year before the license is to expire. The proposed section also clarifies that a license will not be renewed until the Board approves the continuing education documentation. Together with the revision to Section 6, proposed Section 8(c) will allow the Board approximately three months to review continuing education materials and documentation submitted as a prerequisite to license renewal. Currently, many licensees submit their documentation shortly before the end of the licensure period, causing the Board to review substantial numbers of renewal applications and documents at its last meeting before the end of the licensing period. By requiring licensees to file their documentation several weeks before the end of the biennial period, the Board will be able to more efficiently, thoroughly and fairly review the submissions. In addition, the new rule will allow licensees time to submit additional continuing education hours in those cases where the Board does not approve the original submissions.

Finally, the Board proposes to correct an error in Section 8(a)2(ii) of its Rules and Regulations, by deleting the words "three months" in the first sentence and retaining the word "calendar," to clarify that the Board will meet at least once each quarter of the calendar year. The Board finds

that including both phrases in the original Rule was a typographical error and takes this opportunity to correct it.

In summary, the Board concludes that the proposed additions and changes to Sections 6 and 8 of its Rules and Regulations are necessary for the enforcement of 24 *Del.C.* Chapter 2 and for the full and effective performance of the Board's duties under that Chapter. The Board also finds that adopting the regulations as proposed is in the interests of the citizens of the State of Delaware and is necessary to protect the general public, particularly those people receiving landscape architecture services. The Board, therefore, adopts the proposed changes to regulation Sections 6 and 8, all as set forth in Exhibit "A" attached hereto.

ORDER

NOW, THEREFORE, by unanimous vote of a quorum of the Board of Landscape Architecture, IT IS HEREBY ORDERED THAT:

1. Proposed Rule and Regulation, Section 6, "Late Renewal of Licenses," is *approved and adopted* in the exact text attached hereto in Exhibit "A". This Section replaces in its entirety Section 6 of the Board's Rules and Regulations adopted on February 24, 1997 and any changes subsequent thereto.
2. Proposed Rule and Regulation, Section 8(c), is *approved and adopted* in the exact text attached hereto in Exhibit "A". Existing subsections 8(c) through (f), as adopted on February 24, 1997, are retained and reordered as subsections 8(d) through 8(g), respectively.
3. Rule and Regulation Section 8(a)2(ii), as adopted on February 24, 1997, is *amended* by deleting the words "three months" in the first sentence thereof. The remainder of this Section remains as adopted on February 24, 1997.
4. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 *Del.C.* §10118(e).
5. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

BY ORDER OF THE BOARD OF LANDSCAPE ARCHITECTURE:

DENISE HUSBAND, RLA, President
 MARLENE BRADLEY, Secretary
 WAYNE ZOSKI, RLA
 PAUL DAVIS, Public Member
 PAUL DEVILBISS, RLA

***Please note that no changes were made to the regulation as originally proposed and published in the April 1999 issue of the Register at page 1697 (2:10 Del.R. 1697). Therefore, the final regulation is not being republished. Please refer to the April 1999 issue of the Register or contact the Board of Landscape Architects.**

1. 24 *Del.C.* §200, *et. seq.*

DEPARTMENT OF EDUCATION

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

**Regulatory Implementing Order
Necessary and Legal Absences****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary seeks the consent of the State Board of Education to repeal the regulation entitled Necessary and Legal Absences found on page 2 of Appendix A in the Handbook for K-12 Education. The repeal is recommended because 14 Del. C., Section 27 gives local district Boards of Education and their Superintendents the responsibility of setting and enforcing the rules and regulations for school absences.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on April 7, 1999, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. FINDINGS OF FACT

The Secretary finds that it is necessary to repeal this regulation because 14 Del. C., Section 27, gives local district Boards of Education and their Superintendents the responsibility of setting and enforcing the rules and regulations for school absences.

III. DECISION TO REPEAL THE REGULATION

For the foregoing reasons, the Secretary concludes that it is necessary to repeal the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby repealed.

IV. TEXT AND CITATION

The text of the regulation repealed hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be removed from the Handbook for K-12 Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on May 20, 1999.

IT IS SO ORDERED this 20th day of May, 1999.

DEPARTMENT OF EDUCATION

Dr. Iris T. Metts, Secretary of Education

Approved this 20th day of May, 1999.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

REPEAL OF REGULATION ON NECESSARY AND LEGAL ABSENCES

The Secretary seeks the consent of the State Board of Education to repeal the regulation entitled Necessary and Legal Absences found on page 2 of Appendix A in the Handbook for K-12 Education. The repeal is recommended because 14 Del. C., Section 27 gives local district Boards of Education and their Superintendents the responsibility of setting and enforcing the rules and regulations for school absences. The repeal of the regulation was recommended by the State Board of Education during their discussion on amending the regulation.

EXHIBIT B**~~NECESSARY AND LEGAL ABSENCES FROM THE RULES AND REGULATIONS OF THE STATE BOARD OF EDUCATION~~**

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

- ~~1. Illness of child, attested, if necessary by a physician's certificate.~~
- ~~2. Contagious disease in the home of the child, subject to regulations of the Division of Public Health.~~
- ~~3. Pregnancy of the student (14 *Del. C.*, §122(b)(11).~~
- ~~4. Children are elsewhere receiving regular and thorough instruction during at least 180 days in the subjects prescribed for the public schools of the State in accordance with 14 *Del. C.*, §2702.~~
- ~~5. Death in the child's own home, or in the home of the grandparents, time not to exceed one week. Funerals of other relatives or close friends, not to exceed one day, if in the locality; or three days, if at some distance or outside of the state.~~
- ~~6. Provisions of §2705, Title 14 of the *Delaware Code* describe exclusions which may apply to some handicapped children. Specific guidelines can be found in the~~

~~Administrative Manual: Programs for Exceptional Children, March, 1987.~~

~~7. An amendment to §2706, Title 14 of the Delaware Code describes truancy cases.~~

~~8. Legal business.~~

~~9. Suspension or expulsion from school for misconduct. Suspension is the exclusion of a pupil from school for a short and definite period of time. Suspension is a temporary measure for handling a behavior problem and may be delegated to the chief school officer or a building principal. Expulsion is the exclusion of a pupil from school on a permanent basis or for an indefinite period of time. Expulsion can be authorized only by the local district board. The designation of suspension and expulsion as a "Necessary and Legal Absence" applies specifically to 14 Del. C., §2702 and §2706, and such authorized absence may not be construed to represent approval for the make-up of classwork missed due to suspension or expulsion.~~

~~10. The Superintendent of Schools shall have the authority for determining and approving other necessary and legal absences as deemed valid within the enforcement provisions of the compulsory attendance law.~~

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 512(1) (31 Del.C. 512(1))

IN THE MATTER OF:

REVISION OF THE REGULATIONS
OF THE MEDICAID/MEDICAL
ASSISTANCE PROGRAM

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update provider policies. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the April 1999 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 1999, at which time the Department would receive

information, factual evidence and public comment to the said proposed changes to the regulations.

Written comments were received from the Governor's Advisory Council for Exceptional Citizens related to the statement signed by Medicaid applicants/recipients. Consideration was given to these comments and a response sent (summary attached). A minor typographical error was corrected and the revised section follows.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 1999 Register of Regulations should be adopted as amended.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective June 10, 1999.

5/10/99

Gregg C. Sylvester
Secretary

Summary of comments

The Governor's Advisory Council for Exceptional Citizens objected to the statements to be signed by recipients saying:

- "...to have access to all medical and school-based health and related services records" because they feel that this gives access to non-medical school records.

Medicaid's response is:

The "related services" is a term that was added at the request of the Department of Education and refers to health-related services only. It is language used in the Individuals with Disabilities Education Act (IDEA). We do not intend to delete this reference, especially in light of the recent Supreme Court decision issued in March 1999 under Cedar Rapid School District v. Garret F.

- "...of every member of my household who is eligible for Medical Assistance" - saying that this is over broad and should be limited to the applicant and his/her dependants.

Medicaid's response is:

The language referring to "every member of my household who is eligible for Medicaid" must remain because the applicant who is signing this statement is the responsible person making application for everyone else in the Medicaid-eligible household component, and is held responsible for all information provided on behalf of those individuals, whether they are dependents of the signer or not.

Both of the above statements have been in the section of the form signed by applicants for some time and are just being added to the Medicaid provider manual so that the provider will have the information to release records. These were not new statements added and are not new policies.

REVISION TO CORRECT TYPOGRAPHICAL ERROR:*

The DMAP and its authorized representatives have the right to access any information directly related to the administration of the Delaware Medical Assistance Program. This is a contractual obligation of the provider. Also, at the time of application, clients sign the following statement:

“I authorize the Department of Health and Social Services, or its representatives, to have access to all medical records that are related to payment of medical services by Medicaid.”

I agree to allow the Department of Health and Social Services, directly or through its agents or the Diamond State Health Plan or the Delaware Healthy Children program, to have access to all medical and school-based health and related services records of every member of my household who is eligible for Medical Assistance [H] in order to administer the Medical Assistance Program., coordinate care, determine medical necessity, and evaluate or pay for pending or incurred medical services.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 512(1) (31 Del.C. 512(1))

IN THE MATTER OF: |

REVISION OF THE REGULATIONS |
OF THE FOOD STAMP PROGRAM |

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (DHSS) initiated proceedings to amend existing regulations contained in the Division of Social Services Manual Section 9018, 9060, and 9068. These changes are initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

On March 1, 1999, the DHSS published in the Delaware Register of Regulations (pages 1447-1449) its notice of proposed regulation changes. The notice requested that written materials and suggestions by interested persons for related to this proposal be forwarded by March 31, 1999, at

which time the Department would review information, factual evidence and public comment to the said proposed changes to the regulations.

It was determined that no written materials or suggestions had been received from any individual or the public.

FINDINGS OF FACT:

The Department finds that the proposed changes, as set forth in the attached copy, * should be made in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED that the proposed regulations of the Food Stamp Program are adopted and shall become affective ten days after publication of the final regulation in the Delaware Register.

May 7, 1999
GREGG C. SYLVESTER, MD
SECRETARY

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

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

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

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

Qualifying work programs include programs under:

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

Exemptions

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

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

Regaining eligibility

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

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

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

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

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

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

9060 INCOME DEDUCTIONS

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

- a) Amounts paid out of the household's current income to make up for months in which the household did not meet its obligation, except for amount paid through tax intercept,
- b) The value of legally binding child support that is provided in-kind, such as payment of rent directly to the landlord,
- c) Payments provided for health care,
- d) Payments for education,
- e) Payments for recreation,
- f) Payments for clothing,
- g) Payments to meet other specific needs of a child or children, and
- h) Payments to cover attorney's fee, interest, and court costs.

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

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

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

Alimony payments are not included in the child support deduction.

9068 Certification Periods

[273.10(f)]

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

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

12-month certification periods are assigned to households when:

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

7-month certification periods are assigned to households when:

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

6-month certification periods are assigned to households when:

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

3-month certification periods are assigned to households when:

- Households have unstable circumstances, such as households receiving child support payments directly from the absent parent, households receiving out-of-state unemployment compensation, households with an unemployed adult who was employed with 12 months prior to the date of application, households with zero (0) income, households with expenses that exceed income, and all households with earned income;
 - Households claiming a child support deduction have a record of irregular child support payments or child support arrearage payments to nonhousehold members;
 - Homeless households receive their benefits at a P. O. Box;
 - Households receive their benefits at the local office;
 - Households have been closed due to the New Hire Match and they come in verifying they are no longer working.
-

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION
Statutory Authority: 7 Delaware Code,
Chapter 60 (7 Del.C. Ch. 60)

Secretary's Order No. 99-A-0027

Re: Amendment to Delaware's 1999 Rate of Progress Plan for Kent and New Castle Counties for Demonstrating Compliance Toward Attainment of the National Ambient Air Quality Standard for Ground-Level Ozone

Date of Issuance: May 20, 1999

Effective Date of the Amendments: June 11, 1999

I. Background

On Tuesday, March 16, 1999, at approximately 6:00 p.m., a public hearing was held in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. The purpose of this hearing was to receive public comment on proposed amendments to Delaware's 1999 Rate-of-Progress Plan. After the hearing the Department submitted its evaluation of the technical evidence in the record by memorandum to the Hearing Officer dated May 7, 1999, which is expressly incorporated herein. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated May 7, 1999, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated May 7, 1999, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the 1999 Rate of Progress Plan be amended in the manner and form provided for by law pursuant to the changes proposed prior to the hearing with the modifications recommended in the Hearing Officer's memorandum.

IV. Reasons

Adopting the proposed amendments to Delaware's 1999 Rate of Progress Plan will further the policies and purposes of 7 Del. C. Chapter 60, because the Plan concerns

implementation of an actual VOC emission reduction of at least 3 percent per year in Kent and New Castle Counties which will make progress toward attaining the 1-hour national ambient air quality standards for ground level ozone. In addition, Delaware is required by the federal Clean Air Act to adopt a Plan to reach these goals. Also, the Department was required by the Environmental Appeals Board to reconsider the exclusion of 8.5 tons per year of ROPP credits, and this amendment is necessary in order to remove the credits the Department has determined to belong to Motiva Enterprises. Finally, these amendments should correct now inappropriate reference to the NOx Budget Regulation that was retracted and then repromulgated.

Nicholas A. Di Pasquale
Secretary

Amendments to The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties (Submitted to US EPA in December 1997)

For Demonstrating Progress Toward Attainment of the National Ambient Air Quality Standard for Ground-Level Ozone

Submitted by Delaware Department of Natural Resources and Environmental Control, Dover, Delaware

~~January~~ [June] 1999

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AQM: Air Quality Management Section	
BEA: Bureau of Economic Analysis	
CAAA: Clean Air Act Amendments of 1990	
CE: Control Efficiency	
CMSA: Consolidated Metropolitan Statistical Area	
CO: Carbon Monoxide	
DelDOT: Delaware Department of Transportation	
DNREC: Delaware Department of Natural Resources and Environmental Control	
EPA: United States Environmental Protection Agency	
ER: Emission Reduction	
GF: Growth Factor	
mmBTU: Million British Thermal Unit	
MOU: Memorandum Of Understanding	
MW: Megawatt	
NAA: Non-Attainment Area	
NAAQS: National Ambient Air Quality Standard	
NOx: Oxides of Nitrogen	
OTC: Ozone Transport Commission	

OTR: Ozone Transport Region
 RACT: Reasonably Available Control Technology
 RE: Rule Effectiveness
 RP: Rule Penetration
 RPP: Rate-of-Progress Plan
 SCC: Source Classification Code
 SIC: Standard Industrial Classification
 SIP: State Implementation Plan
 TPD: Tons Per Day
 TPY: Tons Per Year
 VOC: Volatile Organic Compound
 VRS: Vapor Recovery System

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

List of References

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3. The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties, Department of Natural Resources and Environmental Control, Air Quality Management Section, Dover, Delaware, December 1997.
4. The Delaware 15% Rate-of-Progress Plan, Department of Natural Resources and Environmental Control, Air Quality Management Section, Dover, Delaware, February, 1995.
5. Delaware Regulations Governing the Control of Air Pollution, Division of Air and Waste Management, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, Updated to March 8, 1995.
6. Memorandum of Understanding among the States of the Ozone Transport Commission on Development of a Regional Strategy Concerning the Control of Stationary Source Nitrogen Oxide Emissions, Stationary and Area Source Committee, Ozone Transport Commission, Washington, D.C., September 1994.
7. The 1990 OTC NO_x Baseline Emission Inventory, EPA-454/R-95-013, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, North Carolina, July 1995.
8. NO_x Budget Program Regulation No. 27, Department of Natural Resources and Environmental Control, Air Quality Management Section, Dover, Delaware, December 1997.
9. Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration, Office of Air Quality

Planning and Standards, US EPA, Research Triangle Park, North Carolina, February 1994.

10. Guidance on Issues Related to 15 Percent Rate-of-Progress Plans, Policy memorandum, M.H. Shapiro, Acting Assistant Administrator for Air and Radiation, US EPA, Washington D.C., August 23, 1993.

11. Procedures for Emission Inventory Preparation Vol. IV: Mobile Sources, EPA-450/4-81-026d (Revised), Office of Air and Radiation and Office of Mobile Sources, US EPA, Ann Arbor, Michigan, and Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, North Carolina, 1992.

1. INTRODUCTION

The Clean Air Act Amendments of 1990 (Ref. 1, hereafter referred to as CAAA) set forth National Ambient Air Quality Standards (NAAQS) for six air pollutants. Two counties in Delaware, i.e., Kent and New Castle, exceed the 1-hour ground-level ozone standard, and have been classified by US Environmental Protection Agency (EPA) as severe nonattainment areas. Under Section 182(d) of the CAAA, Delaware is required to submit to EPA a revision of its State Implementation Plan (SIP), for every 3-year period after 1996, that achieves an actual VOC emission reduction of at least 3% per year over the 3-year period for these two counties. Under certain conditions, the CAAA allows substitution of anthropogenic nitrogen oxides (NO_x) emission reductions for the post-1996 VOC emission reduction requirements (Ref. 2). The revision of Delaware's SIP for the period of 1996-1999, termed as Delaware 1999 Rate-of-Progress Plan was submitted to EPA in December, 1997 (Ref. 3, hereafter referred to as the Delaware 1999 RPP or simply 1999 RPP). Detailed information regarding the CAAA's requirements for attaining the 1-hour NAAQS for the ground-level ozone, as well as Delaware's state implementation plans for meeting these requirements, can be found in Delaware's 1999 RPP (Ref. 3).

This document contains amendments to Delaware's 1999 Rate-of-Progress Plan submitted to EPA in December, 1997. The document will specify individual portions of the original 1999 RPP that are being amended. In brief, the amendments include (1) reevaluations of some VOC and NO_x emission reductions in Part III of the 1999 RPP, (2) recalculation of VOC and NO_x emission reductions in the milestone year of 1999 to meet the rate-of-progress requirements, and (3) development of a contingency plan for the 1999 RPP. The portions in the original 1999 RPP that are not amended by this document remain valid.

The agency with direct responsibility for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section (AQM), under the direction of Darryl D. Tyler, Program Administrator. The working

responsibility for Delaware's air quality planning falls within the Planning and Community Protection Branch of the Air Quality Management Section of DNREC, under the management of Raymond H. Malenfant, Program Manager. Alfred R. Deramo, Program Manager of Emissions Research, Planning and Attainment Group within the Planning and Community Protection Branch, is the project manager and chief editor of this document. The following personnel under Alfred R. Deramo are instrumental in preparing this document:

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2. Reevaluations of VOC and NOx emission reductions

2.1 VOC Emission Reductions from Benzene Waste Rule and Delaware Regulation 24.28

This subsection shall replace the corresponding subsection on page 3-43 of the 1999 RPP, entitled "3. Benzene Waste Rule".

The waste water treatment system at the facility of Motiva Enterprises (formerly Star Enterprise) in New Castle County (Point 50, SCC 30600503) is subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP), Benzene Waste Rule (40CFR61 Subpart FF), and Section 28 of Delaware Air Regulation 24 (Ref. 5, hereafter referred to as Regulation 24.28). Process modifications and emission controls having been planned and implemented for the system to comply with the above rule and regulation can reduce VOC emissions significantly. A detailed discussion of these process modifications and the associated VOC emission reductions is included in Appendix M, as amended in and attached to this document. The 1999 Control Strategy Projection emissions are determined using point source projection Equation P-3 (page 3-10, 1999 RPP) with a control efficiency of 86.6% as derived and explained in the amended Appendix M.

As calculated in the amended Appendix M, the 1999 Control Strategy Projection for VOC emissions from Motiva's wastewater treatment plant is 0.763 TPD in the peak ozone season. The corresponding 1999 Current Control Projection for this source is 2.485 TPD. Thus, the total VOC emission reduction from this source is:

$$ER_{1999} \text{ (TPD)} = 2.485 - 0.763 = 1.722 \text{ TPD in the peak ozone season}$$

The VOC emission reductions expected at Motiva's

wastewater treatment plant are from process modifications and controls planned by Motiva to comply with either the Federal Benzene Waste Rule or Delaware Air Regulation 24.28 for petroleum refinery. In July 1992, DNREC acknowledged a total of 75 TPY VOC emission reductions from the spill diversion tank (a component unit of the wastewater treatment system) to offset VOC emissions from Motiva's then-planned ether project (DNREC Secretary's Order No. 92-0044, July 14, 1992). Since Motiva has estimated that the ether project would lead to a VOC emission increase of only 66.5 TPY, an extra credit of 8.5 TPY (i.e., $75 - 66.5 = 8.5$ TPY) could remain unused. Delaware decides not to use this extra 8.5 TPY credit in its 1999 RPP. It should be pointed out that the 1.722 TPD VOC emission reductions calculated above do not include this extra acknowledged credit (Appendix M).

2.2 NOx Emission Reductions from Delaware RACT Applicable Point Sources in Kent County

This subsection amends Table 3-15 of the original 1999 RPP (page 3-50), entitled "NOx Emission Reductions from Delaware NOx RACT Applicable Sources in Kent County". The amended Table 3-15 provided herein shall replace the original Table 3-15.

In the original Table 3-15, six sources (or nine records) in Kent County are listed as affected by Delaware NOx RACT regulations (Ref. 5). Among them, the sources of Dover Electric and the source of Kraft General Foods have become affected by Delaware Air Regulation 37, the NOx Budget Program (Ref. 8), after the regulation was promulgated in ~~December 1997~~ [April 1999]. Emission reductions from these sources ~~[will be discussed]~~ [can be found in Table 3-19 (Amended)] in the next subsection of this document. As a result, only the three sources at Dover Air Force Base are still affected by the relevant NOx RACT controls. The amended Table 3-15 lists these three sources and the corresponding NOx emission reductions from them. Calculations of emission reductions from these three sources presented in the original 1999 RPP remain valid. As shown in the amended table, the total NOx emission reductions from these three sources are 0.018 TPD. Delaware will take this 0.018 TPD reduction, instead of 1.051 TPD as indicated in the original Table 3-15, as reduction credit to meet the rate-of-progress requirements for the milestone year of 1999.

Table 3-15 (Amended)

NOx Emission Reductions from Delaware NOx RACT Applicable Point sources in Kent County (in TPD)

Plant Name	Point	Source SCC	1990 Emission Rate (TPD)	1990 Emission Rate (lb/ mmBTU)	Applicable Control Technology	1990 Capacity Factor (%)	Control Efficiency (%)	Growth Factor	Current	Control	1999 NOx
									Control Proj. (a)	Strategy Proj. (b)	Emission Reduction (c)=(a)- (b)
Dover Air Force Base	1	1-03-004-01	0.050	0.367	LNB1	--	35.0	1.10	0.055	0.040	0.015
	2	1-03-004-01	0.030	0.368	<5% Capacity 2	13.38	8.4	1.10	0.033	0.031	0.002
	4	1-03-004-01	0.017	0.372	<5% Capacity	7.63	2.6	1.10	0.019	0.018	0.001
Total Reduction (TPD)											0.018

- 1 Low NOx Burning technology.
- 2 Operation at less than 5% maximum capacity during the peak ozone season.

2.3 NOx Emission Reductions from OTC Regional Controls and Delaware Regulation 37

This subsection shall replace a corresponding subsection from page 3-53 to page 3-57 in the 1999 RPP, entitled “7. OTC Regional NOx MOU Controls for Stationary Sources”.

In late 1994, the States of the Ozone Transport Commission (OTC), including Delaware, adopted a Memorandum of Understanding (MOU) on emission reductions from certain large stationary NOx sources within the Ozone Transport Region (Ref. 6). The OTC MOU specifies regional control strategies that require reductions in NOx emissions from fossil fuel-fired boilers and indirect heat exchangers with maximum gross heat input of at least 250 million British thermal units per hour (mmBTU/hr) and electric generating units greater or equal to 15 megawatts (MW). The MOU requires the OTC States to develop regulations for the control of NOx emissions from those NOx sources in two phases, i.e., Phase II and Phase III. Further, the MOU specifies the level of reductions in the OTC’s “Inner Zone” consisting of central eastern portion of the OTC, and the “Outer Zone” consisting of the remainder of the OTR. For Delaware, Kent and New Castle Counties fall in the inner zone and Sussex in the outer zone.

The Phase II of the OTC regional control strategy requires the affected sources to reduce NOx emissions by 65% of their 1990 emission levels, or to limit NOx emission rates below 0.20 lbs/mmBTU, by May 1, 1999. The Phase III strategy requires a NOx emission reduction of 75% of the 1990 level, or an emission rate limit of 0.15 lbs/mmBTU, by

May 1, 2003. The OTC States have developed the 1990 OTC NOx Baseline Emission Inventory (Ref. 7). In this document, the OTC States have (1) developed the 1990 NOx emission baselines for all relevant sources, and (2) established for these sources emission budgets in terms of total emissions to be allowed between May 1 and September 30 starting from 1999 (Phase II) and from 2003 (Phase III). The established 5-month budgets, with limited reserves, will serve as NOx emission caps for the affected sources during the regulated season, i.e., from May 1 to September 30, in the years of corresponding phases.

The OTC MOU Phase II requirements affect Delaware’s 1999 Rate-of-Progress Plan. To fulfill the Phase II requirements, Delaware has promulgated its Air Regulation 37, which contains a compliance deadline of May 1999 (Ref. 8, hereafter referred to as Regulation 37). Sources in Kent and New Castle Counties covered by Regulation 37 are listed in Table 3-19 (Amended) along with their SCC codes and 1990 baseline 5-month emission levels.

Based on the OTC MOU Phase II allocated budgets and reserves, the 5-month emission allowances (i.e., the total emissions allowed between May 1 and September 30) have been set forth in Regulation 37 for individual sources listed in Table 3-19 (Amended). Due to the capping nature of the allowances, the control strategy projections for all these sources are calculated using point source projection Equation P-5, as presented in the 1999 RPP (page 3-11). The emission reductions from these sources in 1999 (ER₁₉₉₉) are obtained using the following equation

$$ER_{1999} = EMIS_{1999-current\ control} - EMIS_{1999-control\ strategy}$$

where EMIS_{1999-current control} is the current control projection emission as determined in Part II of the 1999 RPP, and EMIS_{1999-control strategy} is the control strategy

projection emission as determined using Equation P-5. The following is an example of how to calculate NO_x emission reduction from an affected source.

Example: NO_x Emission Reduction from Implementing OTC Regional Control and Delaware Regulation 37

Delmarva Power Edge Moor Point 002 (Table 3-19, amended) in New Castle County is a source covered by Regulation 37. Emission and control data for this source are as follows:

CRTPOL = 4.552 TPD in peak ozone season;
 EMIS_{by5} = 655.8 tons in 5 months (May 1 to Sept. 30 in 1990 Base Year);
 ER_{py5} = 242 tons in 5 months (Regulation 37 allowance, May 1 to Sept. 30 in 1999);
 RULEFF = 100% (i.e., no rule effectiveness)
 RE_{py} = 80%.

The 1999 control strategy projection for this source can be obtained using Equation P-5:

$$EMIS_{py}(TPD) = 4.552(TPD) \times \frac{242(\text{ton}/5\text{mon})}{655.8(\text{ton}/5\text{mon})} \times \frac{(200-80)}{(200-100)} = 2.016\text{TPD}$$

The 1999 current control projection of this source is 4.134 TPD (from page F-76, Appendix F, 1999 RPP). Thus, the NO_x emission reduction from this source for the 1999 RPP is

$$ER_{1999} = 4.134 \text{ TPD} - 2.016 \text{ TPD} = 2.118 \text{ TPD}$$

Following the same procedures, the NO_x emission reductions from all sources in Kent and New Castle Counties covered by Regulation 37 can be obtained. The results are summarized in Table 3-19 (Amended). In Table 3-19 (Amended), sources of Dover Electric and First State Power are located in Kent County, and all other sources are located in New Castle County. The sum of NO_x emission reductions from sources in Kent County is 1.491 TPD, while the sum of NO_x emission reductions from sources in New Castle County is 27.416 TPD. The total NO_x emission reductions from the two counties due to implementation of Regulation 37 is 28.907 TPD in the peak ozone season. Delaware will take this 28.907 TPD NO_x emission reduction, instead of 24.650 TPD as indicated in the original Table 3-19 in the 1999 RPP, as reduction credit to meet the rate-of-progress requirements for the milestone year of 1999.

2.4 Summary of VOC and NO_x Emission Reductions after Amendments

As a result of the amendments in the foregoing subsections, VOC and NO_x emission reductions in 1999 from the affected sources have changed, and thus the total VOC and NO_x emission reductions for the entire nonattainment area (i.e., Kent and New Castle counties) have changed as well. A summary of these changes is presented in Table 1.

Table 1. Summary of 1999 VOC and NO_x Emission Reductions (in TPD)

Control Measure/Source	VOC		NO _x	
	Original*	Amended	Original*	Amended
Benzene Waste Rule & Delaware Reg. 24.28	1.743	1.722	-	-
Delaware NO _x RACT in Kent County	-	-	1.051	0.018
OTC Regional Controls & Delaware Reg. 37	-	-	24.650	28.907
Nonattainment Area Total Reductions	49.553	49.532	36.856	40.080

* Data are obtained from Table 3-8, page 3-26, Delaware 1999 RPP (Ref. 3).

2.5 Requirements for VOC and NO_x Emission reductions

As required by the adequate rate-of-progress in emission reductions set forth in the CAAA, Delaware has determined that the required target level of total VOC emissions in its nonattainment areas (i.e., Kent and New Castle counties) in 1999 should be 101.814 tons per day (TPD) in the peak ozone season (page 1-24, 1999 RPP). In the 1999 RPP, Delaware has also shown that the 1999 control strategy projection for VOC emissions (or the actual target level) would be 110.185 TPD which is higher than the required target level (page 1-24, page 3-1, 1999 RPP). Thus, it is necessary for Delaware to use NO_x emission reductions to substitute for VOC emission reductions. As explained in the 1999 RPP, Delaware meets all the conditions set forth by EPA for NO_x substitution (Section 1.3, page 1-21, Section 1.4, page 1-25, 1999 RPP).

As determined in Part II of the 1999 RPP (Table 2-1, page 2-2), the 1999 current control projections of VOC emissions is 159.738 TPD. Delaware will use the total amended 49.532 TPD VOC emission reductions in its 1999 Rate-of-Progress Plan. As a result, the 1999 control strategy projection for VOC emissions shall be amended to be 110.206 TPD (i.e., 159.738 - 49.532 = 110.206 TPD). This amended control strategy projection shall serve as a new (or amended) 1999 VOC emission target level and replace the original target level of 110.185 TPD (page 1-29, 1999 RPP). Because of this amendment, the rate-of-progress requirements on VOC and NO_x emission reductions in 1999 must be reassessed.

First, the creditable VOC emission reductions need to be

recalculated. The calculation is shown in the amended Table 1-16, which shall replace the original Table 1-16, page 1-28 of the 1999 RPP, entitled "VOC Emissions Reductions Creditable for 3% per Year Rate of Progress Requirement for 1996-1999 Period in Tons per Peak Ozone Season Day".

Table 1-16 (Amended)

Calculation of Creditable VOC Emission Reductions (in TPD) for 1999 RPP

<u>Description</u>	<u>VOC Emissions</u>	
1996 VOC Emission Target Level*115.815	(u)	
VOC Fleet Turnover for 1996-1999 Period	1.910	(v)
1999 VOC Control Strategy Projection	110.206	(w)
Creditable VOC Emission Reduction	3.699	(x)=(u)-(v)-(w)

*The 1996 VOC emission target level is obtained from Delaware 15% Rate-of-Progress Plan (Reference 4).

Second, the percentage of NOx emission reductions required for substitution needs to be determined. As indicated in the 1999 RPP, the 1990 adjusted base year VOC emission level is 134.343 TPD (page 1-23, 1999 RPP). The percentage of the creditable VOC emission reductions in Table 1-16 (Amended) with respect to the 1990 adjusted base year emission is 2.75% (i.e., 3.699/134.343=0.0275=2.75%). The percentage of NOx emission reductions required for substitution can be determined from EPA's requirement, that is, the total percentage of VOC and NOx emission reductions must be at least equal to 9% for the 3-year period of 1996-1999. Thus, the required NOx emission reduction for substitution will be 9.00% - 2.75% = 6.25%. In other words, the total percentage of VOC reduction plus NOx reduction must be at least 9%, as shown in Table 1-17 (Amended), which shall replace the original Table 1-17, page 1-28, 1999 RPP, entitled "Percent of VOC and NOx Emissions Reductions Needed for 1996-1999 Period".

Table 1-17 (Amended)

Percents of VOC and NOx Emission Reductions for 1996-1999 Period

Milestone Period	VOC Reduction (%) (a)	NOx Reduction (%) (b)	Total Reduction (%) (c)=(a)+(b)
1996 - 1999	2.75	6.25	9.00

As indicated in Table 1-15 of the 1999 RPP, the total 1990 adjusted base year NOx emission is 158.895 TPD (page 1-27, 1999 RPP). By multiplying with the NOx substitution percentage in Table 1-17 (Amended), the NOx emission reductions in 1999 must be at least 158.895x6.25% = 9.931 TPD to meet the rate-of-progress requirements. As a result, the target level of NOx emissions in 1999 will be 158.895 - 9.931 = 148.964 TPD.

As determined in Part II of the 1999 RPP (Table 2-1,

page 2-2), the 1999 current control projections of NOx emissions is 184.059 TPD. To meet the 1999 NOx emission target of 148.964 TPD, a NOx emission reduction of 35.095 TPD must be achieved (i.e., 184.059 - 148.964 = 35.095 TPD). Since the 1999 NOx emission reductions are expected to be 40.080 TPD, which is greater than the required 35.095 TPD, Delaware believes that the control measures proposed in the 1999 RPP, as amended by this document, are adequate for meeting the rate-of-progress requirements set forth by the CAAA. Delaware decides to use 35.095 TPD of the total expected 40.080 TPD (Table 1 in the previous subsection) in the main plan of the 1999 RPP, and use the remainder (i.e., 40.080 - 35.095 = 4.986 TPD) in the contingency plan of the 1999 RPP.

3. Contingency Plan of Delaware's 1999 RPP

3.1 Contingency Requirements for Emission Reductions

The CAAA requires States with nonattainment areas to implement specific control measures if the area fails to make reasonable further progress, fails to meet any applicable milestone, or fails to attain the national ambient air quality standards by the applicable attainment date.¹ The EPA has interpreted this CAAA provision as a requirement for States with moderate and above ozone nonattainment areas to include sufficient contingency measures in their Rate-of-Progress Plans so that, upon implementation of such measures, additional emission reductions of at least 3% of the adjusted 1990 base year emissions would be achieved (Ref. 9). Under the same provision of the CAAA, EPA also requires that the contingency measures must be fully-adopted control measures or rules, so that, upon failure to meet milestone requirements or attain the standards, the contingency measures can be implemented without any further rulemaking activities by the States and/or EPA.

To meet the requirements for contingency emission reductions, EPA allows States to use NOx emission reductions to substitute for VOC emission reductions in their contingency plans. The condition set forth by EPA for NOx substitution is that States must achieve a minimum of 0.30% VOC reductions of the total 3% contingency reduction, and the remaining 2.70% reduction can be achieved through NOx emission controls (Ref. 10). Delaware decides to include both VOC and NOx emission controls in its contingency plan for the 1999 Rate-of-Progress Plan.

¹ CAAA, Title I, Part D, Section 172(c)(9) and Section 182(c)(9).

3.2 Control Measures to Meet Contingency Requirements

Delaware proposes to achieve the required contingency emission reductions through controls over both VOC and NOx emissions. The VOC emission reductions will be

obtained from implementing an annual inspection schedule for the Stage II Vapor Recovery Systems, and the NOx emission reductions will be achieved through a combination of controls on various sources in the peak ozone season. The contingency measures and the associated VOC and NOx emission reductions are discussed in detail in the following subsections.

3.2.1 Stage II Vapor Recovery System with Annual Inspections

The CAAA requires States with moderate and above ozone nonattainment areas to submit a SIP revision requiring owners or operators of gasoline dispensing facilities to install and operate a system for gasoline vapor recovery during refueling process for motor vehicles.² Under this requirement, Delaware has developed its Stage II Vapor Recovery Program, which is defined in Section 36 of Delaware Air Regulation 24 (Ref. 5). The Delaware's stage II vapor recovery regulation gives the regulatory agency the right to perform compliance inspections as needed. Currently, a triennial inspection schedule is performed by the responsible agency (Underground Storage Tank Branch of DNREC). Delaware has taken credit for VOC emission reductions from this triennial inspection schedule in Part III of the 1999 RPP, where the emission reductions are estimated using a control efficiency (CE) of 95%, a rule penetration (RP) of 97%, and a rule effectiveness (RE) of 65.3% according to an EPA guidance document (page 3-69, 1999 RPP). The total creditable VOC emission reduction from the triennial inspection is 1.780 TPD, as indicated in Part III of the 1999 RPP (page 3-72).

Additional VOC emission reductions can be obtained from the Stage II Vapor Recovery Program when the inspection frequency is increased. If the program is conducted with an annual inspection schedule, the rule effectiveness (RE) value of this control will increase from 65.3% to 90.5%, resulting in additional VOC emission reductions. In other words, the program is more effective for reducing VOC emissions with a higher inspection frequency. Delaware proposes to perform an annual inspection schedule for its Stage II Vapor Recovery Program as a contingency measure. Based on a 95% control efficiency, a 97% rule penetration, and a 90.5% rule effectiveness, the emission factor generated from MOBILE5a is 0.92 grams of VOC per gallon of gasoline for both Kent and New Castle Counties. The MOBILE5a input and output files determining the 1999 stage II annual inspection emission factors for Kent and New Castle Counties are provided in Appendix P.

As per EPA's guidance document Procedures for Emissions Inventory Preparation, Volume IV: Mobile Sources (Ref. 11), the in-use efficiency of stage II vapor recovery system applies to both spillage and displacement. Therefore, the effect of the vapor recovery program on

spillage and displacement will be determined separately.

² CAAA, Title I, Part D, Section 182(b)(3).

(a) Effect of Stage II Vapor Recovery with Annual Inspections on Spillage

As explained in Part III of the 1999 RPP (page 3-70), a baseline spillage factor of 0.31 g/gal has been used in the MOBILE5a modeling. The actual spillage factor can be estimated using the 95% control efficiency, 90.5% rule effectiveness, and 97% rule penetration, which gives

$$\begin{aligned} \text{Spillage Factor} &= 0.31 - (0.31 \times 95\% \times 90.5\% \times 97\%) \\ &= 0.05 \text{ grams VOC/gallon gasoline} \end{aligned}$$

The 1999 Control Strategy Projection of VOC emissions from spillage can be determined using Equation A-3 as explained in the 1999 RPP (page 3-16). Using the 0.05 g/gal emission factor, the projected emissions are:

Kent County:

ACTLEV= 183,131 gallons gasoline/day (1990 Baseline Inventory Throughput)

$$\text{EMF}_{\text{py}} = 0.05 \text{ grams VOC/gallon gasoline}$$

$$\text{GF}_{\text{py}} = 0.89$$

$$\text{Conversion Factor} = 0.0022 \text{ lb/gram} \times \frac{\text{ton}}{2000 \text{ lb}}$$

New Castle County

ACTLEV = 587,283 gallons gasoline/day (1990 Baseline Inventory Throughput)

$$\text{EMF}_{\text{py}} = 0.05 \text{ grams VOC/gallon gasoline}$$

$$\text{GF}_{\text{py}} = 0.89$$

$$\text{Conversion Factor} = 0.0022 \text{ lb/gram} \times \frac{\text{ton}}{2000 \text{ lb}}$$

$$\text{EMISpy} = 587,283 \times 0.05 \times 0.89 \times 0.0022 = 0.029 \text{ TPD} \times \frac{\text{ton}}{2000}$$

The additional VOC emission reductions for spillage by switching a triennial inspection schedule to an annual inspection schedule are the differences between the projected emissions for the triennial program and the annual program. The additional reductions are:

Kent County

Projection with triennial inspection (page 3-70, 1999 RPP) = 0.022 TPD;

Projection with annual inspection (calculated above) = 0.009 TPD;

Additional Emission Reduction = 0.022 - 0.009 = 0.013 TPD.

New Castle County

Projection with triennial inspection (page 3-70,
1999 RPP) = 0.069 TPD;
Projection with annual inspection (calculated above)
= 0.029 TPD;
Additional Emission Reduction = 0.069 - 0.029
= 0.040 TPD.

Additional VOC Emission Reduction for Spillage:

$ER_{spill} = 0.013 + 0.040 = 0.053$ TPD in the peak ozone season.

(b) Effect of Stage II Vapor Recovery with Annual Inspections on Displacement

As explained in Part III of the 1999 RPP (page 3-70), the emission factor of 0.92 g/gal from MOBILE5a accounts for emissions from both displacement and spillage. Thus, the emission factor for displacement can be determined by subtracting 0.05 g/gal (determined earlier) from 0.92 g/gal, which gives

Displacement Factor = $0.92 - 0.05 = 0.87$ grams VOC/gallon gasoline

The 1999 Control Strategy Projection emissions from displacement can be determined using Equation A-3 as explained in the 1999 RPP (page 3-16). Using the 0.87 g/gal emission factor, the projected emissions are:

Kent County

ACTLEV = 183,131 gallons gasoline/day
(1990 Baseline Inventory Throughput)
 $EMF_{py} = 0.87$ grams VOC/gallon gasoline
 $GF_{py} = 0.89$
Conversion Factor = $.0022\text{lb/gram} \times \frac{\text{ton}}{2000\text{lb}}$

$EMIS_{py} = 183,131 \times 0.87 \times 0.89 \times \frac{0.0022}{2000} = 0.500$ TPD

New Castle County

ACTLEV = 587,283 gallons gasoline/day
(1990 Baseline Inventory Throughput)
 $EMF_{py} = 0.87$ grams VOC/gallon gasoline
 $GF_{py} = 0.90$
Conversion Factor = $.0022\text{lb/gram} \times \frac{\text{ton}}{2000\text{lb}}$

$EMIS_{py} = 587,283 \times 0.87 \times 0.89 \times \frac{0.0022}{2000} = 0.500$ TPD

The additional VOC emission reductions for displacement by switching a triennial inspection schedule to an annual inspection schedule are the differences between the projected emissions for the triennial program and the annual program. The additional reductions are:

Kent County

Projection with triennial inspection (page 3-71,
1999 RPP) = 0.294 TPD;
Projection with annual inspection (calculated above)
= 0.156 TPD;
Addition VOC Emission Reduction = $0.294 - 0.156$
= 0.138 TPD.

New Castle County

Projection with triennial inspection (page 3-72,
1999 RPP) = 0.943 TPD;
Projection with annual inspection (calculated above)
= 0.500 TPD;
Additional VOC Emission Reduction = $0.943 - 0.500$
= 0.443 TPD.

Additional VOC Emissions Reduction for Displacement:

$ER_{displace} = 0.138 + 0.443 = 0.581$ TPD in the peak ozone season.

The total additional VOC emission reduction from Stage II Vapor Recovery Program with an annual inspection schedule is the sum of the additional reductions for spillage and displacement, that is,

$ER_{total} = 0.053 + 0.581 = 0.634$ TPD in the peak ozone season.

In its 1999 Rate-of-Progress Plan, Delaware has determined its 1990 adjusted base year inventory level of VOC emissions to be 134,343 TPD (page 1-23, 1999 RPP). The additional 0.634 TPD VOC emission reduction estimated above is $(0.634/134,343) = 0.0047 = 0.47\%$ of the 1990 adjusted base year VOC emissions, thus, satisfying the 0.30% minimum requirement on VOC emission reductions for the contingency plan. The rest of the contingency reductions will be obtained through NOx controls, which will be discussed in the following subsection.

3.2.2 NOx Emission Controls in Peak Ozone Season

As determined above, 0.47% of the 3.00% contingency requirement will be obtained by VOC emission reductions from annual inspection of Stage II vapor recovery systems. The remaining 2.53% (i.e., $3.00\% - 0.47\% = 2.53\%$) is the percentage required for NOx reduction substitution. The adjusted 1990 base year NOx emission level has been determined to be 158.895 TPD in the 1999 RPP (page 1-27, 1999 RPP). Thus, the NOx emission reductions for contingency purpose will be at least $158.895 \times 2.53\% = 4.020$ TPD.

In Subsection 2.5 of this document, Delaware has demonstrated that, through adequate NOx emission controls,

a 4.985 TPD NO_x emission reduction will be achieved, in addition to those needed to meet the minimum rate-of-progress requirements for the 1999 RPP. Delaware shall use this additional 4.985 TPD NO_x emission reduction in the contingency plan based on the following judgements. First, this additional reduction satisfies the required minimum amount of NO_x reduction substitution for contingency purpose, i.e., 4.020 TPD as determined above. Second, this additional reduction is achieved from a combination of control measures included in Delaware's 1999 RPP as amended by this document. All these control measures are fully-adopted measures or rules. Thus, no further rulemaking actions by the State and/or EPA are needed when all or part of the 4.985 TPD NO_x reduction becomes necessary to serve the contingency purpose. Third, unused part of the 4.985 TPD can be transferred to backfill shortfalls in the contingency plan and/or the overall control strategy in Delaware's 2002 and/or 2005 rate-of-progress plans without further rulemaking actions.

3.2.3 Summary of Contingency Measures and Emission Reductions

A summary of the contingency measures and the associated additional VOC and NO_x emission reductions are presented in Table 2. As shown in Table 2 and in the discussions above, the contingency measures proposed in this plan are adequate for meeting the contingency requirements set forth by EPA.

Table 2. Summary of Contingency Measures and Emission Reductions

<u>Contingency Measures</u>	<u>Emission Reduction (TPD)</u>	
	<u>VOC</u>	<u>NO_x</u>
Stage II Vapor Rec. with Annual Inspection	0.634	-
Required VOC Emission Reductions	0.634	-
NO _x Controls in Peak Ozone Season	-	4.986
Minimum NO _x Emission Reductions	-	4.020

APPENDIX M (Amended)

VOC EMISSION REDUCTIONS FROM THE FEDERAL BENZENE WASTE RULE AND DELAWARE AIR REGULATION 24.28 AT WASTEWATER TREATMENT PLANT OF MOTIVA ENTERPRISES

(Note: This amended Appendix M shall replace the original version in Delaware's 1999 RPP dated December 1997)

1. Background

In order to comply with the Federal Benzene Waste Rule and Section 28 of Delaware Air Pollution Control Regulation 24 (hereafter referred to as Regulation 24.28), Motiva Enterprises (formerly Star Enterprise) in New Castle

County planned to implement a number of process modifications and emission controls to its waste water treatment plant prior to 1996. These modifications and controls include:

(1) Oily Water Sewer: Using passive ventilation through carbon canisters for active manholes and sealing inactive manholes.

(2) CPI Separator: Sealing the existing fixed roof, adding a nitrogen blanket, and passively venting emissions to a carbon absorption canister.

(3) API Separator: Using a combination of fixed and floating covers and venting emissions to a carbon absorption canister.

(4) Equalization Tanks: Covering with floating roofs.

(5) Spill Diversion Tank: Covering with a floating roof.

(6) Dissolved Air Flotation Unit: Retrofitting with fixed roof covers and venting emissions to a control device.

In the 1990 Base Year Inventory, VOC emissions from the oily water sewer manholes, the CPI and API separators, the equalization tanks, the spill diversion tanks, and the dissolved air floatation unit were reported as a whole with one value of 2.3130 TPD in the per peak ozone season. In order to project future emissions from the treatment system, a breakdown of the 1990 emissions for individual units with modifications and/or new controls has been developed from information provided by Motiva Enterprises via a letter from Motiva's Plant Manager, R.G. Soehlke, to R. Taggart, Program Manager, Engineering and Compliance Section of DNREC, dated on March 6, 1992 (Attachment 1). A summary of the breakdown of 1990 base year emissions from Motiva's wastewater treatment system is presented in Table M-1.

Table M-1 1990 Base Year Uncontrolled VOC Emissions from Motiva's Wastewater Treatment Plant

<u>Unit Description</u>	<u>1990 Base Year Emissions*</u>		
	<u>VOC (TPY)</u>	<u>VOC (TPD)</u>	<u>Non-Benzene VOC (TPY)</u>
Oily Water Sewer	6.2	0.017	5.0
CPI Separator	7.3	0.020	5.8
API Separator	563.0	1.542	562.5
Equalization Tanks	115.9	0.318	114.5
Spill Diversion Tank	75.0	0.205	75.0
<u>Dissolved Air Floatation</u>	<u>81.0</u>	<u>0.222</u>	<u>80.0</u>
Total	848.4	2.324	842.8

* Notes: (1) VOC emissions from oily water sewer was omitted in 1990 Base Year Inventory due to its small emission rate. (2) Total VOC emission in 1990 Base Year Inventory is 2.313 TPD. The small discrepancy herein resulted from rounding error and including the oily water sewer.

2. VOC Emission Reductions from Individual Units

Motiva Enterprises has provided information about the effect of the planned modifications and controls on VOC

emissions for each unit. Such information has been used to project VOC emissions from the wastewater treatment system in the future milestone years. Details of VOC emission projections in 1999 are discussed in this section.

(1) Oily Water Sewer

Per the Benzene Waste Rule, hydrocarbon removal with carbon canisters must be 95 percent effective. Therefore, VOC emissions after modifications to the oily water sewer can be estimated using the 1990 emission in Table M-1 and a 95% control efficiency, which gives

$$(0.017 \text{ TPD}) \times (1-95\%) = 0.001 \text{ TPD}$$

(2) CPI Separator

Per the Benzene Waste Rule, hydrocarbon removal with carbon canisters must be 95 percent effective. Therefore, VOC emissions after modifications to the CPI Separator can be estimated using the 1990 emission in Table M-1 and a 95% control efficiency as follows

$$\text{TPD} \times (1-95\%) = 0.001 \text{ TPD}$$

(3) API Separator

The emissions from the API Separator will be controlled by both covering the unit and venting emissions to a carbon absorption canister. Motiva has estimated the amount of VOC emissions that will be vented to the carbon absorption canister from the covered API Separator by using AP-42 methodology for determining breathing losses from the fixed-roof tanks. This emission rate is 61.7 TPY which is equal to a daily rate of 0.169 TPD. These emissions will be sent to a carbon absorption canister which must have a control efficiency of 95% per the Benzene Waste Rule. Therefore, the emissions to the atmosphere after the installation of controls on the API Separator can be determined as

$$(0.169 \text{ TPD}) \times (1.00 - 95\%) = 0.008 \text{ TPD}$$

Therefore, the amount of VOC that is captured by the carbon absorption canister is

$$0.169 \text{ TPD} - 0.008 \text{ TPD} = 0.161 \text{ TPD}$$

The reduction in VOC emissions from the API Separator is due not only to the carbon absorption device, but also to the fact that the covers on the API Separator keep more volatile organic compounds in the liquid phase rather than vaporizing to the atmosphere. Therefore, a higher volume of VOCs in the liquid phase will go to downstream units in the wastewater treatment plant. Because they may eventually be emitted to the atmosphere from a downstream unit, these VOCs must be accounted for when determining overall emissions from the wastewater treatment plant. The

additional amount of VOCs in the liquid phase that will go to the downstream units is determined as follows.

First, the decrease in VOC emissions due to the new controls is determined by subtracting the controlled emissions from the uncontrolled emissions. The controlled emissions have been previously calculated to be 0.008 TPD. The uncontrolled emissions are 1.542 TPD (Table M-1). Therefore, the total decrease in VOC emissions is

$$(1.542 \text{ TPD})_{\text{uncontrolled}} - (0.008 \text{ TPD})_{\text{controlled}} = 1.534 \text{ TPD}$$

The vapor portion of the 1.534 TPD decrease is the amount of VOC that will be removed by the carbon absorption canister. This amount has been previously calculated to be 0.161 TPD. The portion of the total VOC reduction that remains in the liquid phase is the difference between the total VOC reduction and the vapor portion that is removed by the carbon absorption canister, which is

$$1.534 \text{ TPD} - 0.161 \text{ TPD} = 1.373 \text{ TPD remaining in liquid phase}$$

According to Motiva Enterprises, 55 percent of the 1.373 TPD, or 0.755 TPD, will be removed in the API Separator and will go to the Coker. Therefore, the amount of VOCs that will remain in the liquid phase and go to downstream units is

$$1.373 \text{ TPD} - 0.755 \text{ TPD} = 0.618 \text{ TPD}$$

(4) Equalization Tanks

Based on AP-42 methodology, the emissions from the equalization tanks after installation of floating roofs will essentially be zero. Therefore, the decrease in VOC emissions from these tanks is equal to the 0.318 TPD as listed in Table M-1. The floating roofs on the equalization tanks will cause an increase in liquid VOCs to downstream units similar to the increase caused by the API Separator covers. The amount of VOCs from the equalization tanks that will remain in the liquid phase is equal to the emission reduction of 0.318 TPD. Therefore, the net increase in VOCs to downstream units is the sum of the 0.618 TPD liquid VOCs previously calculated from the API Separator covers and the 0.318 TPD liquid VOCs resulting from the floating roofs on the equalization tanks. Thus, the total increase is $0.618 + 0.318 = 0.936$ TPD liquid phase VOCs that will go to the Dissolved Air Floatation Unit.

(5) Spill Diversion Tank

The VOC emissions from the spill diversion tank will essentially be zero after installation of the floating roof. The uncontrolled VOC emissions of 75 TPY (or 0.205 TPD) from the spill diversion tank (Table M-1) are the result of maintaining an oil layer on the top of the tank to control odor. This practice will no longer be necessary after

installation of the floating roof, thus, the VOC emissions of 0.205 TPD from the spill diversion tank will be totally eliminated from the process. Consequently, there will be no increase in VOC loading on any downstream units from the Spill Diversion Tank.

A portion of the emission reduction from the spill diversion tank will be used to offset VOC emissions from a new Ether Project at Motiva Enterprises facility. This portion of the emission reduction is not creditable for meeting the Rate-of-Progress requirements. The Ether Project is expected to produce a VOC emission of 66.5 TPY, which is equal to a daily emission of 0.182 TPD. A 1:1 offset of the 0.182 TPD is needed from the VOC reduction at the spill diversion tank. Therefore, a controlled emission of 0.182 TPD is attributed to the spill diversion tank. In this manner, the amount of emission reductions to be credited to the 1999 RPP from the spill diversion tank will exclude the amount of reduction needed to offset the Ether Project, which gives

Creditable Reduction for 1999 RPP = 0.205 - 0.182 = 0.023 TPD

(6) Dissolved Air Flootation (DAF) Unit

The VOC emissions from the DAF unit will be controlled by both covering the unit and venting emissions to a control device. Per the Benzene Waste Rule, the control device must have a 95% VOC removal efficiency. Based on design data, Motiva Enterprises have estimated the emissions that will be vented to the control device from the covered DAF unit to be 4.8 TPY, which is equal to a daily emission of 0.013 TPD. The emissions to the atmosphere from the control device are then determined to be

$$(0.013 \text{ TPD}) \times (1.00 - 95\%) = 0.001 \text{ TPD}$$

The amount of VOC that will be removed by the control device is

$$0.013 \text{ TPD} - 0.001 \text{ TPD} = 0.012 \text{ TPD}$$

The covers on the DAF unit will cause an increase in liquid phase VOCs to downstream units similar to the increase caused by the API Separator and the equalization tanks. Similarly, the decrease in VOC emissions due to the new controls is determined by subtracting the controlled emissions from the uncontrolled emissions. The controlled emissions have been previously estimated to be 0.001 TPD, while the uncontrolled emissions are 0.222 TPD, as listed in Table M-1. Therefore, the total decrease in VOC emissions from the DAF unit is

$$0.222 \text{ TPD} - 0.001 \text{ TPD} = 0.221 \text{ TPD}$$

The vapor portion of the 0.221 TPD reduction is the amount of VOC that is removed by the control device. This amount has been previously calculated to be 0.012 TPD. The portion of the total VOC reduction that remains in the liquid phase is the difference between the total VOC reduction and the vapor portion, that is

$$0.221 \text{ TPD} - 0.012 \text{ TPD} = 0.209 \text{ TPD}$$

This amount is added to the previously calculated 0.936 TPD liquid phase VOCs, which comes to the DAF unit from the API Separators and the equalization tanks, resulting in a cumulative increase in liquid phase VOCs of 1.145 TPD. According to Motiva Enterprises, 80 percent of this 1.145 TPD, or 0.916 TPD, will be removed in the DAF unit and will go to the Coker. Therefore, the amount of liquid phase VOCs that will go to downstream units is

$$1.145 \text{ TPD} - 0.916 \text{ TPD} = 0.229 \text{ TPD}$$

Of the 0.229 TPD liquid phase VOCs going downstream from the DAF unit, Motiva Enterprises state that 50% will be bio-degraded in the first stage aeration unit. The remainder will be emitted to the atmosphere. Therefore, the net increase in VOC emissions to the atmosphere due to downstream loading from all units is

$$(0.229 \text{ TPD}) \times (0.50) = 0.115 \text{ TPD to the atmosphere}$$

A summary of VOC emissions from individual units at Motiva's wastewater treatment plant after implementing the planned modifications and controls is presented in Table M-2.

Table M-2
Summary of VOC Emissions at Motiva's Wastewater Treatment Plant

Source Unit	Controlled VOC Emissions (TPD)
Oily Water Sewer	0.001
CPI Separator	0.001
API Separator	0.008
Equalization Tanks	0.000
Spill Diversion Tank	0.182*
Dissolved Air Flootation Unit	0.001
Downstream Loading	0.115
Total Emission	0.308

*For offsetting VOC emissions from the ether project.

3. 1999 Control Strategy Projections and Emission Reductions

The 1999 Control Strategy Projection for the Motiva Enterprises wastewater treatment plant can be calculated

using an overall control efficiency which accounts for VOC emission reductions from all process modifications and controls at the treatment plant. This 1999 Overall Control Efficiency (CE_{1999}) can be determined using the 1990 uncontrolled emissions from Table M-1 and the estimated controlled emissions from Table M-2, which gives

$$CE_{1999} = \frac{2.324 - 0.308}{2.324} \times 100\% = 86.8\%$$

The VOC emissions from Motiva's wastewater treatment plant are projected to 1999 using projection Equation P-3 as presented in the 1999 RPP (page 3-10). The parameters needed for the projection are

1990 Actual Emissions	= 2.324 TPD (From Table M-1)
1999 Overall Control Efficiency	= 86.8% = 0.868 (Calculated above)
1999 Rule Effectiveness	= 80% = 0.80 (Default value)
1990 Control Efficiency	= 0% = 0 (No controls in 1990)
1990 Rule Effectiveness	= 100% = 1 (No rule effect in 1990)
1999 Growth Factor	= 1.08 (Page 2-9, 1999 RPP)

The 1999 control strategy projection of VOC emissions is

$$EMIS_{1999} = 2.324 \times (1 - 0.868) \times 0.80 \times 1.08 = 0.767 \text{ TPD}$$

The VOC emission reduction at Motiva's wastewater treatment plant due to process modifications and new controls is the difference between the 1999 Current Control Projection emissions and the 1999 Control Strategy Projection emissions. The 1999 Current Control Projection emissions can be obtained using Equation P-6 (page 3-12, 1999 RPP), that is, multiplying the 1990 Base Year Emissions with the 1999 growth factor

$$EMIS_{1999 - \text{Current Control}} = 2.324 \times 1.08 = 2.510 \text{ TPD}$$

Therefore, the VOC emission reduction in 1999 (ER_{1999}) from Motiva's wastewater treatment plant is expected to be

$$ER_{1999} = 2.510 \text{ TPD} - 0.767 \text{ TPD} = 1.743 \text{ TPD}$$

4. Emission Reduction Credit for 1999 Rate-of-Progress Plan

The VOC emission reductions at Motiva's wastewater treatment plant resulted from process modifications and controls planned by Motiva to comply with either the Federal Benzene Waste Rule or Delaware Air Regulation 24.28 for petroleum refinery. In July 1992, DNREC

acknowledged the total VOC emission reduction of 75 TPY from the spill diversion tank to offset VOC emissions from Motiva's then-planned ether project (DNREC Secretary's Order No. 92-0044, July 14, 1992). Since Motiva estimated that the ether project would lead to a VOC emission increase of 66.5 TPY, a portion of the acknowledged VOC emission reduction, that is, $75 - 66.5 = 8.5$ TPY, is included in the total emission reductions estimated in Section 3. Delaware decides (1) not to use this 8.5 TPY acknowledged reduction in its 1999 RPP for reduction credit, and (2) to exploit alternative reductions (e.g., NOx emission reductions) to fulfill the emission reduction requirements in the 1999 RPP. This decision reflects DNREC's consideration to follow the Final Order and Decision, issued by the Environmental Appeals Board, the State of Delaware, on November 20, 1998 (Attachment 2).

The 8.5 TPY VOC reduction is estimated with respect to the 1990 base year. It cannot be simply subtracted from the 1999 total VOC emission reductions projected previously in Section 3. Instead, similar steps used in Section 3 should be applied to the source that produces this reduction, namely, the spill diversion tank. Delaware makes the following analysis to determine the 1999 VOC emission reduction resulting from this 8.5 TPY.

The 1990 base year VOC emission from Motiva's wastewater treatment plant ($EMIS_{1990}$) can be expressed as

$$EMIS_{1990} = EMIS_{1990\text{CRED}} + EMIS_{1990\text{NONCR}} \quad (1)$$

where $EMIS_{1990\text{CRED}}$ is the emissions from which reduction credits will be taken in 1999, and $EMIS_{1990\text{NONCR}}$ is the emissions from which the reductions will not be taken as credit in 1999. The 1999 current control projection is

$$EMIS_{CC1999} = EMIS_{1990} \times GF = EMIS_{1990\text{CRED}} \times GF + EMIS_{1990\text{NONCR}} \times GF \quad (2)$$

where GF is the growth factor. The first part of Eq. 2 is the credit portion and the second part is the non-credit portion. The 1999 control strategy projection is

$$EMIS_{CS1999} = EMIS_{1990\text{CRED}} \times GF \times (1 - CE_{\text{CRED}}\% \times RE\%) + EMIS_{1990\text{NONCR}} \times GF \times (1 - CE_{\text{NONCR}}\% \times RE\%) \quad (3)$$

where $CE_{\text{CRED}}\%$ is the control efficiency of the credited sources and $CE_{\text{NONCR}}\%$ is the control efficiency for the non-credited sources. Again, the first part of Eq. 3 is the credit portion and the second part is the non-credit portion. The emission reduction in 1999 (ER_{1999}) is

$$ER_{1999} = EMIS_{CC1999} - EMIS_{CS1999} = ER_{1999\text{CRED}} +$$

$$ER_{1999NONCR} = EMIS_{1990CRED} \times GF - EMIS_{1990CRED} \times GF \times (1 - CE_{CRED}\% \times RE\%) + EMIS_{1990NONCR} \times GF - EMIS_{1990NONCR} \times GF \times (1 - CE_{NONCR}\% \times RE\%) \quad (4)$$

The emission reduction from the credit sources is

$$ER_{1999CRED} = EMIS_{CC1999CRED} = EMIS_{CS1999CRED} = EMIS_{1990CRED} \times GF - EMIS_{1990CRED} \times GF \times (1 - CE_{CRED}\% \times RE\%) \quad (5)$$

The emission reduction from the non-credit sources is

$$ER_{1999NONCR} = EMIS_{CC1999NONCR} = EMIS_{CS1999NONCR} = EMIS_{1990NONCR} \times GF - EMIS_{1990NONCR} \times GF \times (1 - CE_{NONCR}\% \times RE\%) \quad (6)$$

For credit sources, the total 1990 emission can be obtained from Table M-1 minus 8.5 TPY, that is, 848.4 - 8.5 = 839.9 TPY, or 2.301 TPD. The controlled emission from these sources has been calculated previously in Table M-2. Thus, the control efficiency for the credit sources is

$$CE_{1999CRED} = \frac{2.301 - 0.308}{2.301} \times 100\% = 86.6\% \quad (7)$$

Applying Eq. 5 and assuming an 80% rule effectiveness, the emission reduction credit can be calculated as

$$ER_{1999CRED} = EMIS_{CC1999CRED} - EMIS_{CS1999CRED} = 2.301 \times 1.08 - 2.301 \times 1.08 \times (1 - 86.6\% \times 80\%) = 2.485 - 0.763 = 1.722 \text{ TPD}$$

For the non-credit source, the 1990 emission is 8.5 TPY, or 0.023 TPD. The controlled emission for this source is 0.000 TPD (emission from the spill diversion tank after installation of floating roof). Thus, the control efficiency for the non-credit source is

$$CE_{1999[~~CRED~~]NONCR} = \frac{0.023 - 0.00}{0.023} \times 100\% = 100\% \quad (8)$$

Applying Eq. 6 and assuming an 80% rule effectiveness, the emission reduction from the non-credit source can be calculated as

$$ER_{1999nonCR} = 0.023 \times 1.08 - 0.023 \times 1.08 \times (1 - 100\% \times 80\%) = 0.020 \text{ TPD}$$

As mentioned previously, Delaware decides not to take this reduction as credit in its 1999 RPP. Therefore, the

emission reduction credit for Delaware's 1999 RPP is only 1.722 TPD as calculated above.

Attachment 1 to Appendix M (Amended)

(A hardcopy of this attachment is available upon request. The request should be addressed to: Alfred Deramo, Program Manager, ERPA Program, DNREC, 156 S. State St., Dover, DE 19901. Telephone 302-739-4791, fax 302-739-3106.)

Letter from Motiva's Plant Manager, R.G. Soehlke, to R. Taggart, Program Manager, Engineering and Compliance Section of DNREC, dated on March 6, 1992, and the documentation attached to this letter, entitled "Summary of VOC Emission Effect Resulting from Compliance with the Benzene Waste Rule on the Waste Water Treatment Plant".

Attachment 2 to Appendix M (Amended)

(A hardcopy of this attachment is available upon request. The request should be addressed to: Alfred Deramo, Program Manager, ERPA Program, DNREC, 156 S. State St., Dover, DE 19901. Telephone 302-739-4791, fax 302-739-3106.)

Final Order and Decision, the Environmental Appeals Board, the State of Delaware, November 20, 1998.

Appendix P

Mobile 5a Input and Output Files for Stage Ii Vapor Recovery Program With Annual Inspections

(A hardcopy of this appendix is available upon request. The request should be addressed to: Alfred Deramo, Program Manager, ERPA Program, DNREC, 156 S. State St., Dover, DE 19901. Telephone 302-739-4791, fax 302-739-3106.)

DIVISION OF AIR & WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

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

Secretary's Order No. 99-A-0026

Re: Proposed Amendments Regulation No. 31,
Low Enhanced Inspection and Maintenance Program,
Regulations Governing the Control of Air Pollution and State Implementation Plan for the Implementation of Regulation No. 31

Date of Issuance: May 10, 1999

Effective Date of the Amendments: June 11, 1999

I. Background

On Friday, April 30, 1999, at approximately 6:07 p.m., a public hearing was held in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. Evidence of the legal notice was entered into the record. The purpose of this hearing was to receive public comment on proposed amendments to Regulation No. 31, Low Enhanced Inspection and Maintenance Program, *Regulations Governing the Control of Air Pollution* and the SIP Plan intended to implement this regulation. Before the public hearing, the U.S. Environmental Protection Agency ("EPA") provided comments to the Air Quality Management Section ("AQM") concerning the proposed regulation, and these comments were introduced in the record but not discussed during the public hearing. EPA's comments did necessitate changes to the proposed regulation consisting of clarifications of the proposed language and minor technical changes relative to procedure. By memorandum to the Hearing Officer dated May 3, 1999, AQM provided a summary of proposed changes to address EPA's concerns, and that memorandum is expressly incorporated herein. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated May 7, 1999, and that memorandum is also expressly incorporated herein.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated May 7, 1999, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the Proposed Amendments Regulation No. 31, Low Enhanced Inspection and Maintenance Program, *Regulations Governing the Control of Air Pollution* and State Implementation Plan for the Implementation of Regulation No. 31 be amended in the manner and form provided for by law after making the modifications suggested in AQM's May 3, 1999, memorandum as recommended by the Hearing Officer.

IV. Reasons

Adopting the proposed amendments to Regulation No. 31 and the corresponding SIP will further the policies and purposes of 7 Del. C. Chapter 60, because it concerns the implementation of an inspections and vehicle maintenance program. This program is designed to improve the quality of Delaware's air by ensuring that motor vehicle emissions are checked uniformly but cost effectively by allowing for

waivers of testing for vehicles when data shows the vehicle routinely passes emissions testing. In addition, this program allows for waivers when a vehicle has failed emissions after the expenditure of a certain sum of money in order to balance the burden of compliance with the resulting benefit to air quality. Moreover, Delaware needs to implement this motor vehicle inspection and maintenance program in order to comply with the federal Clean Air Act.

Nicholas A. DiPasquale
Secretary

REGULATION NO. 31

LOW ENHANCED
INSPECTION AND MAINTENANCE
PROGRAM

PROPOSED
SIP REVISION

Prepared by the Delaware Department of Natural Resources and Environmental Control
Division of Air and Waste Management
Air Quality Management Section
5/21/99

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

Proposed change: Regulation 31 is proposed to be changed by revising one existing provision and adding four new provisions as follows: changing the new model year exemption for the exhaust emission test from 3 years to 5 years; requiring 1981 and newer model year vehicles to undergo a new idle test procedure which will be the two speed idle test; to add a new exemption of vehicle criteria that is referred in the regulation as *clean screening*; amending Section 3 (c) (2): Transient mass emission test procedure which is reserved in the existing regulation.

Low enhanced Inspection and Maintenance Program
Regulation No. 31

08/13/98

Section 1 - Applicability.

(a) This program shall be known as the "Low enhanced Inspection and Maintenance Program" or "LEIM Program", and shall be identified as such in the balance of this regulation.

(b) This regulation shall apply to New Castle and Kent Counties.

(c) This regulation shall apply to all vehicles registered in the following postal ZIP codes:

19701	19702	19703	19706	19707	19708
19709	19710	19711	19712	19713	19714
19715	19716	19717	19718	19720	19730
19731	19732	19733	19734	19735	19936
19703	19938	19800	19801	19802	19803
19804	19805	19806	19807	19808	19809
19810	19850	19890	19894	19896	19897
19898	19899	19901	19902	19903	19904
19934	19936	19938	19942	19943	19946
19952	19953	19954	19955	19960	19961
19962	19963*	19964	19977	19979	19980

* Note: If vehicles registered in Sussex County and with this ZIP code, this regulation is not applicable.

(d) The legal authority for implementation of the LEIM Program is contained in 7 Del.C. Chapter 60, §6010(a). Appendix 1(d) contains the letter from the State of Delaware, Secretary of the Department to EPA Regional Administrator, W. Michael McCabe committing to continue the I/M program through the enforcement of this regulation out to the attainment year and remain in effect until the applicable area is redesignated to attainment status and a Maintenance Plan is approved by the EPA. 7 Del. C. Chapter 60, §6010(a) does not have a sunset date.

(e) Requirements after attainment.

This LEIM program shall remain in effect if the area is redesignated to attainment status, until approval of a Maintenance Plan, under Section 175A of the Clean Air Act, which demonstrates that the area can maintain the relevant standard for the maintenance period (10 years) without

benefit of the emission reductions attributable to the continuation of the LEIM program.

(f) Definitions

Alternative Fuel Vehicle: Any vehicle capable of operating on one or more fuels, none of which are gasoline, and which is subject to emission testing to the same stringency as a similar gasoline fueled vehicle.

Certified Repair Technician: Automotive repair technician certified jointly by the College (or other training agencies or training companies approved by the Department) and the Department of Natural Resources and Environmental Control and the Division of Motor Vehicles as having passed a recognized course in emission repair. (See Appendix 7 (a))

Certified Manufacturer Repair Technician: Automotive repair technician certified by the Department of Natural Resources and Environmental Control and the Division of Motor Vehicles, as trained in doing emission repairs on vehicles of a specific manufacturer. (See Appendix 7 (a))

College: The Delaware Technical and Community College

Compliance Rate: The percentage of vehicles out of the total number required to be inspected in any given year that have completed the inspection process to the point of receiving a final certificate of compliance or a waiver.

Director: The Director of the Division of Motor Vehicles in the Department of Public Safety.

Division: The Division of Motor Vehicles in the Department of Public Safety of the State of Delaware.

Department: The Department of Natural Resources and Environmental Control of the State of Delaware.

Emissions: Products of combustion and fuel evaporation discharged into the atmosphere from the tailpipe, fuel system or any emission control component of a motor vehicle.

Emissions Inspection Area: The emissions inspection area shall constitute the entire counties of New Castle and Kent.

Emissions Standard(s): The maximum concentration of hydrocarbons (HC), carbon monoxide (CO) or oxides of nitrogen (NO_x), or any combination thereof, allowed in the emissions from a motor vehicle as established by the Secretary, as described in this regulation.

Failed Motor Vehicle: Any motor vehicle which does not comply with applicable exhaust emission standards, evaporative system function check requirements and emission control device inspection requirements during the initial test or any retest.

Flexible Fuel Vehicle: Any vehicle capable of operating on more than one fuel type, one of which includes gasoline, which must be tested to program standards for gasoline. This is in contrast to alternative fuel vehicles.

Going Concern: An individual or business with a primary, full time interest in the repair of motor vehicles.

GPM: Grams per mile (grams of emissions per mile of travel).

Manufacturer's Gross Vehicle Weight: The vehicle gross weight as designated by the manufacturer as the total weight of the vehicle and its maximum allowable load.

Model Year: The year of manufacture of a vehicle as designated by the manufacturer, or the model year designation assigned by the Division to a vehicle constructed by other than the original manufacturer.

Motor Vehicle: Includes every vehicle, as defined in 21 Del. Code, Section 101, which is self-propelled, except farm tractors, off-highway vehicles, motorcycles and mopeds.

Motor Vehicle Technician: A person who has completed an approved emissions inspection equipment training program and is employed or under contract with the State of Delaware.

New Motor Vehicle: A motor vehicle of the current or preceding model year that has never been previously titled or registered in this or any other jurisdiction and whose ownership document remains as a manufacturer's certificate of origin, unregistered vehicle title.

Official Inspection Station: All official Motor Vehicle Inspection Stations located in New Castle and Kent counties, operated by, or under the auspices of, the Division.

Operator: An employee or contractor of the State of Delaware performing any function related to motor vehicle inspections in the State.

Performance Standard: The complete matrix of emission factors derived from the analysis of the model program as defined in 40 CFR Part 51 Subpart S, by using EPA's computerized Mobile5a emission factor model. This matrix of emission factors is dependent upon various speeds, pollutants and evaluation years.

PFI: The Plan for Implementation of Regulation No. 31, which can be also considered to be the technical support document for that regulation.

Reasonable Cost: The actual cost of parts and labor which is necessary to cause the failed motor vehicle to comply with applicable emissions standards or which contributes towards compliance. It shall not include the cost of those repairs determined by the Division to be necessary due to the alteration or removal of any part of the emission control system of the motor vehicle, or due to any damage resulting from the use of improper fuel in the failed motor vehicle.

Registration Fraud: Any attempt by a vehicle owner or operator to circumvent the requirements to properly and legally register any motor vehicle in the State of Delaware.

Secretary: The Secretary of the Department of Natural Resources and Environmental Control.

Stringency Rate: The tailpipe emission test failure rate expected in an I/M program among pre-1981 model year

passenger cars or pre-1984 light-duty trucks.

Vehicle Type: EPA classification of motor vehicles by weight class which includes the terms light duty and heavy duty vehicle.

Waiver: An exemption issued to a motor vehicle that cannot comply with the applicable exhaust emissions standard and cannot be repaired for a reasonable cost.

Waiver Rate: The number of vehicles receiving waivers expressed as a percentage of vehicles failing the initial exhaust emission test.

08/13/98

Section 2 -Low Enhanced I/M Performance Standard.

(a) On-road testing:

The performance standard shall include on-road testing of at least 0.5% of the subject vehicle population, or 20,000 vehicles whichever is less, as a supplement to the periodic inspection required in paragraph (a) of Section 3. The requirements are contained in Section 12 of this regulation.

(b) On-board diagnostics (OBD): [Reserved]

06/11/99

Section 3 - Network Type And Program Evaluation.

(a) The LEIM Program shall be a test-only, centralized system operated in New Castle and Kent Counties by the State of Delaware's Division of Motor Vehicles.

(1) Network type:

Centralized testing.

(2) Start date:

January 1, 1995

(3) Test frequency:

Biennial testing.

(4) Model year coverage:

Idle and two-speed idle test of all covered vehicles: Model years 1968 and newer for light duty vehicles and model years 1970 and newer for light duty trucks with the exception of the five most recent model years.

(5) Vehicle type coverage:

Light duty vehicles, and light duty trucks, rated up to 8,500 pounds Gross Vehicle Weight Rating (GVWR).

(6) Exhaust emission test type:

(i) Idle test of all covered vehicles: Model years 1968 ~~and newer~~ through 1980 for light duty vehicles and model years 1970 ~~and newer~~ through 1980 for light duty trucks according to the requirements found in Appendix 6 (a).

(ii) Two-speed idle test (vehicle engine at idle and 2500 revolutions per minute (rpm) of all covered vehicles model years 1981 and newer according to the requirements found in Appendix 6 (a).

(7) Emission standards:

(Emissions limits according to model year may be found in Appendix 3 (a) (7))

Maximum exhaust dilution measured at no less than 6% CO plus carbon dioxide (CO₂) on all tested vehicles (as described in Appendix B of the EPA Rule).

(8) Emission control device inspections:

Visual inspection of the catalyst on all 1975 and later model year vehicles with the exception of new motor vehicles registered in Delaware.

(9) Evaporative system function checks:

Evaporative system integrity (pressure) test on 1975 and later model year vehicles with the exception of the five most recent model years.

(10) Stringency:

A 20% emission test failure rate among pre-1981 model year vehicles.

(11) Waiver rate:

A 3% rate, as a percentage of failed vehicles.

(12) Compliance rate:

A 96% compliance rate.

(13) Evaluation date:

Low enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by 2000 for ozone nonattainment areas and 2001 for CO nonattainment areas, and for severe and extreme ozone nonattainment areas, on each applicable milestone and attainment deadline, thereafter. Milestones for NO_x shall be the same as for ozone..

(b) On-board diagnostics (OBD):[Reserved]

(c) Program Evaluation

(1) Program evaluation shall be used in determining actual emission reductions achieved from the LEIM program for the purposes of satisfying the requirements of sections 182(g)(1) and 182(g)(2) of the Clean Air Act, relating to reductions in emissions and compliance demonstration.

(2) Transient mass emission test procedure: Reserved. A randomly selected number of subject vehicles that are due to be tested according to the requirements of this regulation will be required to undergo, in addition to the required tests, an alternative test procedure to provide information for the purpose of evaluating the overall effectiveness of the Low Enhanced Inspection and Maintenance Program. The test is referred to as the VMASTM method. See Appendix 3 (c) (2).

06/11/99

Section 4 - Test Frequency And Convenience.

(a) The LEIM Program shall be operated on a biennial frequency, which requires an inspection of each subject vehicle at least once every two years, regardless of any change in vehicle status, at an official inspection station. New vehicles must be presented for LEIM program testing not more than ~~36~~ 60 months after initial titling.

(b) This system of inspections and registration renewals allows the additional benefit of coupling both enforcement systems together. Local, County and State police shall continue to enforce registration requirements, which shall require inspection in order to come into compliance. Requirements of inspection of motor vehicles before receiving a vehicle registration is found in the Delaware Criminal and Traffic manual Title 21 Chapter 21. Violations of registration provisions and the resulting penalties are found in the Delaware Criminal and Traffic Law Manual, Title 21, Chapter 21. One 60 day extension shall be available to allow testing and repair.(See Appendix 4 (a) for the citations)

(c) Stations shall be open to the public at hours designed for maximum public convenience. These hours shall equal a minimum of 42 hours per week. Stations shall remain open continuously through the designated hours, and every vehicle presented for inspection during these hours shall receive a test prior to the daily closing of the station. Testing hours shall be Monday and Tuesday: 8:00 am to 4:30 pm, Wednesday: 12 noon to 8 pm, Thursday and Friday 8:00 am to 4:30 pm. These hours may be subject to change by the State. Official inspection stations shall adhere to regular, extended testing hours and shall test any subject vehicle presented for a test during its test period.

06/11/99

Section 5 - Vehicle Coverage.

(a) Subject Vehicles

The LEIM program is based on coverage of all 1968 and later model year, gasoline powered, light duty vehicles and 1970 and later model year light duty trucks up to 8,500 pounds GVWR (with the exception of the five most recent model years). The following is the complete description of the LEIM program:

Vehicles registered or required to be registered within the emission inspection area, and fleets primarily operated within the emissions inspection area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles, which are as follows: (See Appendix 5 (a) for DMV Out of State Renewals)

(1) All vehicles titled/registered in Delaware from model year 1968 light duty vehicles and 1970 and later model year light duty trucks and whose vehicle type are subject to the applicable test schedule.

(2) All subject fleet vehicles shall be inspected at an official inspection station.

(3) Subject vehicles which are registered in the program area but are primarily operated in another LEIM area shall be tested, either in the area of primary operation, or in the area of registration. Alternate schedules may be established to permit convenient testing of these vehicles (e.g., vehicles belonging to students away at college should be rescheduled for testing during a visit home).

(4) Vehicles which are operated on Federal installations located within an emission inspection shall be tested, regardless of whether the vehicles are registered in the emission inspection jurisdiction. This requirement applies to all employee-owned or leased vehicles (including vehicles owned, leased, or operated by civilian and military personnel on Federal installations) as well as agency-owned or operated vehicles, except tactical military vehicles, operated on the installation. This requirement shall not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year. In areas without test fees collected in the lane, arrangements shall be made by the installation with the LEIM program for reimbursement of the costs of tests provided for agency vehicles, at the discretion of the Director. The installation manager shall provide documentation of proof of compliance to the Director. The documentation shall include a list of subject vehicles and shall be updated periodically, as determined by the Director, but no less frequently than each inspection cycle. The installation shall use one of the following methods to establish proof of compliance:

- (i) Presentation of a valid certificate of compliance from the LEIM program, from any other LEIM program at least as stringent as the LEIM program described herein, or from any program deemed acceptable by the Director.
- (ii) Presentation of proof of vehicle registration within the geographic area covered by the LEIM program, except for any Inspection and Maintenance program whose enforcement is not through registration denial.
- (iii) Another method approved by the Director.

(5) Vehicles powered solely by a "clean fuel" such as compressed natural gas, propane, alcohol and similar non-gasoline fuels shall be required to report for inspection to the same emission levels as gasoline powered cars until standards for clean fuel vehicles become available and are adopted by the State.

(6) Vehicles able to be powered by more than one fuel, such as compressed natural gas and/or gasoline, must be tested and pass emissions standards for all fuels when such standards have become adopted by the Department..

(b) Exemptions

The following motor vehicles are exempt from the provisions of this regulation:

- (1) Vehicles manufactured and registered as Kit Cars
- (2) Tactical military vehicles used exclusively for military field operations.
- (3) All motor vehicles with a manufacturer's gross vehicle weight over 8,500 pounds.
- (4) All motorcycles and mopeds
- (5) All vehicles powered solely by electricity

generated from solar cells and/or stored in batteries.

(6) Non-road sources, or vehicles not operated on public roads

(7) Vehicles powered solely by Diesel fuel.

(c) Any exemption from inspection requirements issued to a vehicle under this Section shall not have an expiration date and shall expire only upon a change in the vehicle status for which the exemption was initially granted.

(d) Fleet owners are required to have all non-exempted vehicles under their control inspected at an official inspection station during regular station hours.

(e) Vehicles shall be pre-inspected prior to the emission inspection, and shall be prohibited from testing should any unsafe conditions be found. These unsafe conditions include, but are not limited to significant exhaust leaks, and significant fluid leaks. The Division and the Department shall not be responsible for major vehicle component failures during the test, of parts which were deficient or excessively worn prior to the start of the test.

(f) Clean Screening: [Clean screening exemptions will be determined by use of a Law Emitter Profile model that identifies expected low emitting vehicles based on historical test data. Exemption criteria is based on vehicle types (make, model, model year, and engine type) Low Emitter Profile modeling database will be updated annually to account for changing vehicle emissions test performance.] Vehicle types (name of manufacturer, model, model year and engine type) that are subject to this regulation and have met clean emissions criteria developed by the Division of Motor Vehicles, may be exempt from the two speed idle exhaust emissions test and the evaporative emissions test (except for a fuel cap pressure test) if warranted by queue conditions at the inspection lanes. Each Delaware inspection lane shall independently control clean screen activation. Clean screen mode shall occur when the inspection lane queue exceeds 60 minutes. The Lane Manager (or designee) must advise inspection personnel to activate the process. Once a queue reduction to less than 60 minutes takes place, reversion to the normal testing protocol shall occur. [Vehicles that are subject to this regulation and have met Low Emitter Profiling criteria, may be exempt from the two speed idle exhaust emissions test and the evaporative emissions test. All subject vehicles will receive a fuel cap pressure test. Vehicle exemptions will be distributed according to profiled model year percentages in order to prevent inadvertent skewing of model year exemption. Clean Screening will occur when motorist wait times exceed 60 minutes. Wait times will be determined by queue lengths that surpass lane markers that indicate expected wait time of 60 minutes or more. The Lane Manager (or designee) is responsible for advising inspection personnel to activate the clean screening exemption process. Once a reduction in queue length to that representing a motorist wait time of less

than 60 minutes takes place, reversion to the normal testing protocol shall occur. Each Delaware inspection lane shall independently control clean screen activation. The Division of Motor Vehicles will cap, on an annual basis, the number of vehicles which may be exempted through clean screening by model year in order to prevent failure to meet expected emission reductions. If the specified number of vehicles clean screened for an individual model year equals the annual cap of emissions for that individual model year, no more vehicles for that model year will be exempt. The maximum allowable number of vehicles to be clean screened will be re-evaluated annually, coinciding with the LEP database update, and lowered as appropriate so that emission reduction targets continue to be achieved.] (See Appendix 5(f) Clean Screening Vehicle Exemption)

06/11/99

Section 6 -Test Procedures And Standards.

(a) Test procedure requirements. (The test procedure use to perform this test shall conform to the requirements shown in Appendix 6 (a)).

(1) Initial tests (i.e., those occurring for the first time in a test cycle) shall be performed without repair or adjustment at the inspection facility, prior to the test.

(2) An official test, once initiated, shall be performed in its entirety regardless of intermediate outcomes except in the case of invalid test condition or unsafe conditions.

(3) Tests involving measurements shall be performed with equipment that has been calibrated according to the quality control procedures established by the Department

(4) Vehicles shall be rejected from testing, as covered in this section, if the exhaust system is missing or leaking, or if the vehicle is in an unsafe condition for testing.

(5) After an initial failure of any portion of any emission test in the LEIM program, all vehicles shall be retested without repairs being performed. This retest shall be indicated on the records as the second chance test. After failure of the second chance test, prior to any subsequent retests, proof of appropriate repairs must be submitted indicating the type of repairs and parts installed (if any). This shall be done by completing the "Vehicle Emissions Repair Report Form" (Appendix 6 (a) (5) which will be distributed to anyone failing the emissions test.)

(6) Idle testing using BAR 90 emission analyzers (analyzers that have been certified by the California Bureau of Automotive Repair) shall be performed on all 1968 through current (minus ~~three years~~ five years) model year vehicles in New Castle and Kent Counties.

(7) Emission control device inspection.

Visual emission control device checks shall be performed through direct observation or through indirect

observation using a mirror. These inspections shall include a determination as to whether each subject device is present.

(8) Evaporative System Integrity Test. Vehicles shall fail the evaporative system integrity test(s) if the system(s) cannot maintain the equivalent pressure of eight inches of water using USEPA approved fast pass methodology. Additionally, vehicles shall fail evaporative system integrity testing if the canister is missing or obviously disconnected, the hoses are crimped off, or the fuel cap is missing. Evaporative system integrity test procedure is found in See Appendix 6 (a) (8) .

(9) On-board diagnostic checks.

[Reserved]

(b) Test standards

(1) Emissions standards.

HC, CO, CO+CO₂ (or CO₂ alone), emission standards shall be applicable to all vehicles subject to the LEIM program and repairs shall be required for failure of any standard regardless of the attainment status of the area.

(i) Steady-state short tests.

Appropriate model program standards shall be used in idle testing of vehicles from model years 1968 light duty vehicles and model years 1970 light duty trucks and newer.

(2) Visual equipment inspection standards performed by the Motor Vehicle Technician.

(i) Vehicles shall fail visual inspections of subject emission control devices if such devices are part of the original certified configuration and are found to be missing, modified, disconnected, or improperly connected.

(3) On-board diagnostics test standards.

[Reserved].

(c) Applicability.

In general, section 203(a)(3)(A) of the Clean Air Act prohibits altering a vehicle's configuration such that it changes from a certified to a non-certified configuration. In the inspection process, vehicles that have been altered from their original certified configuration are to be tested by the Motor Vehicle Technician in the same manner as other subject vehicles.

(1) Vehicles with engines of a model year older than the chassis model year shall be required to pass the standards commensurate with the chassis model year.

(2) Vehicles that have been switched from an engine of one fuel type to another fuel type that is subject to the LEIM program (e.g., from a diesel engine to a gasoline engine) shall be subject to the test procedures and standards for the current fuel type, and to the requirements of paragraph (c)(1) of this section.

(3) Vehicles that are switched to a fuel type for which there is no certified configuration shall be tested according to the most stringent emission standards established for that vehicle type and model year. Emission control device requirements may be waived if the Division

determines that the alternatively fueled vehicle configuration would meet the new vehicle standards for that model year without such devices.

(4) Vehicles converted to run on alternate fuels, frequently called a dual-fuel vehicle, shall be tested and required to pass the most stringent standard for each fuel type.

(5) Mixing vehicle classes (e.g., light-duty with heavy-duty) and certification types (e.g., California with Federal) within a single vehicle configuration shall be considered tampering.

08/13/98

Section 7 - Waivers And Compliance Via Diagnostic Inspection.

(a) Waiver issuance criteria.

(1) Motorists shall expend a reasonable cost, as defined in Section 1 of this Regulation in order to qualify for a waiver. Effective January 1, 1997 for vehicles registered in New Castle County and July 1, 1997 for vehicles registered in Kent County, in order to qualify for waiver repairs on any 1981 or later model year vehicle shall be performed by a certified repair technician or a certified manufacturer repair technician, as defined in Section 1 of this regulation, and must have been appropriate to correct the emission failure. Repairs of primary emission control components may be performed by non-technicians (e.g., owners) to apply toward the waiver limit. The waiver would apply to the cost of parts for the repair or replacement of the following list of emission control component systems: Air induction system (air filter, oxygen sensor), catalytic converter system (convertor, preheat catalyst), thermal reactor, EGR system (valve, passage/hose, sensor) PCV System, air injection system (air pump, check valve), ignition system (distributor, ignition wires, coil, spark plugs). The cost of any hoses, gaskets, belts, clamps, brackets or other emission accessories directly associated with these components may also be applied to the waiver limit.

(2) Any available warranty coverage shall be used to obtain needed repairs before expenditures can be counted towards the cost limits in paragraph (a)(4) of this section. The operator of a vehicle within the statutory age and mileage coverage under section 207(b) of the Clean Air Act shall present a written denial of warranty coverage from the manufacturer or authorized dealer for this provision to be waived for approved tests applicable to the vehicle.

(3) Receipts shall be submitted for review to further verify that qualifying repairs were performed.

(4) A minimum expenditure for repairs of \$75 for pre-81 model year vehicles or a minimum expenditure of \$200 for 1981 model year and newer vehicles shall be spent in order to qualify for a waiver. The minimum repair cost for 1981 and newer vehicles shall increase to \$450 starting

January 1, 2000. For each subsequent year, the \$450 minimum expenditure shall be adjusted in January of that year by the percentage, if any, by which the Consumer Price Index for the preceding calendar year differs from the Consumer Price Index for 1989.

(5) The issuance of a waiver applies only to those vehicles failing an exhaust emission tests. No waivers are granted to vehicles failing the evaporative emission integrity test.

(6) Waivers shall be issued by the Division Director only after:

(i) a vehicle has failed a retest for only the exhaust emissions portions of the program, performed after all qualifying repairs have been completed;

(ii) and a minimum of 10% improvement (reduction) in hydrocarbons (HC) and carbon monoxide (CO) has resulted from those repairs. This requirement [Section 7 (a) (6) (ii)] will cease to be in effect starting January 1, 2000.

(7) Qualifying repairs include repairs of primary emission control components performed within 90 days of the test date.

(8) Waivers issued pursuant to this regulation are valid until the date of current registration expiration.

(9) Waivers will not be issued to vehicles for tampering-related repairs. The cost of tampering-related repairs shall not be applicable to the minimum expenditure in paragraph (a)(4) of this section. The Director will issue exemptions for tampering-related repairs if it can be verified that the part in question or one similar to it is no longer available for sale

(b) Compliance via diagnostic inspection.

Vehicles subject to an emission test at the cutpoints shown in Appendix 3 (a)(7) of Regulation 31 may be issued a certificate of compliance without meeting the prescribed emission cutpoints, if, after failing a retest on emissions, a complete, documented physical and functional diagnosis and inspection performed by a Delaware Certified Emission Repair Technician shows that no additional emission-related repairs are needed.

(c) (1) In order to meet the requirements of the EPA Rule, the State commits to maintaining a waiver rate equal to or less than 3% of the failed vehicles.

(2) The Secretary shall take corrective action to lower the waiver rate should the actual rate reported to EPA be above 3%.

(3) Actions to achieve the 3% waiver rate, if required, shall include measures such as not issuing waivers on vehicles less than 6 years old, raising minimum expenditure rates, and limiting waivers to once every four years. If the waiver rate cannot be lowered to levels committed to in the SIP, or if the State chooses not to implement measures to do so, then the Secretary shall revise the I/M emission reduction projections in the SIP and shall

implement other LEIM program changes needed to ensure the performance standard is met.

08/13/98

Section 8 - Motorist Compliance Enforcement.

(a) Registration denial.

Registration denial enforcement (See Appendix 8 (a), the Systems Requirement Definition for the Registration Denial process) is defined as rejecting an application for initial registration or re-registration of a used vehicle (i.e., a vehicle being registered after the initial retail sale and associated registration) unless the vehicle has complied with the LEIM program requirement prior to granting the application. This enforcement is the express responsibility of the Division with the assistance of police agencies for on road inspection and verification. The law governing the registration of motor vehicles is found in the Delaware Criminal and Traffic Law Manual, Title 21, Chapter 21. Pursuant to section 207(g)(3) of the Act, nothing in this section shall be construed to require that new vehicles shall receive emission testing prior to initial retail sale. In designing its enforcement program, the Director shall:

(1) Provide an external, readily visible means of determining vehicle compliance with the registration requirement to facilitate enforcement of the LEIM program. This shall be in the form of a window sticker and tag sticker which clearly indicate the vehicles compliance status and next inspection date;

(2) Adopt a schedule of biennial testing that clearly determines when a vehicle shall have to be inspected to comply prior to (re)registration;

(3) Design a registration denial system which features the electronic transfer of information from the inspection lanes to the Division's Data Base, and monitors the following information:

(i) Expiration date of the registration;

(ii) Unambiguous vehicle identification information; and

(iii) Whether the vehicle received either a waiver or a certificate of compliance, and;

(iv) The Division's unique windshield certificate identification number to verify authenticity; and

(v) The Division shall finally check the inspection data base to ensure all program requirements have been met before issuing a vehicle registration.

(4) Ensure that evidence of testing is available and checked for validity at the time of a new registration of a used vehicle or registration renewal.

(5) Prevent owners or lessors from avoiding testing through manipulation of the title or registration system; title transfers do not re-start the clock on the inspection cycle.

(6) Limit and track the use of time extensions of the registration requirement to only one 60 day extension per

vehicle to prevent repeated extensions.

(b) (1) (i) Owners of subject vehicles must provide valid proof of having received a passing test or a waiver to the Director's representative in order to receive registration from the Division.

(ii) State and local enforcement branches, such as police agencies, as part of this program, shall cite motorist who do not visibly display evidence of compliance with the registration and inspection requirements.

(iii) Fleet and all other registered applicable vehicle compliance shall be assured through the regular enforcement mechanisms concurrent with registration renewal, on-road testing and parking lot observation. Fleets shall be inspected at official inspection stations.

(iv) Federal fleet compliance shall be assured through the cooperation of the federal fleet managers as well as also being subject to regular enforcement operations of the Division.

08/13/98

Section 9 - Enforcement Against Operators And Motor Vehicle Technicians.

(a) Imposition of penalties

The State of Delaware shall continue to operate the LEIM program using State of Delaware Employees for all functions. Should enforcement actions be required for violations of program requirements, the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8, Disciplinary Action, and, the State of Delaware Merit Rules, shall be adhered to in all matters. Applicable provisions of these documents are found in Appendix 9 (a).

(b) Legal authority.

(1) The Director shall have the authority to temporarily suspend station Motor Vehicle Technicians' certificates immediately upon finding a violation or upon finding the Motor Vehicle Technician administered emission tests with equipment which had a known failure and that directly affects emission reduction benefits, in accordance with the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8 Disciplinary Action.

(2) The Director shall have the authority to impose disciplinary action against the station manager or the Motor Vehicle Technician, even if the manager had no direct knowledge of the violation but was found to be careless in oversight of motor vehicle technicians or has a history of violations, in accordance with the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, and the State of Delaware Merit Rules. The lane manager shall be held fully

responsible for performance of the motor vehicle technician in the course of duty.

08/13/98

Section 10 - Improving Repair Effectiveness.

A prerequisite for a retest shall be a completed repair form that indicates which repairs were performed. (See Section 6 (a) (5) of this Regulation).

08/13/98

Section 11 - Compliance With Recall Notices.

[Reserved]

08/13/98

Section 12 - On-Road Testing.

(a) Periodic random Delaware registered vehicle pullovers on Delaware highways will occur without prior notice to the public for on-road vehicle exhaust emission testing.

(b) Vehicles identified by the on-road testing portion of the LEIM program shall be notified of the requirement for an out-of-cycle emission retest, and shall have 30 days from the date of the notice to appear for inspection. Vehicles not appearing for a retest shall be out of compliance, and be liable for penalties under Title 21 of Delaware Criminal and Traffic Law Manual and the Division will take action to suspend the vehicle registration.

06/11/99

Section 13 - Implementation Deadlines.

All requirements related to the LEIM program shall be effective ten days after the Secretary's order has been signed and published in the State Register except for the following provisions that have been amended to this regulation:

Date of Implementation

- | | |
|--|--------------------------|
| (a) <u>Five year new model year exemption from the idle and two speed idle tests</u> | <u>September 1, 1999</u> |
| (b) <u>Two-speed idle test (vehicle at idle and 2500 rpm) of all covered vehicles model years 1981 and newer</u> | <u>November 1, 1999</u> |
| (c) <u>Clean Screen exemptions.</u> | <u>January 1, 2000</u> |
| (d) <u>Program Evaluation using VMAS™ test procedure.</u> | <u>January 1, 2000</u> |

~~This regulation supersedes the existing Regulation Numbers 26 and 33 for Kent and New Castle Counties effective ten days after the Secretary's order has been signed and published in the State Register.~~

APPENDIX 1(d)

Commitment to Extend the I/M Program to the Attainment Date Letter from Secretary Tulou to EPA Regional Administrator, W. Michael McCabe

***Please note that there were no changes to this appendix as originally proposed and published in the August 1998 issue of the Register at page 246 (2:2 Del.R. 246). Therefore, the final appendix is not being republished. Please refer to the August 1998 issue of the Register or contact the Department of Natural Resources and Environmental Control.**

APPENDIX 2 - (b)

INPUT AND OUTPUT FILES RELATING TO
MOBILE5A ANALYSIS
MOBILE5A LOCAL INPUT SOURCES AND
CALCULATIONS
RESULTS OF MODELLING ANALYSIS
AND CLEAN SCREEN ANALYSIS

This document may be reviewed during normal business hours (8:30 am – 4 pm) Monday through Friday at the Air Quality Management Section Office, 156 South State Street, Dover. For more information call Philip Wheeler at 302/739-4791

APPENDIX 3 (A)(7)

***Please note that there were no changes to this appendix as originally proposed and published in the August 1998 issue of the Register at page 247 (2:2 Del.R. 247). Therefore, the final appendix is not being republished. Please refer to the August 1998 issue of the Register or contact the Department of Natural Resources and Environmental Control.**

APPENDIX 3 (c) (2)

VMAS™ TEST PROCEDURES

***Please note that there were no changes to this appendix as originally proposed and published in the March 1998 issue of the Register at page 1528 (2:9 Del.R. 1528). Therefore, the final appendix is not being republished. Please refer to the March 1998 issue of the Register or contact the Department of Natural Resources and Environmental Control.**

APPENDIX 4 (a)

SECTIONS FROM DELAWARE CRIMINAL AND TRAFFIC LAW MANUAL

***Please note that there were no changes to this appendix as originally proposed and published in the August 1998 issue of the Register at page 247 (2:2 Del.R. 247). Therefore, the final appendix is not being republished. Please refer to the August 1998 issue of the Register or contact the Department of Natural Resources and Environmental Control.**

APPENDIX 5 (a)

DIVISION OF MOTOR VEHICLES POLICY ON OUT-OF-STATE RENEWALS

***Please note that there were no changes to this appendix as originally proposed and published in the August 1998 issue of the Register at page 248 (2:2 Del.R. 248). Therefore, the final appendix is not being republished. Please refer to the August 1998 issue of the Register or contact the Department of Natural Resources and Environmental Control.**

APPENDIX 5(f)

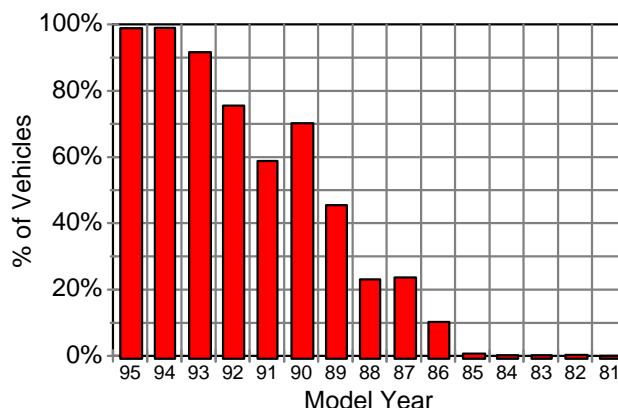
CLEAN SCREENING VEHICLE EXEMPTION

BACKGROUND ON CLEAN SCREENING

Delaware plans to implement a clean screen program that combines the use of the low emitter profile model (LEP) with an expansion of model year exemptions from 3 year old and newer vehicles to 5 year old and newer vehicles. The LEP model uses data from Arizona's IM240 program to predict whether a vehicle will pass the test. Analysis of data from applying the LEP to Colorado's fleet indicate that up to half of the vehicles can be exempted without greatly impacting the emission benefits of the program. The model only requires an accurate vehicle identification number (VIN) to project emission characteristics.

The LEP would be used primarily a lane management tool to increase throughput during peak periods. Under this scenario, the LEP would be used only during peak periods to clean screen vehicles more than 5 years old. Vehicles flagged as clean screen candidates would receive the gas cap test and the safety inspection, but would be exempted from the exhaust emission and pressure test when in clean screen mode. Delaware expects that "clean screening" would be activated less than 40% of the time. During off-peak periods, all vehicles more than 5 years old would receive exhaust emission and tank pressure tests along with the gas cap and safety test. Figure one and Table A show the possible percentages of vehicle model years that would be

Figure 1. % of Vehicles Clean Screened By Model Year



exempt under clean screening if queue conditions warranted.

Table A
Percent of Vehicles Eligible for Clean Screen When in Clean Screen Mode

Vehicle Age	Observed Screen %	Clean	Assumed Clean Screen %
1	99.00%		100%
2	98.83%		100%
3	99.00%		99.00%
4	91.59%		88.00%

FINAL REGULATIONS

5	75.50%	77.00%
6	58.74%	66.00%
7	70.20%	55.00%
8	45.48%	44.00%
9	23.08%	33.00%
10	23.62%	22.00%
11	10.17%	11.00%
12 and older	0.65%	0.00%

¹Based on Arizona IM240 data

The Division of Motor Vehicles will determine when and if any applicable vehicles are exempt under the clean screen program. Typically, applicable vehicles will be exempt if queue conditions result in a wait time at the lane of 60 minutes or more. However, there are factors in the program that will automatically prevent the clean screen exemption from being implemented. Specifically, a budget of the total number of the applicable vehicles that can be exempt under clean screen will be established for any one calendar year and therefore if that budget is exceeded, the clean screen exemption will not apply even when wait times are 60 minutes or longer.

Vehicle Type	Model Year	Make	Engine Size
Passenger	86	ACURA	2.5
Passenger	87	ACURA	2.5
Passenger	87	ACURA	2.7
Passenger	88	ACURA	2.7
Passenger	89	ACURA	2.7
Passenger	90	ACURA	1.8
Passenger	90	ACURA	2.7
Passenger	91	ACURA	3.2
Passenger	91	ACURA	3
Passenger	91	ACURA	1.8
Passenger	92	ACURA	1.8
Passenger	92	ACURA	2.5
Passenger	92	ACURA	3.2
Passenger	93	ACURA	2.5

Passenger	93	ACURA	3.2
Passenger	93	ACURA	1.8
Passenger	94	ACURA	2.5
Passenger	94	ACURA	3.2
Passenger	94	ACURA	1.8
Passenger	95	ACURA	3.2
Passenger	95	ACURA	1.8
Passenger	92	AUDI	2.8
Passenger	93	AUDI	2.8
Passenger	87	BMW	2.5
Passenger	87	BMW	2.7
Passenger	88	BMW	2.5
Passenger	88	BMW	2.7
Passenger	88	BMW	3.4
Passenger	89	BMW	5
Passenger	89	BMW	3.4
Passenger	89	BMW	2.5
Passenger	90	BMW	2.5
Passenger	90	BMW	3.4
Passenger	90	BMW	3.5
Passenger	91	BMW	2.5
Passenger	91	BMW	3.5
Passenger	91	BMW	1.8
Passenger	92	BMW	2.5
Passenger	92	BMW	3.5
Passenger	92	BMW	1.8

FINAL REGULATIONS

Passenger	93	BMW	1.8
Passenger	93	BMW	4
Passenger	93	BMW	2.5
Passenger	94	BMW	2.5
Passenger	94	BMW	4
Passenger	94	BMW	1.8
Passenger	95	BMW	2.5
Passenger	95	BMW	3
Passenger	95	BMW	4
Passenger	95	BMW	1.8
Passenger	87	BUICK	3.8
Passenger	87	BUICK	3
Passenger	88	BUICK	3
Passenger	88	BUICK	3.8
Passenger	89	BUICK	3.3
Passenger	89	BUICK	3.8
Passenger	89	BUICK	2.8
Passenger	90	BUICK	3.1
Passenger	90	BUICK	3.8
Passenger	90	BUICK	3.3
Passenger	90	BUICK	5
Passenger	91	BUICK	2.5
Passenger	91	BUICK	3.8
Passenger	91	BUICK	3.3
Passenger	92	BUICK	3.3
Passenger	92	BUICK	2.3
Passenger	92	BUICK	3.8
Passenger	92	BUICK	5.7
Passenger	93	BUICK	5.7
Passenger	93	BUICK	3.3
Passenger	93	BUICK	3.8
Passenger	94	BUICK	2.2
Passenger	94	BUICK	3.1
Passenger	94	BUICK	3.8
Passenger	94	BUICK	5.7

Passenger	94	BUICK	2.3
Passenger	95	BUICK	2.3
Passenger	95	BUICK	3.1
Passenger	95	BUICK	2.2
Passenger	95	BUICK	5.7
Passenger	95	BUICK	3.8
Passenger	95	BUICK	3.8
Passenger	87	CADIL	2.8
Passenger	89	CADIL	4.5
Passenger	90	CADIL	5
Passenger	90	CADIL	5.7
Passenger	90	CADIL	4.5
Passenger	91	CADIL	5.7
Passenger	92	CADIL	5
Passenger	92	CADIL	4.9
Passenger	93	CADIL	5.7
Passenger	93	CADIL	4.9
Passenger	94	CADIL	4.9
Passenger	94	CADIL	5.7
Passenger	95	CADIL	5.7
Passenger	95	CADIL	4.9
Passenger	90	CHEVR	1.6
Passenger	90	CHEVR	5.7
Passenger	90	CHEVR	2.2
Passenger	91	CHEVR	2.5
Passenger	91	CHEVR	2.2
Passenger	91	CHEVR	1.6
Passenger	92	CHEVR	3.4
Passenger	92	CHEVR	1.6
Passenger	92	CHEVR	1
Passenger	92	CHEVR	2.2
Passenger	92	CHEVR	2.5
Passenger	93	CHEVR	2.2
Passenger	93	CHEVR	3.8
Passenger	93	CHEVR	1.8
Passenger	93	CHEVR	1.6

FINAL REGULATIONS

2299

Passenger	93	CHEVR	1
Passenger	93	CHEVR	5.7
Passenger	93	CHEVR	5
Passenger	93	CHEVR	2.5
Passenger	93	CHEVR	3.1
Passenger	93	CHEVR	3.4
Passenger	94	CHEVR	3.8
Passenger	94	CHEVR	3.4
Passenger	94	CHEVR	4.3
Passenger	94	CHEVR	3.1
Passenger	94	CHEVR	4.3
Passenger	94	CHEVR	3.4
Passenger	94	CHEVR	4.3
Passenger	94	CHEVR	2.2
Passenger	94	CHEVR	3.1
Passenger	94	CHEVR	2.2
Passenger	94	CHEVR	5.7
Passenger	94	CHEVR	1.8
Passenger	94	CHEVR	1.6
Passenger	95	CHEVR	3.4
Passenger	95	CHEVR	3.8
Passenger	95	CHEVR	2.2
Passenger	95	CHEVR	5.7
Passenger	95	CHEVR	4.3
Passenger	95	CHEVR	3.1
Passenger	95	CHEVR	1.6
Passenger	95	CHEVR	4.3
Passenger	95	CHEVR	3.4
Passenger	95	CHEVR	4.3
Passenger	95	CHEVR	3.1
Passenger	95	CHEVR	1.8
Passenger	95	CHEVR	3.8
Passenger	87	CHRY	2.5
Passenger	92	CHRY	3.3
Passenger	92	CHRY	2.5
Passenger	92	CHRY	3.8

Passenger	92	CHRY	3
Passenger	93	CHRY	3.3
Passenger	93	CHRY	3.3
Passenger	93	CHRY	3.5
Passenger	93	CHRY	3
Passenger	93	CHRY	3.8
Passenger	94	CHRY	3.3
Passenger	94	CHRY	3.5
Passenger	94	CHRY	3
Passenger	95	CHRY	2.5
Passenger	95	CHRY	3.3
Passenger	95	CHRY	3.5
Passenger	95	CHRY	3
Passenger	87	DODGE	3
Passenger	89	DODGE	2.5
Passenger	89	DODGE	2.5
Passenger	89	DODGE	2.2
Passenger	90	DODGE	1.5
Passenger	90	DODGE	5.9
Passenger	92	DODGE	3
Passenger	92	DODGE	3.3
Passenger	92	DODGE	2.2
Passenger	92	DODGE	3
Passenger	92	DODGE	5.2
Passenger	92	DODGE	1.5
Passenger	93	DODGE	3.3
Passenger	93	DODGE	3
Passenger	93	DODGE	3.5
Passenger	93	DODGE	1.8
Passenger	93	DODGE	3.3
Passenger	93	DODGE	2.5
Passenger	93	DODGE	5.2
Passenger	93	DODGE	3.3
Passenger	93	DODGE	3
Passenger	93	DODGE	1.5
Passenger	93	DODGE	3.9

FINAL REGULATIONS

Passenger	93	DODGE	2.2
Passenger	93	DODGE	2.5
Passenger	94	DODGE	3
Passenger	94	DODGE	3.9
Passenger	94	DODGE	2.2
Passenger	94	DODGE	3
Passenger	94	DODGE	3.3
Passenger	94	DODGE	2.5
Passenger	94	DODGE	2.5
Passenger	94	DODGE	3.5
Passenger	94	DODGE	5.2
Passenger	94	DODGE	3.8
Passenger	94	DODGE	3.3
Passenger	95	DODGE	3
Passenger	95	DODGE	2.5
Passenger	95	DODGE	2
Passenger	95	DODGE	3.8
Passenger	95	DODGE	3
Passenger	95	DODGE	2.5
Passenger	95	DODGE	2.4
Passenger	95	DODGE	5.2
Passenger	95	DODGE	3.9
Passenger	95	DODGE	3.5
Passenger	95	DODGE	3.3
Passenger	95	DODGE	3.3
Passenger	92	EAGLE	2
Passenger	93	EAGLE	1.8
Passenger	93	EAGLE	2
Passenger	93	EAGLE	3.5
Passenger	93	EAGLE	3.3
Passenger	94	EAGLE	1.8
Passenger	94	EAGLE	3.5
Passenger	94	EAGLE	3.3
Passenger	95	EAGLE	3.5
Passenger	95	EAGLE	2
Passenger	95	EAGLE	3.3

Passenger	87	FORD	2.9
Passenger	89	FORD	2.2
Passenger	89	FORD	3
Passenger	89	FORD	1.9
Passenger	89	FORD	3.8
Passenger	89	FORD	2.9
Passenger	89	FORD	2.3
Passenger	90	FORD	1.9
Passenger	90	FORD	3
Passenger	90	FORD	5
Passenger	90	FORD	3.8
Passenger	90	FORD	2.9
Passenger	90	FORD	2.2
Passenger	90	FORD	4
Passenger	90	FORD	1.3
Passenger	90	FORD	2.3
Passenger	90	FORD	5.8
Passenger	90	FORD	3
Passenger	90	FORD	1.9
Passenger	90	FORD	2.3
Passenger	90	FORD	3.8
Passenger	91	FORD	2.2
Passenger	91	FORD	3.8
Passenger	91	FORD	1.9
Passenger	91	FORD	3
Passenger	91	FORD	1.3
Passenger	91	FORD	4
Passenger	91	FORD	3.8
Passenger	91	FORD	5.8
Passenger	91	FORD	2.3
Passenger	91	FORD	3
Passenger	91	FORD	2.3
Passenger	92	FORD	4.6
Passenger	92	FORD	4
Passenger	92	FORD	2.2
Passenger	92	FORD	3.8

FINAL REGULATIONS

2301

Passenger	92	FORD	3
Passenger	92	FORD	3
Passenger	92	FORD	5
Passenger	92	FORD	1.3
Passenger	92	FORD	2.3
Passenger	92	FORD	3.8
Passenger	92	FORD	5.8
Passenger	92	FORD	2.3
Passenger	92	FORD	1.9
Passenger	93	FORD	5
Passenger	93	FORD	5.8
Passenger	93	FORD	4.6
Passenger	93	FORD	3.8
Passenger	93	FORD	2
Passenger	93	FORD	3
Passenger	93	FORD	1.8
Passenger	93	FORD	2.3
Passenger	93	FORD	1.9
Passenger	93	FORD	3
Passenger	93	FORD	2.5
Passenger	93	FORD	1.3
Passenger	93	FORD	3.2
Passenger	93	FORD	4
Passenger	94	FORD	1.3
Passenger	94	FORD	2.3
Passenger	94	FORD	3.8
Passenger	94	FORD	1.9
Passenger	94	FORD	3.2
Passenger	94	FORD	5
Passenger	94	FORD	4
Passenger	94	FORD	1.8
Passenger	94	FORD	2.5
Passenger	94	FORD	3
Passenger	94	FORD	5.8
Passenger	94	FORD	2
Passenger	94	FORD	4.6

Passenger	95	FORD	2
Passenger	95	FORD	1.3
Passenger	95	FORD	4
Passenger	95	FORD	3
Passenger	95	FORD	3.8
Passenger	95	FORD	2.5
Passenger	95	FORD	5
Passenger	95	FORD	5.8
Passenger	95	FORD	3.8
Passenger	95	FORD	1.9
Passenger	95	FORD	4.6
Passenger	95	FORD	2
Passenger	86	GMC	4.3
Passenger	90	GMC	3.1
Passenger	92	GMC	5.7
Passenger	93	GMC	3.8
Passenger	93	GMC	5.7
Passenger	94	GMC	3.8
Passenger	94	GMC	5.7
Passenger	94	GMC	4.3
Passenger	94	GMC	4.3
Passenger	95	GMC	4.3
Passenger	95	GMC	5.7
Passenger	95	GMC	3.8
Passenger	85	HONDA	2
Passenger	86	HONDA	1.5
Passenger	86	HONDA	2
Passenger	87	HONDA	2
Passenger	87	HONDA	1.5
Passenger	87	HONDA	1.5
Passenger	87	HONDA	2
Passenger	87	HONDA	1.3
Passenger	87	HONDA	1.5
Passenger	88	HONDA	1.5
Passenger	88	HONDA	2
Passenger	88	HONDA	1.6

FINAL REGULATIONS

Passenger	88	HONDA	2
Passenger	88	HONDA	2
Passenger	88	HONDA	1.5
Passenger	89	HONDA	1.5
Passenger	89	HONDA	1.6
Passenger	89	HONDA	2
Passenger	89	HONDA	1.5
Passenger	89	HONDA	2
Passenger	90	HONDA	1.6
Passenger	90	HONDA	1.5
Passenger	90	HONDA	2.2
Passenger	90	HONDA	2
Passenger	91	HONDA	2
Passenger	91	HONDA	1.6
Passenger	91	HONDA	1.5
Passenger	91	HONDA	2.2
Passenger	92	HONDA	2.2
Passenger	92	HONDA	2.3
Passenger	92	HONDA	1.5
Passenger	92	HONDA	1.6
Passenger	93	HONDA	2.3
Passenger	93	HONDA	1.5
Passenger	93	HONDA	2.2
Passenger	93	HONDA	1.6
Passenger	94	HONDA	2.3
Passenger	94	HONDA	1.5
Passenger	94	HONDA	2.2
Passenger	94	HONDA	1.6
Passenger	95	HONDA	2.2
Passenger	95	HONDA	2.7
Passenger	95	HONDA	2.3
Passenger	95	HONDA	1.5
Passenger	95	HONDA	1.6
Passenger	92	HYUND	3
Passenger	93	HYUND	1.5
Passenger	93	HYUND	3

Passenger	93	HYUND	1.5
Passenger	94	HYUND	1.5
Passenger	94	HYUND	1.5
Passenger	94	HYUND	1.6
Passenger	95	HYUND	2
Passenger	95	HYUND	1.6
Passenger	95	HYUND	1.5
Passenger	95	HYUND	1.8
Passenger	95	HYUND	3
Passenger	90	INFIN	3
Passenger	90	INFIN	4.5
Passenger	91	INFIN	4.5
Passenger	91	INFIN	2
Passenger	92	INFIN	4.5
Passenger	92	INFIN	2
Passenger	93	INFIN	3
Passenger	93	INFIN	2
Passenger	93	INFIN	4.5
Passenger	94	INFIN	2
Passenger	94	INFIN	4.5
Passenger	94	INFIN	3
Passenger	95	INFIN	4.5
Passenger	95	INFIN	3
Passenger	95	INFIN	2
Passenger	91	ISUZU	1.6
Passenger	92	ISUZU	2.6
Passenger	93	ISUZU	2.6
Passenger	94	ISUZU	2.6
Passenger	94	ISUZU	3.2
Passenger	95	ISUZU	2.6
Passenger	95	ISUZU	3.2
Passenger	88	JAGUA	3.6
Passenger	89	JAGUA	3.6
Passenger	90	JAGUA	4
Passenger	91	JAGUA	4
Passenger	93	JAGUA	4

FINAL REGULATIONS

2303

Passenger	94	JAGUA	4
Passenger	95	JAGUA	4
Passenger	94	KIA	1.6
Passenger	95	KIA	1.6
Passenger	90	LEXUS	4
Passenger	90	LEXUS	2.5
Passenger	91	LEXUS	4
Passenger	91	LEXUS	2.5
Passenger	92	LEXUS	3
Passenger	92	LEXUS	4
Passenger	93	LEXUS	4
Passenger	93	LEXUS	3
Passenger	94	LEXUS	4
Passenger	94	LEXUS	3
Passenger	95	LEXUS	3
Passenger	95	LEXUS	4
Passenger	89	LINCO	5
Passenger	89	LINCO	3.8
Passenger	90	LINCO	3.8
Passenger	90	LINCO	5
Passenger	91	LINCO	3.8
Passenger	91	LINCO	4.6
Passenger	92	LINCO	4.6
Passenger	92	LINCO	3.8
Passenger	93	LINCO	3.8
Passenger	93	LINCO	4.6
Passenger	94	LINCO	3.8
Passenger	94	LINCO	4.6
Passenger	95	LINCO	4.6
Passenger	87	MAZDA	2
Passenger	88	MAZDA	1.3
Passenger	88	MAZDA	2.2
Passenger	89	MAZDA	2.2
Passenger	89	MAZDA	3
Passenger	89	MAZDA	1.6
Passenger	90	MAZDA	1.6

Passenger	90	MAZDA	2.2
Passenger	90	MAZDA	2.2
Passenger	90	MAZDA	1.8
Passenger	91	MAZDA	1.6
Passenger	91	MAZDA	2.6
Passenger	91	MAZDA	2.2
Passenger	91	MAZDA	3
Passenger	91	MAZDA	4
Passenger	92	MAZDA	3
Passenger	92	MAZDA	1.6
Passenger	92	MAZDA	1.8
Passenger	92	MAZDA	2.2
Passenger	92	MAZDA	4
Passenger	93	MAZDA	2
Passenger	93	MAZDA	1.6
Passenger	93	MAZDA	4
Passenger	93	MAZDA	3
Passenger	93	MAZDA	1.8
Passenger	93	MAZDA	2.5
Passenger	94	MAZDA	2
Passenger	94	MAZDA	1.6
Passenger	94	MAZDA	2.5
Passenger	94	MAZDA	3
Passenger	94	MAZDA	4
Passenger	94	MAZDA	1.8
Passenger	95	MAZDA	2.5
Passenger	95	MAZDA	1.8
Passenger	95	MAZDA	2.3
Passenger	95	MAZDA	1.5
Passenger	95	MAZDA	2
Passenger	95	MAZDA	2.5
Passenger	86	MERCE	5.6
Passenger	87	MERCE	5.6
Passenger	87	MERCE	3
Passenger	87	MERCE	4.2
Passenger	88	MERCE	4.2

FINAL REGULATIONS

Passenger	88	MERCE	5.6
Passenger	89	MERCE	2.6
Passenger	89	MERCE	3
Passenger	89	MERCE	4.2
Passenger	89	MERCE	5.6
Passenger	90	MERCE	5.6
Passenger	90	MERCE	4.2
Passenger	90	MERCE	3
Passenger	90	MERCE	2.6
Passenger	91	MERCE	2.3
Passenger	91	MERCE	3
Passenger	91	MERCE	5.6
Passenger	91	MERCE	4.2
Passenger	91	MERCE	2.6
Passenger	92	MERCE	2.3
Passenger	92	MERCE	3
Passenger	92	MERCE	2.6
Passenger	93	MERCE	3.2
Passenger	93	MERCE	2.8
Passenger	93	MERCE	2.6
Passenger	93	MERCE	2.3
Passenger	95	MERCE	3.2
Passenger	95	MERCE	2.2
Passenger	95	MERCE	2.8
Passenger	89	MERCU	3.8
Passenger	89	MERCU	2.3
Passenger	89	MERCU	3
Passenger	90	MERCU	3.8
Passenger	90	MERCU	3
Passenger	90	MERCU	5
Passenger	90	MERCU	2.3
Passenger	91	MERCU	1.9
Passenger	91	MERCU	3.8
Passenger	91	MERCU	2.3
Passenger	91	MERCU	3
Passenger	92	MERCU	1.9

Passenger	92	MERCU	2.3
Passenger	92	MERCU	1.6
Passenger	92	MERCU	3
Passenger	92	MERCU	3.8
Passenger	92	MERCU	4.6
Passenger	93	MERCU	1.6
Passenger	93	MERCU	1.9
Passenger	93	MERCU	3.8
Passenger	93	MERCU	3
Passenger	93	MERCU	4.6
Passenger	93	MERCU	2.3
Passenger	94	MERCU	4.6
Passenger	94	MERCU	2.3
Passenger	94	MERCU	3
Passenger	94	MERCU	3.8
Passenger	94	MERCU	1.9
Passenger	94	MERCU	1.6
Passenger	95	MERCU	2.5
Passenger	95	MERCU	2
Passenger	95	MERCU	3
Passenger	95	MERCU	4.6
Passenger	95	MERCU	3.8
Passenger	95	MERCU	1.9
Passenger	90	MITSU	2
Passenger	91	MITSU	1.8
Passenger	92	MITSU	2
Passenger	92	MITSU	2.4
Passenger	92	MITSU	1.5
Passenger	92	MITSU	1.8
Passenger	92	MITSU	1.8
Passenger	92	MITSU	3
Passenger	93	MITSU	1.5
Passenger	93	MITSU	1.8
Passenger	93	MITSU	2
Passenger	93	MITSU	3
Passenger	93	MITSU	3

FINAL REGULATIONS

2305

Passenger	94	MITSU	3
Passenger	94	MITSU	3
Passenger	94	MITSU	2.4
Passenger	94	MITSU	1.8
Passenger	94	MITSU	2
Passenger	94	MITSU	1.5
Passenger	95	MITSU	1.5
Passenger	95	MITSU	2
Passenger	95	MITSU	1.8
Passenger	95	MITSU	3
Passenger	95	MITSU	3
Passenger	95	MITSU	2.4
Passenger	88	NISSA	3
Passenger	89	NISSA	3
Passenger	89	NISSA	3
Passenger	90	NISSA	3
Passenger	90	NISSA	2.4
Passenger	90	NISSA	3
Passenger	91	NISSA	3
Passenger	91	NISSA	2.4
Passenger	91	NISSA	1.6
Passenger	91	NISSA	3
Passenger	91	NISSA	2
Passenger	92	NISSA	3
Passenger	92	NISSA	2
Passenger	92	NISSA	1.6
Passenger	92	NISSA	2.4
Passenger	93	NISSA	2
Passenger	93	NISSA	1.6
Passenger	93	NISSA	2.4
Passenger	93	NISSA	3
Passenger	93	NISSA	3
Passenger	94	NISSA	3
Passenger	94	NISSA	3
Passenger	94	NISSA	2.4
Passenger	94	NISSA	2

Passenger	94	NISSA	1.6
Passenger	95	NISSA	3
Passenger	95	NISSA	2.4
Passenger	95	NISSA	3
Passenger	87	OLDSM	3.8
Passenger	88	OLDSM	3.8
Passenger	88	OLDSM	3
Passenger	89	OLDSM	3.3
Passenger	89	OLDSM	3.8
Passenger	90	OLDSM	3.3
Passenger	90	OLDSM	3.8
Passenger	91	OLDSM	3.8
Passenger	91	OLDSM	3.3
Passenger	92	OLDSM	2.3
Passenger	92	OLDSM	3.3
Passenger	92	OLDSM	3.8
Passenger	93	OLDSM	3.4
Passenger	93	OLDSM	3.8
Passenger	93	OLDSM	3.3
Passenger	93	OLDSM	2.3
Passenger	94	OLDSM	2.3
Passenger	94	OLDSM	3.1
Passenger	94	OLDSM	2.2
Passenger	94	OLDSM	3.8
Passenger	94	OLDSM	3.4
Passenger	95	OLDSM	3.1
Passenger	95	OLDSM	3.8
Passenger	95	OLDSM	4
Passenger	95	OLDSM	2.3
Passenger	95	OLDSM	3.4
Passenger	87	PLYMO	5.2
Passenger	87	PLYMO	3
Passenger	89	PLYMO	2.5
Passenger	89	PLYMO	2.5
Passenger	90	PLYMO	2.5
Passenger	90	PLYMO	3.3

FINAL REGULATIONS

Passenger	90	PLYMO	2.5
Passenger	92	PLYMO	3
Passenger	92	PLYMO	3
Passenger	92	PLYMO	3.3
Passenger	92	PLYMO	1.8
Passenger	93	PLYMO	2.5
Passenger	93	PLYMO	3
Passenger	93	PLYMO	3.3
Passenger	93	PLYMO	3
Passenger	93	PLYMO	2
Passenger	93	PLYMO	2.2
Passenger	93	PLYMO	1.8
Passenger	93	PLYMO	2.5
Passenger	93	PLYMO	1.5
Passenger	94	PLYMO	3
Passenger	94	PLYMO	3
Passenger	94	PLYMO	3.8
Passenger	94	PLYMO	2.5
Passenger	94	PLYMO	2.2
Passenger	94	PLYMO	2.5
Passenger	94	PLYMO	3.3
Passenger	95	PLYMO	3
Passenger	95	PLYMO	2.5
Passenger	95	PLYMO	3
Passenger	95	PLYMO	3.8
Passenger	95	PLYMO	2.5
Passenger	95	PLYMO	3.3
Passenger	95	PLYMO	2
Passenger	88	PONTI	3.8
Passenger	89	PONTI	1.6
Passenger	89	PONTI	5.7
Passenger	89	PONTI	3.8
Passenger	89	PONTI	3.1
Passenger	89	PONTI	2
Passenger	90	PONTI	1.6
Passenger	90	PONTI	3.8

Passenger	90	PONTI	2
Passenger	90	PONTI	5
Passenger	91	PONTI	1.6
Passenger	91	PONTI	3.8
Passenger	91	PONTI	2
Passenger	92	PONTI	3.3
Passenger	92	PONTI	3.4
Passenger	92	PONTI	3.8
Passenger	92	PONTI	2.3
Passenger	92	PONTI	2
Passenger	93	PONTI	3.8
Passenger	93	PONTI	2.3
Passenger	93	PONTI	3.4
Passenger	93	PONTI	2
Passenger	93	PONTI	3.3
Passenger	94	PONTI	3.1
Passenger	94	PONTI	3.1
Passenger	94	PONTI	3.8
Passenger	94	PONTI	3.4
Passenger	94	PONTI	3.4
Passenger	94	PONTI	2.3
Passenger	94	PONTI	2
Passenger	94	PONTI	5.7
Passenger	95	PONTI	3.1
Passenger	95	PONTI	2.2
Passenger	95	PONTI	3.4
Passenger	95	PONTI	2.3
Passenger	95	PONTI	3.4
Passenger	95	PONTI	5.7
Passenger	95	PONTI	3.8
Passenger	84	PORSC	3.2
Passenger	86	PORSC	3.2
Passenger	88	PORSC	3.2
Passenger	90	PORSC	3.6
Passenger	91	PORSC	3.6
Passenger	95	PORSC	3.6

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Passenger	91	SAAB	2.1
Passenger	91	SAAB	2.3
Passenger	92	SAAB	2.1
Passenger	95	SAAB	2.3
Passenger	93	SATUR	1.9
Passenger	94	SATUR	1.9
Passenger	95	SATUR	1.9
Passenger	88	SUBAR	1.8
Passenger	88	SUBAR	1.8
Passenger	89	SUBAR	1.8
Passenger	90	SUBAR	1.8
Passenger	90	SUBAR	2.2
Passenger	91	SUBAR	1.8
Passenger	91	SUBAR	2.2
Passenger	92	SUBAR	2.2
Passenger	92	SUBAR	1.8
Passenger	93	SUBAR	1.8
Passenger	93	SUBAR	2.2
Passenger	94	SUBAR	2.2
Passenger	89	SUZUK	1.3
Passenger	90	SUZUK	1.3
Passenger	91	SUZUK	1.6
Passenger	92	SUZUK	1.6
Passenger	93	SUZUK	1.6
Passenger	93	SUZUK	1.3
Passenger	94	SUZUK	1.6
Passenger	94	SUZUK	1.3
Passenger	83	TOYOT	2.3
Passenger	85	TOYOT	2
Passenger	86	TOYOT	2
Passenger	86	TOYOT	2.2
Passenger	87	TOYOT	2
Passenger	87	TOYOT	2.2
Passenger	88	TOYOT	2
Passenger	88	TOYOT	2.2
Passenger	88	TOYOT	4

Passenger	88	TOYOT	1.6
Passenger	88	TOYOT	3
Passenger	88	TOYOT	2.5
Passenger	89	TOYOT	2.5
Passenger	89	TOYOT	2.2
Passenger	89	TOYOT	1.6
Passenger	89	TOYOT	2
Passenger	89	TOYOT	2
Passenger	89	TOYOT	3
Passenger	89	TOYOT	4
Passenger	89	TOYOT	3
Passenger	90	TOYOT	1.6
Passenger	90	TOYOT	3
Passenger	90	TOYOT	2
Passenger	90	TOYOT	2.4
Passenger	90	TOYOT	2.2
Passenger	90	TOYOT	3
Passenger	90	TOYOT	1.5
Passenger	90	TOYOT	2.5
Passenger	91	TOYOT	2.5
Passenger	91	TOYOT	2.2
Passenger	91	TOYOT	2.2
Passenger	91	TOYOT	2.4
Passenger	91	TOYOT	3
Passenger	91	TOYOT	1.6
Passenger	91	TOYOT	1.5
Passenger	92	TOYOT	1.6
Passenger	92	TOYOT	2.4
Passenger	92	TOYOT	2.2
Passenger	92	TOYOT	3
Passenger	92	TOYOT	2.2
Passenger	92	TOYOT	3
Passenger	92	TOYOT	2
Passenger	92	TOYOT	1.5
Passenger	93	TOYOT	3
Passenger	93	TOYOT	1.5

FINAL REGULATIONS

Passenger	93	TOYOT	2
Passenger	93	TOYOT	1.8
Passenger	93	TOYOT	3
Passenger	93	TOYOT	2.4
Passenger	93	TOYOT	2.2
Passenger	93	TOYOT	2.2
Passenger	93	TOYOT	1.6
Passenger	94	TOYOT	1.6
Passenger	94	TOYOT	1.8
Passenger	94	TOYOT	3
Passenger	94	TOYOT	3
Passenger	94	TOYOT	2.2
Passenger	94	TOYOT	2.4
Passenger	94	TOYOT	1.5
Passenger	95	TOYOT	2.2
Passenger	95	TOYOT	1.6
Passenger	95	TOYOT	1.5
Passenger	95	TOYOT	3
Passenger	95	TOYOT	1.8
Passenger	95	TOYOT	3
Passenger	95	TOYOT	2.4
Passenger	85	VOLKS	2
Passenger	87	VOLKS	2
Passenger	92	VOLKS	1.8
Passenger	93	VOLKS	2
Passenger	93	VOLKS	1.8
Passenger	94	VOLKS	1.8
Passenger	95	VOLKS	1.8
Passenger	95	VOLKS	2
Passenger	89	VOLVO	2.3
Passenger	90	VOLVO	2.3
Passenger	91	VOLVO	2.3
Passenger	92	VOLVO	2.3
Passenger	93	VOLVO	2.3
Passenger	93	VOLVO	2.4
Passenger	94	VOLVO	2.4

Passenger	94	VOLVO	2.3
Passenger	94	VOLVO	2.9
Passenger	95	VOLVO	2.9
Passenger	95	VOLVO	2.3
Passenger	95	VOLVO	2.4
Truck	90	CHEVR	5.7
Truck	92	CHEVR	2.5
Truck	92	CHEVR	2.8
Truck	93	CHEVR	5.7
Truck	93	CHEVR	2.8
Truck	93	CHEVR	2.5
Truck	94	CHEVR	5.7
Truck	94	CHEVR	4.3
Truck	94	CHEVR	4.3
Truck	94	CHEVR	2.2
Truck	94	CHEVR	5
Truck	95	CHEVR	2.2
Truck	95	CHEVR	4.3
Truck	95	CHEVR	7.4
Truck	95	CHEVR	5
Truck	95	CHEVR	4.3
Truck	95	CHEVR	5.7
Truck	82	DODGE	5.2
Truck	85	DODGE	2.5
Truck	89	DODGE	2.5
Truck	89	DODGE	5.9
Truck	90	DODGE	5.9
Truck	90	DODGE	2.5
Truck	91	DODGE	2.5
Truck	92	DODGE	2.4
Truck	92	DODGE	2.5
Truck	93	DODGE	2.5
Truck	93	DODGE	3
Truck	94	DODGE	3.3
Truck	94	DODGE	5.2
Truck	94	DODGE	5.9

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Truck	94	DODGE	2.5
Truck	95	DODGE	3.9
Truck	95	DODGE	5.9
Truck	95	DODGE	5.2
Truck	95	DODGE	2.5
Truck	89	FORD	2.9
Truck	90	FORD	4
Truck	90	FORD	2.3
Truck	90	FORD	2.9
Truck	91	FORD	2.9
Truck	91	FORD	4
Truck	91	FORD	3
Truck	91	FORD	2.3
Truck	92	FORD	4
Truck	92	FORD	2.3
Truck	92	FORD	3
Truck	93	FORD	2.3
Truck	93	FORD	5.8
Truck	93	FORD	5
Truck	93	FORD	4.9
Truck	93	FORD	4
Truck	93	FORD	3
Truck	94	FORD	5.8
Truck	94	FORD	2.3
Truck	94	FORD	4.9
Truck	94	FORD	4
Truck	94	FORD	3
Truck	94	FORD	5
Truck	95	FORD	4.9
Truck	95	FORD	2.3
Truck	95	FORD	5
Truck	95	FORD	4
Truck	95	FORD	3
Truck	95	FORD	5.8
Truck	90	GMC	5.7
Truck	90	GMC	2.5

Truck	93	GMC	5.7
Truck	94	GMC	4.3
Truck	94	GMC	2.2
Truck	94	GMC	5.7
Truck	94	GMC	4.3
Truck	95	GMC	5.7
Truck	95	GMC	5
Truck	95	GMC	2.2
Truck	95	GMC	4.3
Truck	95	GMC	4.3
Truck	90	ISUZU	2.6
Truck	92	ISUZU	2.3
Truck	92	ISUZU	2.6
Truck	93	ISUZU	2.3
Truck	94	ISUZU	2.3
Truck	95	ISUZU	2.3
Truck	90	JEEP	4
Truck	91	JEEP	4
Truck	92	JEEP	4
Truck	93	JEEP	4
Truck	94	JEEP	4
Truck	94	JEEP	2.5
Truck	95	JEEP	4
Truck	95	JEEP	2.5
Truck	90	MAZDA	2.2
Truck	91	MAZDA	2.6
Truck	91	MAZDA	2.2
Truck	92	MAZDA	2.6
Truck	92	MAZDA	2.2
Truck	93	MAZDA	2.2
Truck	94	MAZDA	2.3
Truck	94	MAZDA	3
Truck	94	MAZDA	4
Truck	95	MAZDA	2.3
Truck	87	MITSU	2.6
Truck	92	MITSU	2.4

Truck	93	MITSU	2.4
Truck	87	NISSA	2.4
Truck	87	NISSA	3
Truck	88	NISSA	2.4
Truck	89	NISSA	2.4
Truck	89	NISSA	3
Truck	90	NISSA	3
Truck	90	NISSA	2.4
Truck	91	NISSA	3
Truck	91	NISSA	2.4
Truck	92	NISSA	2.4
Truck	92	NISSA	3
Truck	93	NISSA	2.4
Truck	93	NISSA	3
Truck	94	NISSA	2.4
Truck	94	NISSA	3
Truck	95	NISSA	3
Truck	95	NISSA	2.4
Truck	90	SUZUK	1.3
Truck	84	TOYOT	2
Truck	86	TOYOT	2.2
Truck	86	TOYOT	2.3
Truck	87	TOYOT	2.3
Truck	87	TOYOT	2.2
Truck	88	TOYOT	2.3
Truck	88	TOYOT	3
Truck	89	TOYOT	2.3
Truck	89	TOYOT	2.2
Truck	89	TOYOT	3
Truck	90	TOYOT	3
Truck	90	TOYOT	2.4
Truck	91	TOYOT	2.4
Truck	91	TOYOT	3
Truck	92	TOYOT	3
Truck	92	TOYOT	2.4
Truck	93	TOYOT	2.4

Truck	93	TOYOT	3
Truck	94	TOYOT	3
Truck	94	TOYOT	2.7
Truck	94	TOYOT	2.4
Truck	95	TOYOT	2.7
Truck	95	TOYOT	2.4
Truck	95	TOYOT	3

1 Based on Arizona IM240 data

APPENDIX 6 (a) IDLE EMISSIONS TEST PROCEDURES

The on-site test inspection of motor vehicles uses the ESP FICS 4000 - Bar 90 computerized Emission Analyzer which will require minimal time to complete the inspection procedure.

GENERAL TEST PROCEDURES

1. If the inspection technician observes a vehicle having coolant, oil, excess smoke or fuel leaks or any other such defect that is unsafe to allow the emission test to be conducted the vehicle shall be rejected from the testing area. The inspection technician is prohibited from conducting the emissions test until the defects are corrected.

2. The vehicle transmission is to be placed in neutral gear if equipped with a manual transmission, or in park position if equipped with an automatic transmission. The hand or parking brake is to be engaged. If the parking brake is found to be defective, then wheel chocks are to be placed in front and/or behind the vehicle's tires.

3. The inspection technician advises the owner to turn off all vehicle accessories.

4. The inspection technician enters the vehicle registration number (tag) or the vehicle identification number into the BAR 90 system. This information is electronically transmitted to the Division of Motor Vehicle's database. The system will also identify for each vehicle entered into the BAR 90 system whether the vehicle is eligible for a clean screen exemption. Only under certain conditions determined by the vehicle services chief or his designee will those vehicles eligible for the clean screen exemption be excuse from any exhaust emissions test for the current two year test cycle. In no case shall the number of vehicles exempt in any one calendar year, under the clean screen procedures, exceed 40% of the total number of vehicles subject to the requirements of Regulation 31. The clean screen procedures or methodology is described in Appendix Y.

5. If the vehicle registration number is in the database, the following information will be transmitted to and verified by the inspection technician:

- a. Vehicle make
- b. Vehicle Year
- c. Vehicle Model
- d. Vehicle Body Style
- e. Vehicle fuel type and
- f. other related information

6. The inspection technician will verify this information and verify the last five characters of the Vehicle Identification Number (VIN) prior to beginning the emission test.

7. If the vehicle's identification number is not on the database, the R.L. Polk VIN Package shall be automatically accessed. This VIN package will return the following information to the inspection technician who, in turn will verify the returned information:

- a. Vehicle make
- b. Vehicle Year
- c. Vehicle Model
- d. Vehicle Body Style
- e. Vehicle fuel type

8. The DMV System will identify and require an emission inspection on all eligible vehicles meeting the State's criteria for an emission inspection. Once the vehicle information has been verified and accepted, the system will prompt the inspection technician to place the analyzer test probe into the tailpipe. The technician connects the tachometer lead to the vehicle's spark plug and verifies that the idle RPM is within the specified range. If the RPM exceeds the allowed range the vehicle is rejected and not tested. The technician will insert the probe at least 8 inches into the exhaust pipe. Genuine dual exhaust vehicles will be tested with a dual exhaust probe. Once the probe has been placed into the exhaust pipe the test will begin. The test process is completely automatic, including the pass/fail decision.

9. If the vehicle has been identified as requiring a completed Vehicle Inspection Repair (VIRR) Report Form prior to reinspection, the inspection technician will review the form for completeness and, if applicable, record into the system the Certified Emission Repair Technician's (CERT) number or Certified Manufacturer's Repair Technician (CMRT) number before the retest.

TWO SPEED IDLE TEST PROCEDURES

1. Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations will begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations will be analyzed at a rate of two times per second. The measured value for pass/fail determinations will be a simple running average of the measurements taken over five seconds.

2. Pass/fail determinations. A pass or fail determination will be made for each applicable test mode based on a comparison of the applicable standards listed in Appendix 3 (a)(7) and the measured value for HC and CO. A vehicle will pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable standards. A vehicle will fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

3. Void test conditions. The test will immediately end and any exhaust gas measurements will be voided if the measured concentration of CO plus CO₂ (CO+ CO₂) falls below six percent of the total concentration of CO plus CO₂ or the vehicle's engine stalls at any time during the test sequence.

4. Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with dual exhaust systems will be sampled accordingly.

5. The test will be immediately terminated upon reaching the overall maximum test time.

6. Test sequence.

(a) The test sequence will consist of a first-chance test and a second chance test as follows:

(i) The first-chance test will consist of an idle mode followed by a high-speed mode.

(ii) The second-chance high-speed mode, as described will immediately follow the first-chance high-speed mode. It will be performed only if the vehicle fails the first-chance test. The second-chance idle will follow the second chance high speed mode and be performed only if the vehicle fails the idle mode of the first-chance test.

(b) The test sequence will begin only after the following requirements are met:

(i) The vehicle will be tested in as-received condition with the transmission in neutral or park, the parking brake actuated (or chocked) and all accessories turned off. The engine shall appear to and is assumed to be at normal operating temperature.

(ii) The tachometer will be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe(s) will be inserted into the vehicle's tailpipe to a minimum depth of ~~[8 inches]~~ [10 inches]. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension will be used.

(iv) The measured concentration of CO plus CO₂ (CO + CO₂) will be greater than or equal to 6% of the total concentration.

(c) First-chance test and second-chance high-speed mode. The test timer will start (tt=0) when the conditions specified above are met. The first-chance test and second-chance high-speed mode will have an overall maximum test time of 390 seconds (tt=390). The first-

chance test will consist of an idle mode following immediately by a high-speed mode. This is followed immediately by an additional second-chance high-speed mode, if necessary.

(d) First-chance idle mode. The mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If engine speed exceeds 1300 rpm or falls below 550 rpm, the mode timer will reset to zero and resume timing. The maximum idle mode length will be 30 seconds (mt=30) elapsed time. The pass/ fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle and the mode terminated as follows:

(i) The vehicle will pass the idle mode and the mode will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less or equal to the applicable standards listed in Appendix 3 (a)(7).

(ii) The vehicle will fail the idle mode and the mode will be terminated if the provisions of d (i) are not satisfied within an elapsed time of 30 seconds (mt=30).

(iii) The vehicle may fail the first-chance and second-chance test will be omitted if no exhaust gas concentration less than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(e) First-chance and second-chance high-speed modes. This mode includes both the first-chance and second-chance high-speed modes, and follows immediately upon termination of the first-chance idle mode. The mode timer will reset (mt=0) when the vehicle engine speed is between 2200 and 2800 rpm. If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than two seconds in one excursion, or more than six seconds over all excursions within 30 seconds of the final measured value used in the pass/fail determination, the measured value will be invalidated and the mode continued. If any excursion lasts for more than ten seconds, the mode timer will reset to zero (mt=0) and timing resumed. The minimum high-speed mode length will be determined as described under paragraphs (e) (i) and (ii) below. The maximum high-speed mode length will be 180 seconds (mt=180) elapsed time.

(i) Ford Motor Company and Honda vehicles. For 1981-1987 model year Ford Motor Company vehicles and 1984-1985 model year Honda Preludes, the pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(A) A pass or fail determination, as described below, will be used, for vehicles that passed the idle mode, to determine whether the high-speed test should be terminated prior to or at the end of an elapsed time of 180 seconds (mt=180).

(I) The vehicle will pass the high-speed mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured

values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(II) If at an elapsed time of 30 seconds (mt=30) the measured values are greater than the applicable standards listed in Appendix 3 (a)(7), the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds have elapsed (mt=40).

(III) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at any point between an elapsed time of 40 seconds (mt=40) and 60 seconds (mt=60), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(IV) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180) both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7). (V) The vehicle will fail the high-speed mode and the test will be terminated if neither paragraphs (e) (i) (A) (III) or (e) (i) (A) (IV), above, are not satisfied by an elapsed time of 180 seconds (mt=180).

(B) A pass or fail determination will be made for vehicles that failed the idle mode and the high-speed mode terminated at the end of an elapsed time of 180 seconds (mt=180) as follows:

(I) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 30 seconds (mt=30) if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(II) Restart. If at an elapsed time of 30 seconds (mt=30) the measured values of HC and CO exhaust gas concentrations during the high-speed mode are greater than the applicable short test standards as described in Appendix 3 (a)(7), the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds (mt=40) have elapsed.

(III) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 60 seconds (mt=60) if any measured values of HC and CO exhaust gas concentrations during the high-speed

mode are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(IV) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180) both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(V) The vehicle will fail the high-speed mode and the test will be terminated if neither paragraphs (e) (i) (B) (I), (e) (i) (B) (III) or e (i) (B) (IV), above, is satisfied by an elapsed time of 180 seconds (mt=180).

(ii) All other light-duty vehicles. The pass/fail analysis for vehicles not specified in paragraph (e) (i), above, will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(A) A pass or fail determination will be used for 1981 and newer model year vehicles that passed the idle mode, to determine whether the high-speed mode should be terminated prior to or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, no high speed idle mode test will be performed.

(I) The vehicle will pass the high-speed mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(II) The vehicle will pass the high-speed mode and the test will be immediately terminated if emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(III) The vehicle will fail the high-speed mode and the test will be terminated if neither the provisions of paragraphs (e) (ii)(A)(I) or (e) (ii)(A)(II), above, is satisfied.

(B) A pass or fail determination will be made for 1981 and newer model year vehicles that failed the idle mode and the high-speed mode terminated prior to or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, the duration of the high speed idle mode will be 30 seconds and no pass or fail determination will be used at the high speed idle mode.

(I) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 30 seconds (mt=30) if any measured values are less than or equal to the applicable standards listed Appendix 3 (a)(7).

(II) The vehicle will pass the high-speed mode and the test will be immediately terminated if emissions continue to decrease after an elapsed time of 30

seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(III) The vehicle will fail the high speed mode and test will be terminated if neither the provisions of paragraphs (e) (ii)(B)(I) or (e) (ii)(B)(II) is satisfied.

(f) Second-chance idle mode. If the vehicle fails the first-chance idle mode and passes the high-speed mode, the mode timer will reset to zero (mt=0) and a second chance idle mode will commence. The second-chance idle mode will have an overall maximum mode time of 30 seconds (mt=30). The test will consist on an idle mode only.

(i) The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes will be shut off for not more than 10 seconds and restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure.

(ii) The mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If the engine speed exceeds 1300 rpm or falls below 550 rpm the mode timer will reset to zero and resume timing. The minimum second-chance idle mode length will be determined as described in paragraph (f) (iii) below. The maximum second-chance idle mode length will be 30 seconds (mt=30) elapsed time.

(iii) The pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle and the second-chance mode will be terminated as follows:

(A) The vehicle will pass the second-chance idle mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), any measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle will pass the second-chance idle mode and the test will be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (f)(iii)(A), above, are not satisfied and the measured values during the time period between 25 and 30 seconds (mt=25-30) are less than or equal to the applicable short test standards listed Appendix 3 (a)(7).

(C) The vehicle will fail the second-chance idle mode and the test will be terminated if neither of the provisions of paragraphs (f) (iii)(A) or (f)(iii)(B), above are satisfied by an elapsed time of 30 seconds (mt=30).

IDLE TEST PROCEDURE

From 40 CFR 51 Appendix B to Subpart S -- Test Procedures

(I) Idle Test

(a) General requirements

(1) Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations shall begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations shall be analyzed at a minimum rate of two times per second. The measured value for pass/fail determinations shall be a simple running average of the measurements taken over five seconds.

(2) Pass/fail determination. A pass or fail determination shall be made for each applicable test mode based on a comparison of the short test standards contained in Appendix C to this subpart, and the measured value for HC and CO as described in paragraph (I)(a)(1) of this appendix. A vehicle shall pass the test mode if any pair of simultaneous measured values for HC and CO are below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(3) Void test conditions. The test shall immediately end and any exhaust gas measurements shall be voided if the measured concentration of CO plus CO₂ falls below six percent or the vehicle's engine stalls at any time during the test sequence.

(4) Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes shall be sampled simultaneously.

(5) The test shall be immediately terminated upon reaching the overall maximum test time.

(b) Test sequence.

(1) The test sequence shall consist of a first-chance test and a second-chance test as follows:

(i) The first-chance test, as described under paragraph (c) of this section, shall consist of an idle mode.

(ii) The second-chance test as described under paragraph (I)(d) of this appendix shall be performed only if the vehicle fails the first-chance test.

(2) The test sequence shall begin only after the following requirements are met:

(i) The vehicle shall be tested in as-received condition with the transmission in neutral or park and all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(ii) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe shall be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(iv) The measured concentration of CO plus CO₂ shall be greater than or equal to six percent.

(c) First-chance test. The test timer shall start ($tt=0$) when the conditions specified in paragraph (I)(b)(2) of this appendix are met. The first-chance test shall have an overall maximum test time of 145 seconds ($tt=145$). The first-chance test shall consist of an idle mode only.

(1) The mode timer shall start ($mt=0$) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum mode length shall be determined as described under paragraph (I)(c)(2) of this appendix. The maximum mode length shall be 90 seconds elapsed time ($mt=90$).

(2) The pass/fail analysis shall begin after an elapsed time of 10 seconds ($mt=10$). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(i) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds ($mt=30$), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds ($mt=30$), if prior to that time the criteria of paragraph (I)(c)(2)(i) of this appendix are not satisfied and the measured values are less than or equal to the applicable short test standards as described in paragraph (I)(a)(2) of this appendix.

(iii) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds ($mt=30$) and 90 seconds ($mt=90$), the measured values are less than or equal to the applicable short test standards as described in paragraph (I)(a)(2) of this appendix.

(iv) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (I)(c)(2)(i), (ii) and (iii) of this appendix is satisfied by an elapsed time of 90 seconds ($mt=90$). Alternatively, the vehicle may be failed if the provisions of paragraphs (I)(c)(2)(i) and (ii) of this appendix are not met within an elapsed time of 30 seconds.

(v) Optional. The vehicle may fail the first-chance test and the second-chance test shall be omitted if no exhaust gas concentration lower than 1800 ppm HC is found by an elapsed time of 30 seconds ($mt=30$).

(d) Second-chance test. If the vehicle fails the first-chance test, the test timer shall reset to zero ($tt=0$) and a second-chance test shall be performed. The second-chance test shall have an overall maximum test time of 425 seconds ($tt=425$). The test shall consist of a preconditioning mode followed immediately by an idle mode.

(1) Preconditioning mode. The mode timer shall start ($mt=0$) when the engine speed is between 2200 and

2800 rpm. The mode shall continue for an elapsed time of 180 seconds (mt=180). If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than five seconds in any one excursion, or 15 seconds over all excursions, the mode timer shall reset to zero and resume timing.

(2) Idle mode.

(i) Ford Motor Company and Honda vehicles. The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes shall be shut off for not more than 10 seconds and restarted. This procedure may also be used for 1988-1989 Ford Motor Company vehicles but should not be used for other vehicles. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure.

(ii) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum idle mode length shall be determined as described in paragraph (I)(d)(2)(iii) of this appendix. The maximum idle mode length shall be 90 seconds elapsed time (mt=90).

(iii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the idle mode shall be terminated as follows:

(A) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30), if prior to that time the criteria of paragraph (I)(d)(2)(iii)(A) of this appendix are not satisfied and the measured values are less than or equal to the applicable short test standards as described in paragraph (I)(a)(2) of this appendix.

(C) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), measured values are less than or equal to the applicable short test standards described in paragraph (I)(a)(2) of this appendix.

(D) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (I)(d)(2)(iii)(A), (d)(2)(iii)(B), and (d)(2)(iii)(C) of this appendix

(E) Are satisfied by an elapsed time of 90 seconds (mt=90)

APPENDIX 6 (a) (5)

Vehicle Emission Repair Report Form

This document may be reviewed during normal business hours (8:30 am – 4 pm) Monday through Friday at the Air Quality Management Section Office, 156 South State Street, Dover. For more information call Philip Wheeler at 302/739-4791

***Please note that there were no changes to this appendix as originally proposed and published in the August 1998 issue of the Register at page 250 (2:2 Del.R. 250). Therefore, the final appendix is not being republished. Please refer to the August 1998 issue of the Register or contact the Department of Natural Resources and Environmental Control.**

APPENDIX 6 (a)(8)

EVAPORATIVE SYSTEM INTEGRITY (PRESSURE)
TEST

***Please note that there were no changes to this appendix as originally proposed and published in the August 1998 issue of the Register at page 250 (2:2 Del.R. 250). Therefore, the final appendix is not being republished. Please refer to the August 1998 issue of the Register or contact the Department of Natural Resources and Environmental Control.**

APPENDIX 7 (a)

EMISSION REPAIR TECHNICIAN CERTIFICATION
PROCESS

***Please note that there were no changes to this appendix as originally proposed and published in the August 1998 issue of the Register at page 251 (2:2 Del.R. 251). Therefore, the final appendix is not being republished. Please refer to the August 1998 issue of the Register or contact the Department of Natural Resources and Environmental Control.**

APPENDIX 8 (a)

Registration Denial System Requirements Definition

***Please note that there were no changes to this appendix as originally proposed and published in the August 1998 issue of the Register at page 251 (2:2 Del.R. 251). Therefore, the final appendix is not being republished. Please refer to the August 1998 issue of the Register or contact the Department of Natural Resources and Environmental Control.**

APPENDIX 9 (a)

ENFORCEMENT AGAINST OPERATORS AND
INSPECTORS

***Please note that there were no changes to this appendix as originally proposed and published in the August 1998 issue of the Register at page 260 (2:2 Del.R. 260). Therefore, the final appendix is not being republished. Please refer to the August 1998 issue of the Register or contact the Department of Natural Resources and Environmental Control.**

**Plan for Implementation
Regulation No. 31**

Low Enhanced Inspection And Maintenance Program

Proposed SIP Revision

Prepared by the Division of Air and Waste Management
Air Quality Management Section
Delaware Department of Natural Resources and
Environmental Control

April 30, 1999

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Note: The appendix number refers to the section number in the PFI

To adopt a Plan for Implementation (PFI) of Regulation No. 31 - Enhanced Inspection and Maintenance Program, as follows:

Notes on the content of the PFI beginning on the next page:

* The preparation of this document used the Federal I/M Rule from 40 CFR Part 51 Subpart S as the framework. All portions of that Rule are addressed in either the PFI, which follows, or Regulation No. 31, a separate document. This procedure is consistent with the Introduction to the Checklist for Completing the Inspection/Maintenance SIP, dated March 1993, prepared by the US EPA, Office of Air and Radiation.

Low Enhanced Inspection and Maintenance Program Plan for Implementation (PFI)

Section 1 - Applicability.

This program shall be known as the "Low Enhanced Inspection and Maintenance Program" or the "LEIM Program", and shall be identified as such in the balance of this document.

Enhanced programs are required in serious or worse ozone nonattainment areas, depending upon population and nonattainment classification or design value. The determination of whether an area has a Low Enhanced or a High Enhanced program depends on the emission reductions required for the area. If minimal reductions are needed to meet the Rate of Progress Plan/Attainment requirements, the A Low Enhanced program is acceptable, otherwise the a High Enhanced program must be adopted and implemented.

The following analysis first portrays the tests of the EPA Rule, first for classification and population criteria and then for extent of area of coverage. For both analyses, various criteria are used to determine applicability. Following each criteria is an analysis which identifies the areas of Delaware where each criteria may or may not apply. The rule language is shown in italics.

(a) Nonattainment area classification and population criteria.

(1) States or areas within an ozone transport region shall implement enhanced I/M programs in any metropolitan statistical area (MSA), or portion of an MSA, within the state or area with a 1990 population of 100,000 or more as defined by the Office of Management and Budget (OMB) regardless of the area's attainment classification. In the case of a multi-state MSA, enhanced I/M shall be implemented in all ozone transport region portions if the sum of these portions has a population of 100,000 or more, irrespective of the population of the portion in the individual ozone transport region state or area.

Applicability:This criteria includes New Castle and Kent Counties.

This criteria excludes Sussex County due to no 1990 MSA.

(2) Apart from those areas described in paragraph (a)(1) of this section, any area classified as serious or worse ozone nonattainment, or as moderate or serious CO nonattainment with a design value greater than 12.7 ppm, and having a 1980 Bureau of Census-defined (Census-defined) urbanized area population of 200,000 or more, shall implement enhanced I/M in the 1990 Census-defined urbanized area.

Applicability:This criteria includes New Castle and Kent Counties.

This criteria excludes Sussex County, with a classification of Marginal.

(3) Any area classified, as of November 5, 1992, as marginal ozone nonattainment or moderate CO nonattainment with a design value of 12.7 ppm or less shall continue operating I/M programs that were part of an approved State Implementation Plan (SIP) as of November 15, 1990, and shall update those programs as necessary to meet the basic I/M program requirements of this subpart. Any such area required by the Clean Air Act, as in effect prior to November 15, 1990, as interpreted in EPA guidance, to have an I/M program shall also implement a basic I/M program. Serious, severe and extreme ozone areas and CO areas over 12.7 ppm shall also continue operating existing I/M programs and shall upgrade such programs, as appropriate, pursuant to this subpart.

Applicability:This criteria does not apply to New Castle or Kent Counties since they are required to adopt enhanced I/M.

This criteria does not apply to Sussex since the SIP Revision to include that county in the statewide basic I/M program was not adopted by EPA by November 15, 1990.

(4) Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of this section, shall implement basic I/M in any 1990 Census-defined urbanized area in the nonattainment area.

Applicability:This criteria applies to no Delaware counties since no counties are classified as Moderate.

(5) Any area outside an ozone transport region classified as serious or worse ozone nonattainment, or moderate or serious CO nonattainment with a design value greater than 12.7 ppm, and having a 1990 Census-defined urbanized area population of less than 200,000 shall implement basic I/M in the 1990 Census-defined urbanized area.

Applicability:This criteria applies to no Delaware counties since no counties are outside the ozone transport region.

(6) If the boundaries of a moderate ozone nonattainment area are changed pursuant to section 107(d)(4)(A)(i)-(ii) of the Clean Air Act, such that the area includes additional urbanized areas, then a basic I/M program shall be implemented in the newly included 1990 Census-defined urbanized areas.

Applicability: This criteria applies to no Delaware counties since no counties are classified as Moderate.

(7) If the boundaries of a serious or worse ozone nonattainment area or of a moderate or serious CO nonattainment area with a design value greater than 12.7 ppm are changed any time after enactment pursuant to section 107(d)(4)(A) such that the area includes additional urbanized areas, then an enhanced I/M program shall be implemented in the newly included 1990 Census-defined urbanized areas, if the 1980 Census-defined urban area population is 200,000 or more. If such a newly included area has a 1980 Census-defined population of less than 200,000, then a basic I/M program shall be implemented in the 1990 Census-defined urbanized area.

Applicability: This criteria applies to no Delaware counties since no counties (other than Kent) have urbanized areas.

(8) If a marginal ozone nonattainment area, not required to implement enhanced I/M under paragraph (a)(1) of this section, is reclassified to moderate, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area. If the area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area, if the 1980 Census-defined urban area population is 200,000 or more. If less than 200,000, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area.

Applicability: This criteria could only apply to Sussex, however data does not demonstrate that Sussex should be reclassified to Moderate nonattainment.

(9) If a moderate ozone or CO nonattainment area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area, if the 1980 Census-defined urban area population is 200,000 or more. In the case of ozone areas reclassified as serious or worse, if the 1980 Census-defined population of the urbanized area is less than 200,000, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area.

Applicability: This criteria applies to no Delaware counties since no counties are classified as Moderate.

(b) Extent of area coverage.

(1) In an ozone transport region, the program shall entirely cover all counties within subject MSAs or subject portions of MSAs, as defined by OMB in 1990, except largely rural counties having a population density of less than 200 persons per square mile based on the 1990 Census can be excluded provided that at least 50% of the MSA population is included in the program. This provision does not preclude the voluntary inclusion of portions of an

excluded rural county. Non-urbanized islands not connected to the mainland by roads, bridges, or tunnels may be excluded without regard to population.

Applicability: This criteria does not apply to New Castle or Kent Counties since they are already classified as Severe. This criteria does not apply to Sussex since there are no MSAs in Sussex.

(2) Outside of ozone transport regions, programs shall nominally cover at least the entire urbanized area, based on the 1990 census. Exclusion of some urban population is allowed as long as an equal number of non-urban residents of the MSA containing the subject urbanized area are included to compensate for the exclusion.

Applicability: This criteria applies to no Delaware counties since no counties are outside the ozone transport region.

(3) Emission reduction benefits from expanding coverage beyond the minimum required urban area boundaries can be applied toward the reasonable further progress requirements or can be used for offsets, provided the covered vehicles are operated in the nonattainment area, but not toward the enhanced I/M performance standard requirement.

Applicability: Delaware does not plan to include credits from vehicles registered in Sussex and operated in Kent or New Castle due to the tentative nature of this analysis.

(4) In multi-state urbanized areas outside of ozone transport regions, I/M is required in those states in the subject multi-state area that have an urban area population of 50,000 or more, as defined by the Bureau of Census in 1990. In a multi-state urbanized area with a population of 200,000 or more that is required under paragraph (a) of this section to implement enhanced I/M, any state with a portion of the urbanized area having a 1990 Census-defined population of 50,000 or more shall implement an enhanced program. The other coverage requirements in paragraph (b) of this section shall apply in multi-state areas as well.

Applicability: This criteria applies to no Delaware counties since no counties are outside the ozone transport region.

The conclusion of this analysis is that New Castle and Kent Counties are subject to the LEIM program requirements.

(c) Requirements after attainment.

[This requirement is included in Regulation 31, Section 1 (e)]

(d) Definitions: (*Note: Definitions are found in Regulation 31*).

Section 2 - Low Enhanced I/M performance standard.

(a) The LEIM programs will be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm), achieved from highway mobile sources as a result of the LEIM program. The performance standard was established using the following LEIM program inputs and local characteristics, such as vehicle mix and local fuel controls. The Delaware LEIM program inputs can be found in Appendix 2 (b).

- (1) Network type:
Centralized testing.
- (2) Start date:
January 1, 1995
- (3) Test frequency:
Annual testing.
- (4) Model year coverage:
Testing of 1968 and newer vehicles.
- (5) Vehicle type coverage:
Light duty vehicles, and light duty trucks, rated up to 8,500 pounds Gross Vehicle Weight Rating (GVWR).
- (6) Exhaust emission test type:
Idle test of all covered vehicles. (As described in appendix B of Subpart S of 40 CFR 51.
- (7) Emission standards:
Those specified in 40 CFR Part 85, Subpart W.

Emission standards for 1981 and newer vehicles of 1.2% CO, and 220 ppm HC for the idle test (as described in Appendix B of the EPA Rule); and

Maximum exhaust dilution measured as no less than 6% CO plus carbon dioxide (CO₂) on all tested vehicles (as described in Appendix B of the EPA Rule).

- (8) Emission control device inspections:
Visual inspection of the positive crankcase ventilation valve on all 1968 through 1971 model year vehicles, inclusive, and of the exhaust gas recirculation valve on all 1972 and newer model year vehicles.
- (9) Evaporative system function checks: none
- (10) Stringency:
A 20% emission test failure rate among pre-1981 model year vehicles.
- (11) Waiver rate:
A 3% waiver rate, as a percentage of failed vehicles.
- (12) Compliance rate:
A 96% compliance rate.
- (13) Evaluation date:
Enhanced LEIM program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by 2000 for ozone nonattainment

areas and 2001 for CO nonattainment areas, and for severe and extreme ozone nonattainment areas, on each applicable milestone and attainment deadline, thereafter. Milestones for NOx shall be the same as for ozone.

(b) The emission factors determined from the application of the above inputs to Mobile5a are shown in the document submitted to EPA, in November, 1995, entitled State of Delaware Demonstration of Meeting the Environmental Protection Agency Performance Standard for the Low-Enhanced Motor Vehicle Inspection and Maintenance Program. This document has been provided in Appendix 2 (b).

(c) On-board diagnostics (OBD):

[Reserved]

(d) Modeling requirements:

[Modeling requirements may be found in the document cited in paragraph (b) above]

Section 3 - Network type and program evaluation.

(a) Program evaluation.

The LEIM program includes an ongoing evaluation by the Department to quantify the emission reduction benefits of the program, and to determine if the LEIM program is meeting the requirements of the Clean Air Act and Regulation 31.

(1) LEIM program evaluation reports will be prepared by the Department on a biennial basis, starting two years after the initial start date of mandatory testing as required in Section 24 of this PFI. The first report will be due to EPA by July 1, 1998, and every two years thereafter.

(2) The LEIM program evaluation test data will be submitted to EPA and used by the State to calculate local fleet emission factors, to assess the effectiveness of the program, and to determine if the performance standard is being met. The most recent version of EPA's mobile source emission factor model, will be used to reflect the appropriate emission reduction effectiveness of LEIM program elements within Section 2 of this PFI based on actual performance.

Section 4 - Adequate tools and resources.

(a) Administrative resources.

The LEIM program will maintain the administrative resources necessary to perform all of the LEIM program functions including quality assurance, data analysis and

reporting, and the holding of hearings and adjudication of cases.

Based on the passage of HB 360 which was signed by the Governor on November 9, 1993, on an annual schedule \$2.8 million is dedicated from fines derived from the Justice of the Peace Courts for the purpose of ongoing operation of the LEIM program. This signed legislation amends ' 6102 of Title 29 of the Delaware Code which is found in Appendix 4 (a). In addition, the yearly expected expenditures which Delaware is committed to for the LEIM program is detailed in Appendix 4 (a).

(b) Personnel.

The LEIM program shall employ sufficient personnel to effectively carry out the duties related to the program, including but not limited to administrative audits, inspector audits, data analysis, LEIM program oversight, LEIM program evaluation, public education and assistance, and enforcement against motorists who are out of compliance with LEIM program regulations and requirements. The category of personnel, the numbers of each category, the duties and responsibilities of each category and the location of each category within the structure of Delaware government is shown in Appendix 4 (b). When required, enforcement actions taken involving Division and Department personnel shall be conducted in accordance with the Agreement between the State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees and the State of Delaware Merit Rules.

(c) Equipment.

The LEIM program shall possess equipment necessary to achieve the objectives of the program and meet LEIM program requirements, including but not limited to a steady supply of vehicles for covert auditing, test equipment and facilities for LEIM program evaluation, and computers capable of data processing, analysis, and reporting. Vehicles used for covert auditing will be derived from the State owned fleet of vehicles.

Section 5 - Test frequency and convenience.

(a) The biennial LEIM program test frequency is consistent with Delaware Code requirements of 7 Del. Chapter 21 " 2109 and 2110 and found in Appendix 5(a). The test frequency shall be automatically integrated with the enforcement process since the date of registration renewal is the same date as that of the emission testing requirement. Vehicles are assigned inspection cycles in Delaware. The inspection cycle normally remains with the vehicle when

sold or transferred within the State. New vehicles, or used vehicles newly tagged in Delaware, enter the "cycle" on the date of registration, and remain on that cycle until removed from service or transferred to another state. [See Section 11 for a detailed explanation of the registration denial process]

(b) In LEIM programs, test systems are to be designed in such a way as to provide convenient service to motorists required to get their vehicles tested. The location of official inspection stations are located in Wilmington, New Castle and Dover and are essentially the same locations as before the requirement for the LEIM program. These locations have been found to be adequate and publicly accepted convenient locations since 1983.

The network of stations are to provide test services that are sufficient to insure short waiting times to get a test. In preparing the estimates for the number of lanes required, the State based all assumptions on the peak hours of operation, based on local experience. Additional relief will be realized with the inception of the change of expiration dates to daily, avoiding end of period delays. Short-term wait times will be addressed by opening only enough lanes to provide a convenient wait of no more than a monthly average of 20 minutes.

Section 6 - Vehicle coverage.

The legal authority for this section is contained in 7 Del. C. 6707, as included in Appendix 11 (b).

The requirements of this section and the corresponding section in Regulation 31, shall apply to all of the subject vehicles registered in Delaware as described in the PFI. For the start up of the program on January 1, 1996, this number is an historical growth data projection of 478,000 vehicles. Delaware has confidence in this estimation based on a lengthy record of 3 percent per annum growth in the vehicle population.

Section 7 -Test procedures and standards.

[Requirements may be found in Section 6 of Regulation No. 31]

(a) Test procedure requirements: As a Division policy, a vehicle will only be retested for that portion of the LEIM program test (exhaust idle emissions or evaporative emissions) that it initially failed.

(1) On-board diagnostic checks.

[Reserved].

(b) Test standards

Section 8 -Test equipment.**(a) Performance features of computerized test systems.**

Test equipment specifications are attached as Appendix 8 (a). Each test lane will be equipped with the following equipment for the idle test, at a minimum: a tailpipe probe, a flexible sample line, a water removal system, particulate trap, sample pump, flow control components, analyzers for HC, CO and CO₂, and O₂ displays for exhaust concentrations of HC, CO, O₂ and CO₂. Materials that are in contact with the gases sampled shall not contaminate or change the character of the gases to be analyzed, including gases from alcohol fueled vehicles. The probe shall be capable of being inserted to a depth of at least eight inches into the tailpipe of the vehicle being tested, or into an extension boot if one is used. A pressure gauge and equipment for flowing compressed air into the fuel tank evaporative control system will be used for the pressure test. The same equipment shall be used to separately test the gas tank cap.

Test equipment for the Idle Test shall comply with the Bureau of Automotive Repair BAR 90 TEST ANALYZER SYSTEM SPECIFICATIONS dated April 1996, and is incorporated here by reference. Public review of this document may requested by contacting the Department at (302) 739-4791.

All test equipment will be fully computerized and all processes will be automated to the highest degree possible. All computerized equipment will have lock-out features to prevent tampering by unauthorized personnel. Station managers, or their supervisors will have authorization to clear lock-outs or access the hardware for any purpose other than to perform an emissions test: and will be required to enter an access code that identifies them personally in order to do so. The date and reason for all lock-outs, as well as the date, and by whom lock-outs are cleared will be kept in a data file.

The test process is completely computerized. The process begins with data entry, which will involve entering the license plate number or the VIN. The Motor Vehicle Technician will obtain the VIN digits from the vehicle itself and will check the tag number as well. The entry will either, call up a pre-existing or, create a new vehicle file based on the registration data base and previous inspections of the vehicle. The Motor Vehicle Technician will compare the data in the file and confirm that the vehicle presented matches the VIN/tag number combination in the file. The test process is completely automatic, including the pass/fail decision and test procedure. Test lanes will be linked on a

real-time basis to a central computer; test data will be recorded onto the station server and to the central data base as each test is completed, and multiple initial testing will be prevented. Records will be kept on the central data base for 10 years or the life of the vehicle whichever is less. The central data base will be backed up nightly, and if the vehicle is purged, data will be recorded on microfiche permanently. System lockouts will be initiated whenever the following quality control checks are failed or not conducted on schedule: periodic calibration or leak checks, and check of the pressure monitoring devices. All electronic calibration and system integrity checks will be performed automatically, i.e., without specific prompting by the Motor Vehicle Technician prior to each test, and quality control will be under computer control to the extent possible.

(1) Emission test equipment shall be capable of testing all subject vehicles and will be updated from time to time to accommodate new technology vehicles as well as changes to the LEIM program.

(2) At a minimum, emission test equipment:

(i) Shall be automated to the highest degree commercially available to minimize the potential for intentional fraud and/or human error;

(ii) Shall be secure from tampering and/or abuse;

(iii) Shall be based upon written specifications; and

(iv) Shall be capable of simultaneously sampling dual exhaust vehicles.

(v) Shall be able to determine the RPM of the vehicle.

(3) The vehicle owner or driver will normally be provided with a computer-generated record of test results, including all of the items listed in 40 CFR part 85, subpart W as being required on the test record. The test report will include:

(i) A vehicle description, including license tag number, vehicle identification number, and odometer reading;

(ii) The date and time of test;

(iii) The name or identification number of the individual(s) performing the tests and the location of the test station and lane;

(iv) The type of tests performed, including emission tests, visual checks for the presence of emission control components including catalytic converter, and functional, evaporative system checks including a gas cap test;

(v) The applicable test standards;

(vi) The test results, including exhaust concentrations and pass/fail results for each mode measured, pass/fail results for evaporative system checks, and which emission control devices inspected were passed, failed, or not applicable;

(vii) A handout indicating the availability of warranty coverage as required in Section 207 of the Clean Air Act;

(viii) Certification that tests were performed in accordance with the regulations; and

(ix) For vehicles that fail the tailpipe emission test, some possible causes of the specific pattern of high emission levels found during the test are given in the Vehicle Inspection Program Brochure distributed at the inspection lane.

(b) Functional characteristics of computerized test systems. The test system is composed of emission measurement devices and other motor vehicle test equipment controlled by a computer.

(1) The test system shall automatically:

(i) Make a pass/fail decision for all measurements;

(ii) Record test data to an electronic medium;

(iii) Conduct regular self-testing of recording accuracy;

(iv) Perform electrical calibration and system integrity checks before each test, as applicable, forwarded electronically to the inspection database where it shall be retained for 10 years or the life of the vehicle whichever is less, and;

(v) Initiate system lockouts for:

(A) Tampering with security aspects of the test system;

(B) Failing to conduct or pass periodic calibration or leak checks;

(C) Failing to conduct or pass the pressure monitoring device check (if applicable); (D) A full data recording medium or one that does not pass a cyclical redundancy check.

(2) The test systems will include a real-time data link to a host computer that prevents unauthorized multiple initial tests on the same vehicle in a test cycle and to insure test record accuracy.

(3) The test system will insure accurate data collection by limiting, cross-checking, and/or confirming manual data entry.

(4) On-board diagnostic test equipment requirements. [Reserved].

Section 9 - Quality control.

Quality control measures will insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained. (Concerning document maintenance see Regulation 31 Appendix 8(a) Systems Requirement Document - Registration Denial)

(a) General provisions.

(1) The practices described in this section and in Appendix 9 (a) (1) to this PFI shall be followed, at a minimum.

(2) Preventive maintenance on all inspection equipment necessary to insure accurate and repeatable operation will be performed on a periodic basis.

(3) Computerized analyzers shall automatically record quality control check information, lockouts, attempted tampering, and any other recordable circumstances which should be monitored to insure quality control (e.g., service calls).

(b) Requirements for evaporative system functional test equipment.

Requirements for evaporative system functional test equipment.

Equipment shall be maintained by the operator according to demonstrated good engineering practices to assure test accuracy. Computer control of quality assurance checks and quality control charts shall be used whenever possible. Appendix 9 (b) contains periodic maintenance procedures which shall be performed on all emission testing equipment by the State.

(c) Document security.

Measures shall be taken to ensure that compliance documents and data files cannot be stolen, removed, changed or edited without being damaged or marked for detection. Additional procedures concern document security can be found in Appendix 9 (c).

(d) Covert Audits.

Unmarked state vehicles will be adjusted to fail emission tests and brought into the testing lanes by state employees not related to the LEIM program. Test records for these vehicles be kept by the Department auditing personnel. The number of covert vehicles that passed and failed the tests will be compiled and the Motor Vehicle Technician that performed the tests will be identified. Details of the actual operation of the covert program will remain confidential to the Department personnel doing the audits.

Section 10 -Waivers and compliance via diagnostic inspection.

The LEIM program allows for the issuance of a waiver, which is a form of compliance with the LEIM program requirements that allows a motorist to comply without

meeting the applicable test standards, as long as prescribed criteria are met.

(a) Issuance criteria.

[Requirements may be found in Regulation 31, Section 6 (a)]

(b) Compliance via diagnostic inspection.

[Requirements may be found in Regulation 31, Section 6 (b)]

(c) Quality control of waiver issuance.

(1) The Director shall provide control of waiver issuance and processing by establishing a system of waivers issued by the Division.

(2) Vehicle owners or lessors shall be informed via a standardized form provided by the Division, of potential warranty coverage, and ways to obtain warranty repairs upon their failure of an emissions inspection.

(3) Division personnel shall insure that repair receipts are authentic and cannot be revised or reused. All qualified receipts shall be permanently marked so they cannot be revised or reused. Department personnel or personnel contracted by the Department, on a periodic schedule shall perform visual inspections of all related repairs done by anyone, except for waiver repairs done by Certified Emission Repair Technicians.

(4) Waivers shall be tracked, managed, and accounted for by the Division with respect to time extensions or exemptions in the Division's database so that owners or lessors cannot receive or retain a waiver improperly. Records shall be maintained in secured, limited access data files and cross checked on a quarterly basis with the main data base to ensure waivers are being properly managed and reinspected biennially by the inspection program.

Section 11 - Motorist compliance enforcement.

Compliance shall be ensured through the denial of motor vehicle registration unless the vehicle has complied with the I/M requirement prior to initial registration or registration renewal.

(a) The following is a description of the Division of Motor Vehicles' registration policy according to Delaware law on the registration of newly titled vehicles and registration renewals:

(1) New motor vehicles that have never been titled/registered in any state are allowed to register for a period of three years without complying with the I/M requirement.

(2) All other vehicles older than 3 model years (and that must comply with Regulation 31) coming into Delaware or being titled/registered for the first time are required to

pass I/M inspection prior to titling and registration. Delaware Motor Vehicle Law Title 21, Section 2102, requires new residents to register all vehicles within 60 days after taking up residency in Delaware. Failure to comply subjects the violator to a fine of \$25 or no more than \$100 for the first offense; second offense not less than \$50 nor more than \$200 or imprisonment not less than 10 nor more than 30 days or both.

(3) All vehicles applying for registration renewal must pass an I/M inspection within 90 days of their registration expiration date in order for their registration to be renewed.

(4) Delaware's registration denial system is designed to prevent fraud and registrations without inspection. The system will be fully computerized by the end of 1998 which will allow the Division to use Vehicle Inspection Reports (VIR's) which are generated when a vehicle is inspected as backup documentation. Currently, the VIR is printed on all inspections. A VIR showing the vehicle has passed inspection must be presented at the time of registration or registration renewal. The computer system when implemented will automate the entire system. The test record will be stored in the vehicle's registration database. A failure in any portion of the test will prevent the vehicle from being registered. The system will lock out the clerks from updating the vehicle record until the vehicle passes inspection. The VIR will only be used as backup documentation in the event a failure occurs in the automated system.

(5) The I/M test record for each vehicle is stored in the Division's mainframe computer database. The I/M test record is matched to the vehicle's Vehicle Identification Number (VIN), and the last ten (10) I/M inspections will be stored with the vehicle's registration record. The test record is a computer-based record with a paper back-up (VIR). The paper record is only kept for one year. The motorist is given the VIR when the inspection is completed.

(6) The Division currently issues a registration card and license plate sticker to show a vehicle is registered. In order to prevent theft of license plates and plate stickers, the Division anticipates issuing a windshield sticker in addition to the plate sticker. The window stickers will have unique serial numbers which will be loaded into the registration database and printed on the vehicle registration card. In addition, each sticker will have a unique bar code. The window sticker will also allow the Division to implement a daily expiration system. Currently, vehicle registrations expire the 15th and the last day of each month.

(7) Penalty for non-compliance:

(i) Delaware law prohibits a vehicle owner from operating or knowingly permitting the operation of a vehicle upon the highway that is not registered or which does not have attached thereon the number plate assigned by the Department or a current expiration sticker. The penalty for

non-compliance for the first offense is a fine of not less than \$50 nor more than \$200, be imprisoned not less than 30 days nor more than 90 days or be penalized by both fine and imprisonment for each subsequent like offense, fined not less than \$100 nor more than \$300, be imprisoned not less than 90 days nor more than six months, or be penalized by both fine and imprisonment. Delaware law enforcement officers having probable cause to believe that a vehicle is not in compliance with the law or regulations may inspect the vehicle and documents and make arrests for non-compliance.

(ii) At any time and notwithstanding the possession of current registration plates as provided by Delaware Title 21, the Public Safety Secretary, any authorized agent of the Department or any police officer may, upon reasonable cause, require the owner or operator of a vehicle to stop and submit such vehicle and the equipment to such further inspection and test with reference thereto as may be appropriate. In the event such vehicle is found to be in an unsafe condition or lacking the required equipment or is not in proper repair and adjustment, the officer shall give a written notice to the driver and shall send a copy thereof to the Department. The notice shall require that such vehicle and its equipment be placed in safe condition and in proper repair and adjustment and/or that proper equipment be obtained, and that a certificate of inspection and approval for such vehicle be obtained within five (5) days thereafter.

(iii) Every owner or driver upon receiving the notice prescribed in subsection (a) of Title 21, Section 2144, of the Delaware Code shall comply therewith and shall, within the five (5) day period, secure an endorsement upon such notice by an inspector of the Department that such vehicle is in safe condition and properly equipped and its equipment in proper repair and adjustment and shall then forward the notice to the Department. No person shall operate any such vehicle after receiving a notice with reference thereto as above provided, except as may be necessary to return such vehicle to the residence or the place of business of the owner or driver if within a distance of 20 miles or to a garage until the vehicle and its equipment has been placed in proper repair and adjustment and otherwise made to conform to the requirements of this title.

(8) Rental agencies are required to register in Delaware the number of vehicles the agency has available for rent in Delaware.

(9) Department personnel will perform periodic parking lot surveys to determine vehicle compliance rates and to ensure I/M program compliance is being adhered to in practice. During the surveys the Department personnel shall match vehicle tag numbers with Division Vehicle Inspection Reports to ensure Delaware registered vehicles have been inspected and complied with Regulation 31. Vehicles with expired tag stickers will be referred to the Division for enforcement action.

(10) In Delaware, the compliance sticker (and vehicle tag) normally remains with any vehicle already in the program, regardless of ownership. Vehicles changing the compliance sticker and vehicle tag with a change in vehicle ownership shall be assigned a new inspection cycle and require a new compliance sticker prior to re-registration. Manipulation of the title or registration shall therefore be ineffective in attempting to avoid inspection.

(b) The following explains how the system currently works and how the computer controlled system will work once implemented:

(1) A registration renewal notice is sent to each vehicle owner approximately 90 days prior to the expiration of the current registration/inspection.

(2) The vehicle is required to be inspected at one of the Division of Motor Vehicles inspection facilities. After the vehicle is inspected the owner is issued a Vehicle Inspection Report (VIR). The VIR indicates if the vehicle failed or passed inspection. When the vehicle passes inspection, the owner presents the VIR to a registration specialist who verifies the vehicle has passed inspection and issues the registration renewal.

(3) Vehicles failing inspection must have the vehicle repaired and presented back for inspection. The Division allows one retest without proof of repair. After the first retest, documented repairs must be performed prior to another retest. Vehicle owners whose registration have expired or are about to expire can apply for a temporary license plate to allow for operation of the vehicle for 30 days while the vehicle is being repaired. Vehicles failing for safety violations may be provided a temporary permit for 15 days to allow for the vehicle to be driven directly to a repair shop from DMV. The temporary tags and permits are tightly controlled and are shown on the vehicle's registration record. This prevents an owner from obtaining more than one temporary tag or permit. The vehicle cannot obtain registration until a VIR is presented which shows the vehicle has passed I/M and the Division's safety inspection program.

(4) The new automated system that will be operating by the end of 1998 will provide the registration specialist with on-line access to the vehicle inspection record. When an owner comes in to register a vehicle, the computer will indicate if the vehicle failed or passed inspection. When a vehicle fails inspection, the computer will lock the vehicle record and prevent any attempt to register the vehicle. The registration specialist can look at the vehicle test record and inform the customer of the failed items. The customer can then be offered a 30-day temporary tag or temporary permit. Vehicles passing inspection will be allowed to register and will be provided a new registration card and plate sticker. Vehicles being titled for the first time in Delaware are subject to the same restrictions. The system will prevent the vehicle from being registered.

(5) The system will have two methods to override the inspection failure. The first method involves emission waivers issued under Regulation 31, Section 6. The waiver information and receipts will be verified by Delaware's Department of Natural Resources and Environmental Control (DNREC). The second method is by supervisory override. The override authority allows the registration specialists to change a vehicle record from fail to pass for certain safety-related failure items. Example: vehicle fails for license plate being damaged. The customer will be issued a new license plate by a registration specialist, and the failed safety item will be changed to pass. Registration specialists will not have the authority or the ability to change any I/M-related items. The second security level involves DMV supervisory personnel who would have the authority to override a record in the event of a computer failure. Example: vehicle owner takes vehicle through inspection, passes and receives a VIR showing a pass in all areas. Through a computer glitch, the vehicle record is not updated in the mainframe computer system. The supervisor can verify through the inspection lane station manager computer that the vehicle was inspected and passed. The supervisor would then override the system and allow the renewal. The supervisor would notify the Division's Computer Support of the computer problem and action would be taken to ensure the inspection test record is sent to the mainframe system. The override transaction ability will be strictly controlled. Managers will be provided with reports when the override is used. The override transaction report will contain information to easily identify the individual who performed the transaction override, date, time and the item overridden.

(c) The legal authority is contained in 7 Del. C.60, '6010(a), 7 Del. C. 67, '6702.. These provisions are found in Appendix 11 (b). In Regulation 31, Section 8 and Appendix 4 (a) procedures to be followed by the Division in the specific operation of the enforcement program, as well as a penalty schedule to be followed when violations occur, are included.

(d) (1) In the future, through the examination of data, test records and enforcement actions the Department will be able to assess the compliance rate. In addition, the Department will conduct on-road and parking lot surveys of vehicles with Delaware tags, noting the vehicle inspection sticker located on the tag and indicating the month and year of expiration. In these same surveys, tag numbers will be tracked and verified with the Division's record as to registration compliance. The number of out of compliance vehicles that are identified in the on-road test and the number of vehicles that have expired registration stickers that are identified by the parking lot checks will be compiled and a compliance rate will be determined.

(2) The State commits to a sustained level of LEIM program enforcement which shall ensure a compliance rate of no less than 96% of subject vehicles. This reflects the compliance rate used in LEIM program modeling. In the event that LEIM program evaluation reveals that this compliance rate is not being continuously met, the following contingency measures shall be implemented by the Department:

(i) additional on-road testing and additional parking lot surveillance

(ii) contact fleet and federal fleet managers to ensure full compliance

(3) Should these measures not be sufficient to bring the State's compliance rate to the needed level, a final measure shall be implemented. The Division shall generate a list of all vehicles known to be operating in the State under legal tags. This list shall be compared to a list of all vehicles in compliance with the LEIM program. Any outstanding vehicles shall be investigated by the Department and brought into compliance subject to current laws and regulations.

(e) As described in Section 6 (c) of Regulation No. 31, certain vehicles shall be exempt from the inspection requirements of the LEIM program. Detailed in Appendix 11 (c)(1), is a 1993 estimation of the percentage of the fleet by vehicle type, and, the percentage of the subject fleet that vehicle type represents. The exempt status of these vehicles shall be confirmed through the registration inspection requirements and through other established enforcement mechanisms. If a violation is found, the exempt status of any individual vehicle may be revoked.

Section 12 - Motorist compliance enforcement program oversight.

The enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary.

(a) Quality assurance and quality control.

A quality assurance program has been implemented to insure effective overall performance of the enforcement system. Quality control procedures are required to instruct individuals in the enforcement process regarding how to properly conduct their activities. Audits of the Quality Assurance and Quality Control procedures shall be performed by Department Auditors and reported to EPA on an annual basis. The quality control and quality assurance program shall include:

(1) Verification of exempt vehicle status by inspecting and confirming such vehicles during registration;

(2) Facilitation of accurate critical test data and vehicle identifier collection through the use of automatic data capture systems such as bar-code scanners or optical

character readers, or through redundant data entry performed upon appearance for testing by lane personnel;

(3) Maintenance of an audit trail to allow for the assessment of enforcement effectiveness such that all documentation can be controlled, tracked and reported to EPA by the Department on an annual basis with program evaluations;

(4) Establishment of written procedures for personnel directly engaged in LEIM program enforcement activities, contained in Appendix 12 (a)(4);

(5) Establishment of written procedures for Division personnel engaged in LEIM program document handling and processing, such as registration clerks or personnel involved in sticker dispensing and waiver processing, as well as written procedures for the auditing of their performance, contained in Appendix 12- (a)(5);

(6) A determination of enforcement program effectiveness through annual audits of test records and LEIM program compliance documentation, with the procedures described in Appendix 12 (a)(6). Results shall be provided to EPA with annual program evaluation reports;

(7) Enforcement procedures in accordance with the Agreement Between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees and the State of Delaware Merit Rules for immediate disciplining, retraining, or removing enforcement personnel who deviate from established requirements; [Additional requirements may be found in Section 12 of the PFI]

(b) Information management.

The information data base to be used in characterizing, evaluating, and enforcing the LEIM program shall:

(1) Determine the subject vehicle population through analysis of vehicles receiving State of Delaware tags in New Castle and Kent Counties;

(2) Permit EPA audits of the enforcement process;

(3) Assure the accuracy of registration and other program document files and data bases through internal and cross data base comparisons of records;

(4) Maintain and ensure the accuracy of the testing database through periodic internal and/or third-party Departmental review; through automated or redundant data entry; and, through automated analysis for valid alpha-numeric sequences of the vehicle identification number (VIN), certificate number, or tag number. Department auditors shall annually review and verify analyses, and assist the Division and Police agencies in enforcement actions;

(5) Compare on a quarterly and annual basis, the testing database to the registration database to determine LEIM program effectiveness and establish compliance rates.

(6) Sample the fleet as a determination of compliance through parking lot surveys, road-side pull-overs, or other in-use vehicle measurements.

(c) The legal authority in Appendix 11 (b), 7 Del. C. '6010(a), includes the authority to develop and implement the enforcement oversight element of the LEIM program. The regulations also include procedures to be followed by the Division in the specific operation of the registration denial system, as well as a penalty schedule to be followed when violations occur. (See Regulation 31, Appendix 8 (a) Systems Requirement Document- Registration Denial)

Section 13 - Quality assurance.

An ongoing quality assurance LEIM program has been implemented to discover, correct and prevent fraud, waste, and abuse and to determine whether procedures are being followed, are adequate, whether equipment is measuring accurately, and whether other problems might exist which would impede LEIM program performance. The quality assurance and quality control procedures shall be evaluated at least annually to assess their effectiveness and relevance in achieving LEIM program goals.

(a) Performance audits.

Performance audits shall be conducted by the Departments auditors on a minimum of an annual basis to determine whether Motor Vehicle Technicians are correctly performing all tests and other required functions. Performance audits shall be of two types: overt and covert, and shall include:

(1) Performance audits based upon written procedures and results shall be reported using either electronic or written forms to be retained by the Division, with sufficient detail using violations of procedures found, to support a hearing if necessary. This shall include all evidence uncovered of a violation, including the time, date, nature of the violation, and possible effect on vehicles being inspected and the programs overall effectiveness. Preliminary results shall be discussed with the lane manager. Final results shall be transmitted to both the Division Director and the Department Secretary who shall decide if further action is required, and initiate that further action;

(2) Performance audits in addition to regularly programmed audits for Motor Vehicle Technicians suspected of violating regulations as a result of audits, data analysis, or consumer complaints;

(3) Overt performance audits shall be performed once per month and shall include:

(i) A check for the observance of issuing windshield stickers (when implemented);

(ii) A check to see that required record keeping practices are being followed;

(iii) A check for licenses or certificates and other required display information; and

(iv) Observation and written evaluation of each Motor Vehicle Technician's ability to properly perform an inspection;

(4) Covert performance audits shall include:

(i) Remote visual observation of Motor Vehicle Technician performance, which shall include the use of aids such as binoculars or video cameras, at least once per year per Motor Vehicle Technician.

(ii) Site visits at least once per year per number of Motor Vehicle Technicians using covert vehicles set to fail (this requirement sets a minimum level of activity to one covert inspection for each Motor Vehicle Technician at each station, not a requirement that each Motor Vehicle Technician be involved in a covert audit);

(iii) Full documentation of all audit preparation, execution and performance, including verified vehicle condition and preparation, which shall be sufficient for building a legal case and establishing a performance record;

(iv) Covert vehicles covering the range of vehicle technology groups (e.g., carbureted and fuel-injected vehicles) included in the LEIM program, including a full range of introduced malfunctions covering the emission test, the evaporative system tests, and emission control component checks (as applicable);

(v) Sufficient numbers of covert vehicles and auditors to allow for frequent rotation of both to prevent detection by station personnel during audits conducted once per month; and,

(vi) Access to on-line inspection databases by Department and Division personnel to permit the creation and maintenance of covert vehicle records.

Covert vehicles to be used in this requirement shall be supplied from the pool maintained by the State of Delaware for use throughout the State by various agencies. The records of these vehicles shall be temporarily modified by the Division and fitted with regular tags so that they cannot be identified either visually or through an electronic search of Division records as being anything other than regular vehicles used by an individual for normal transportation. Should re-use of any vehicle be necessary in conducting audits, the Division's System Administrator or designee only, shall reset the test records to avoid detection of the vehicle by lane personnel.

(b) Record audits.

Station and Motor Vehicle Technician records shall be reviewed or screened at least monthly by the Department, to assess station performance and identify problems that may indicate potential fraud or incompetence. Such review shall include:

(1) Software-based, computerized analysis which can be initiated by Division personnel to examine station records and identify statistical inconsistencies, unusual patterns, and other discrepancies;

(2) Visits to inspection stations by Department auditors, to review records not already covered in the electronic analysis (if any); and

(3) Comprehensive accounting for the windshield stickers (when implemented) used to demonstrate compliance with the LEIM program.

(c) Equipment audits.

During overt site visits, auditors shall conduct quality control evaluations of the required test equipment, including (where applicable):

(1) A gas audit using gases of known concentrations at least as accurate as those required for regular equipment quality control and comparing these concentrations to actual readings;

(2) A check for tampering, worn instrumentation, blocked filters, and other conditions that would impede accurate sampling;

(3) A leak check;

(4) A check to determine that station gas bottles used for calibration purposes are properly labeled and within the required tolerances;

(5) A check of the system's ability to accurately detect background pollutant concentrations;

(6) A check of the pressure monitoring devices used to perform the evaporative canister pressure test; and

(d) Auditor training and proficiency.

(1) Auditors are required to be formally trained and knowledgeable in:

(i) The use of analyzers;

(ii) LEIM program rules and regulations;

(iii) The basics of air pollution control;

(iv) Basic principles of motor vehicle engine repair, related to emission performance;

(v) Emission control systems;

(vi) Evidence gathering;

(vii) State administrative procedures laws;

(viii) Quality assurance practices; and

(ix) Covert audit procedures.

(2) Auditors shall themselves be audited by their supervisor, at least once per annum.

(3) The training and knowledge requirements in paragraph (d)(1) of this section may be waived for temporary auditors engaged solely for the purpose of conducting covert vehicle runs.

Section 14 - Enforcement against operators and motor vehicle technicians.

Enforcement against operators or motor vehicle technicians shall include swift, sure, effective, and consistent penalties for violation of LEIM program requirements in accordance with the Agreement between the State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees and the State of Delaware Merit Rules..

(a) Imposition of penalties.

[Requirements may be found in Section 14 of Regulation No. 31]

(b) Legal authority.

[Requirements may be found in Section 14 of Regulation No. 31]

(c) Recordkeeping. The Department shall maintain records of all warnings, civil fines, suspensions, revocations, and violations and shall compile statistics on violations and penalties on an annual basis. These records shall be provided to the Division Director and to the EPA on an annual basis beginning July 1, 1998.

Section 15 - Data collection.

Accurate data collection is essential to the management, evaluation, and enforcement of an LEIM program. The Director shall gather test data on individual vehicles, as well as quality control data on test equipment.

(a) Test data.

The goal of gathering test data is to unambiguously link specific test results to a specific vehicle, LEIM program registrant, test site, and Motor Vehicle Technician, and to determine whether or not the correct testing parameters were observed for the specific vehicle in question. In turn, these data can be used to distinguish complying and non-complying vehicles as a result of analyzing the data collected and comparing it to the registration database, to screen inspection stations and Motor Vehicle Technicians for investigation as to possible irregularities, and to help establish the overall effectiveness of the LEIM program. At a minimum, the LEIM program shall collect the following with respect to each test conducted:

- (1) Test record number;
- (2) Inspection station and Motor Vehicle Technician numbers;
- (3) Test system number;
- (4) Date of the test;
- (5) Vehicle Identification Number;

- (6) Delaware tag number;
- (7) Manufacturer's Gross Vehicle Weight Rating (GVWR) for vehicles above 8,500 pounds;
- (8) Vehicle model year, make, and body style and EPA vehicle classification;
- (9) Odometer reading;
- (10) Category of test performed (i.e., initial test, first retest, or subsequent retest);
- (11) Fuel type of the vehicle (i.e., gas, diesel, or other fuel);
- (12) Emission test sequence(s) used;
- (13) Hydrocarbon emission scores and standards for each applicable test mode;
- (14) Carbon monoxide emission scores and standards for each applicable test mode;
- (15) Carbon dioxide emission scores (CO+CO₂) and standards for each applicable test mode;
- (16) Nitrogen oxides emission scores, if available, and standards for each applicable test mode;
- (17) Results (Pass/Fail/Not Applicable) of the applicable visual inspections for the gas cap, catalytic converter, evaporative system, and any other visual inspection for which emission reduction credit is claimed;
- (18) Results of the evaporative system pressure test expressed as a pass or fail; and

(b) Quality control data. At a minimum, the program shall gather and report the results of the quality control checks required under Section 9 of this PFI, identifying each check by station number, system number, date, and start time. The data report shall also contain the concentration values of the calibration gases used to perform the gas characterization portion of the quality control checks.

Section 16 -Data analysis and reporting.

Data analysis and reporting are required to allow for monitoring and evaluation of the program by program management and EPA, and shall provide information regarding the types of program activities performed and their final outcomes, including summary statistics and effectiveness evaluations of the enforcement mechanism, the quality assurance system, the quality control program, and the testing element. Initial submission of the following annual reports shall commence on July 1, 1996. The biennial report shall commence on July 1, 1998.

(a) Test data report.

The Secretary shall submit to EPA by July of each year a report providing basic statistics on the testing program for January through December of the previous year, including:

- (1) The number of vehicles tested by model year and vehicle type;

(2) By model year and vehicle type, the number and percentage of vehicles:

- (i) Failing the emissions test initially;
- (ii) Failing each emission control component check initially;
- (iii) Failing the evaporative system integrity check initially;
- (iv) Failing the first retest for tailpipe emissions;
- (v) Passing the first retest for tailpipe emissions;
- (vi) Initially failed vehicles passing the second or subsequent retest for tailpipe emissions;
- (vii) Initially failed vehicles passing each emission control component check on the first or subsequent retest by component;
- (viii) Initially failed vehicles passing the evaporative system integrity check on the first or subsequent retest;
- (ix) Initially failed vehicles receiving a waiver; and
- (x) Vehicles with no known final outcome (regardless of reason);

(3) The initial test volume by model year and test station;

(4) The initial test failure rate by model year and test station; and

(5) The average increase or decrease in tailpipe emission levels for HC, CO, and NO_x (if applicable) after repairs by model year and vehicle type for vehicles receiving an emission test.

(b) Quality assurance report.

The Secretary shall submit to EPA by July of each year a report providing basic statistics on the quality assurance program for January through December of the previous year, including:

- (1) The number of inspection stations and lanes operating throughout the year; and
- (2) The number of inspection stations and lanes operating throughout the year:
 - (i) Receiving overt performance audits in the year;
 - (ii) Not receiving overt performance audits in the year;
 - (iii) Receiving covert performance audits in the year;
 - (iv) Not receiving covert performance audits in the year.
- (3) The number of covert audits:
 - (i) Conducted with the vehicle set to fail the emission test;
 - (ii) Conducted with the vehicle set to fail the component check;
 - (iii) Conducted with the vehicle set to fail the evaporative system check;

(iv) Conducted with the vehicle set to fail any combination of two or more of the above checks;

- (v) Resulting in a false pass for emissions;
- (vi) Resulting in a false pass for component checks;
- (vii) Resulting in a false pass for the evaporative system check; and

(viii) Resulting in a false pass for any combination of two or more of the above checks;

(4) The number of Motor Vehicle Technicians and stations, in accordance with the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees and the State of Delaware Merit Rules:

- (i) That were suspended, fired, or otherwise prohibited from testing as a result of overt or covert audits;
- (ii) That were suspended, fired, or otherwise prohibited from testing for other causes; and

(5) The number of Motor Vehicle Technicians certified to conduct testing;

(6) The number of hearings:

- (i) Held to consider adverse actions against Motor Vehicle Technicians and stations; and
- (ii) Resulting in adverse actions against Motor Vehicle Technicians and stations;

(7) The total number of covert vehicles available for undercover audits over the year; and

(8) The number of covert auditors available for undercover audits.

(c) Quality control report.

The Secretary shall submit to EPA by July of each year a report providing basic statistics on the quality control program for January through December of the previous year, including:

- (1) The number of emission testing sites and lanes in use in the LEIM program;
- (2) The number of equipment audits by station and lane;
- (3) The number and percentage of stations that have failed equipment audits; and
- (4) Number and percentage of stations and lanes shut down as a result of equipment audits.

(d) Enforcement report.

(1) The Secretary shall, at a minimum, submit to EPA by July of each year a report providing basic statistics on the enforcement program for January through December of the previous year, including:

- (i) An estimate of the number of vehicles subject to the inspection program, including the results of an analysis of the registration data base;

(ii) The percentage of motorist compliance based upon a comparison of the number of valid final tests with the number of subject vehicles;

(iii) The number of compliance surveys conducted, number of vehicles surveyed in each, and the compliance rates found.

(2) The Secretary shall provide the following additional information obtained from the Director:

(i) A report of the LEIM program's efforts and actions to prevent motorists from falsely registering vehicles out of the LEIM program area or falsely changing fuel type on the vehicle registration, and the results of special studies to investigate the frequency of such activity; and

(ii) The number of registration file audits, number of registrations reviewed, and compliance rates found in such audits.

(e) Additional reporting requirements.

In addition to the annual reports in paragraphs (a) through (d) of this section, LEIM programs shall submit to EPA by July of every other year, beginning with July 1, 1998, biennial reports addressing:

(1) Any changes made in LEIM program design, personnel levels, procedures, regulations, and legal authority, with detailed discussion and evaluation of the impact on the LEIM program of all such changes; and

(2) Any weaknesses or problems identified in the LEIM program within the two-year reporting period, what steps have already been taken to correct those problems, the results of those steps, and any future efforts planned.

[(f) Clean Screen, Low Emitter Profiling Report: The Division of Motor Vehicles will prepare reports on, at least, an annual basis that include the following at a minimum:

(1) Number and percentage of vehicles clean screened by model year.

(2) The percentage of vehicles clean screen by model year will be compared to values assumed in the mobile5 modeling.]

[(g) Evaluation of Clean Screen, Low Emitter Profiling: The emissions test data base will include two flags: one indicating if the vehicle was inspected in clean screen mode, and another indicating if the vehicle was clean screened. In addition, the Division will analyze inspection data when in clean screen mode to assure that the vehicle mix being inspected, and accordingly, the vehicles being clean screened match expectations. On at least an annual basis, the Division of Motor Vehicles will evaluate the clean screen program by analyzing the data base of test results when the system was not in clean screen mode to determine the following:

(1) The percent of I/M failures that would have been clean screened (if the system was in clean screen mode).

(2) The percent of excess emissions (based on the two-speed idle to IM240 correlations) that would have been clean screened.

(3) The impact of the observed clean screen effectiveness on the mobile model results.]

Section 17 -Motor Vehicle Technician training and certification.

The Department and the Division shall jointly ensure that adequate and appropriate training is available within the state. Interested agents may apply to be a state training facility. Upon evaluation of the program and a positive finding, the agent may be certified. The Department and the Division shall monitor and evaluate the training program delivery at least annually to ensure that it continues to meet the requirements of the program and reflects changes occurring in the program over time. (See also Appendix 17)

(a) Training.

(1) Motor vehicle technician training shall impart knowledge of the following:

(i) The air pollution problem, its causes and effects;

(ii) The purpose, function, and goal of the inspection LEIM program;

(iii) State inspection regulations and procedures;

(iv) Technical details of the test procedures and the rationale for their design;

(v) Emission control device function, configuration, and inspection;

(vi) Test equipment operation, calibration, and maintenance;

(vii) Quality control procedures and their purpose;

(viii) Public relations; and

(ix) Safety and health issues related to the inspection process.

(2) [Requirements for monitoring and evaluating the training program delivery can be found in the PFI, Section 17]

(3) In order to complete the training requirement, a trainee shall pass with a minimum of 80% of correct responses to all questions, a written test administered by the Division. In addition, a hands-on test shall be administered in which the trainee demonstrates without assistance the ability to conduct a proper inspection, to properly utilize equipment and to follow other procedures. Inability to properly conduct all test procedures shall constitute failure of the test. The LEIM program shall take appropriate steps to insure the security and integrity of the testing process, and that sufficient training is provided to allow all motor vehicle technicians to complete the training requirements.

(b) Motor Vehicle Technician Certification.

(1) All motor vehicle technicians shall be certified by the Division in order to perform official inspections.

(2) Completion of motor vehicle technician training and passing required tests with a grade of at least 80% shall be a condition of certification.

(3) Motor vehicle technician certificates shall be valid for no more than 2 years, at which point refresher training and testing shall be required prior to renewal. Alternative approaches based on more comprehensive skill examination and determination of motor vehicle technician competency may be used.

(4) Certificates shall not be considered a legal right but rather a privilege bestowed by the LEIM program conditional upon adherence to LEIM program requirements.

Section 18 -Public information and consumer protection.

(a) Public awareness.

The Department and the Division shall ensure the development of a plan for informing the public on an ongoing basis throughout the life of the LEIM program of the air quality problem, the requirements of federal and state law, the role of motor vehicles in the air quality problem, the need for and benefits of an LEIM program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the LEIM program. This information will be provided to motorists whose vehicles fail the emission test in a brochure developed by the Division entitled "Vehicle Inspection Program Brochure. Motorists shall also be offered a list of repair facilities in the area and information on the results of repairs performed by repair facilities in the area, as described in Section 20 (b)(1) of this PFI.

(b) Consumer protection.

The Department shall institute procedures and mechanisms to protect the public from fraud and abuse by Motor Vehicle Technicians, and others involved in the LEIM program. It shall include mechanisms for protecting whistle blowers and following up on complaints by the public or others involved in the process. It shall include a program to assist owners in obtaining warranty covered repairs for eligible vehicles that fail a test. Additional consumer protection policies by the Division is included in Appendix 18-(b).

Section 19 -Improving repair effectiveness.

Effective repairs are the key to achieving LEIM program goals and the state shall take steps to ensure the capability exists in the repair industry to repair vehicles that fail I/M tests.

(a) Technical assistance.

The Department shall provide the repair industry with information and assistance related to vehicle inspection diagnosis and repair.

(1) The Department shall regularly inform repair facilities of changes in the inspection LEIM program, training course schedules, common problems being found with particular engine families, diagnostic tips and the like.

(2) The Department shall provide a telephone number where the public may call with questions related to the legal requirements of state and Federal law with regard to emission control device tampering, engine switching, or similar issues. Where possible, the Department will assist repair technicians with repair problems and answer technical questions that arise out of the repair process.

(b) Performance monitoring.

(1) The Department shall monitor the performance of individual motor vehicle repair facilities, and provide to the public at the time of initial failure, a summary of the performance of Certified Emission Repair Technicians that have repaired vehicles for retest. The initial stage of the repair technician report card will score certified emission repair technicians only with a 1 each time a repaired vehicle comes in for a retest and passes and a 0 when the repaired vehicle fails after the retest. Motor Vehicle Technicians will enter the Certified Emission Repair Technician's code number into data management system and the vehicle emission report for that retest will then have the technician and the results of the test in the record. The records will then be compiled in a report on a percent of repaired vehicles that passed the retest will be given to each technician. The initial analysis will be to assess the training that the state provides to the technician to acquire certification. After the initial stage of the performance monitoring program is completed, a full performance monitoring shall include statistics on the number of vehicles submitted for a retest after repair by the repair facility, the percentage passing on first retest, the percentage requiring more than one repair/retest trip before passing, and the percentage receiving a waiver. The Department shall issue procedures to weight the averages for repair shops, to avoid causing a shop to carry a poor record from the beginning of the program that does not reflect their current ability to make repairs. The LEIM program may provide motorists with alternative statistics that convey similar information on the relative ability of repair facilities provide effective and convenient repairs, in light of the age and other characteristics of vehicles presented for repair at each facility.

This performance monitoring shall be achieved by requiring waiver applicants to have repairs performed at repair

facilities with state certified technicians beginning on January 1, 1997 for vehicles registered in New Castle County and July 1, 1997 for vehicles registered in Kent County. Shops shall be encouraged to participate because market forces dictate the majority of customers will want to seek out State Certified repair technicians due to their implied and State regulated qualifications to perform emission repairs. By "closing the loop", a standard form readable by a scanner can be used to report repair information by shop and technician directly to a data-base, which will readily allow compilation of the required reporting statistics on performance monitoring. Department personnel will review the Vehicle Inspection Report and Vehicle Emission Repair Report Form for the failures that occurred and the types of repairs done before retest. (See Appendix 6 (a) (5) in Regulation 31 for a copy of the Vehicle Emission Repair Report Form)

(2) The Secretary shall provide feedback, including statistical and qualitative information (repair technician report card) prior to releasing the information to the public, to individual repair facilities on a regular basis (at least annually) regarding their success in repairing failed vehicles. Copies will be sent to the Division.

(c) Repair technician training.

The Secretary shall assess the availability of adequate repair technician training in the emissions inspection area and, if the types of training described in paragraphs (c)(1) through (4) of this section are not currently available, shall insure that training is made available to all interested individuals in the community either through private or public facilities. This shall involve working with the College (or other training agencies or training companies approved by the Department and Division) to add curricula to existing programs or start new programs. The training available shall include:

(1) Diagnosis and repair of malfunctions in computer controlled, closed-loop vehicles;

(2) The application of emission control theory and diagnostic data to the diagnosis and repair of failures on the emission test and the evaporative system functional check;

(3) Utilization of diagnostic information on systematic or repeated failures observed in the emission test and the evaporative system functional check; and

(4) General training on the various subsystems related to engine emission control.

(d) The College (or other training agencies or training companies approved by the Department and Division) shall provide, jointly certified by the Department and the Division, adequate training in emission repair to qualified individuals. The program of study shall be consistent with the EPA Rule, and shall qualify the trainees to perform

effective repairs on vehicles failing the emission test. The course of study shall be available on ongoing basis. The Department shall cooperate with the College (or other training agencies or training companies approved by the Department) on an ongoing basis to ensure the training program remains current with any changes to the program or it's requirements.

Section 20 -Compliance with recall notices.

[RESERVED]

Section 21 -On-road testing.

On-road testing is defined as the measurement of HC, CO, and/or CO₂ emissions on any road or roadside in any I/M area. On-road testing is required in the emission inspection area as defined in Regulation No. 31.

(a) General requirements.

(1) On-road testing shall be part of the emission testing system, but is to be a complement to testing otherwise required. [Using a mobile Bar 90 unit to fulfill this requirement is one alternative under consideration.]

(2) On-road testing shall evaluate the emission performance of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, including any vehicles that may be subject to the follow-up inspection provisions of paragraph (a)(4) of this section, each inspection cycle. For Delaware, that means that at least 1,125 valid inspections on vehicles are to be conducted in this manner, adjusting annually for any changes in subject fleet size.

(3) Owners of vehicles that have previously been through the normal periodic inspection and passed the final retest and found to be high emitters shall be notified that the vehicles are required to pass an out-of-cycle follow-up inspection. Notification of the requirement to appear for testing shall be issued by mail.

(4) Number of vehicles failing the on-road emission test or found not in compliance with applicable sections of Regulation 31 will be compiled and used as a measurement of the compliance rate of the LEIM program.

(5) The on-road tests will be done at different locations in the LEIM area and cover different times of the year.

Section 22 -Implementation deadlines.

[Requirements may be found in Regulation 31, Section 13].

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER SIXTY**

TO: HEADS OF ALL STATE DEPARTMENTS,
AGENCIES, AND AUTHORITIES, AND ALL
POLITICAL SUBDIVISIONS AND
GOVERNMENTAL UNITS OF THE
STATE OF DELAWARE

RE: CITIZENS' WORK GROUP ON RECYCLING

WHEREAS, Delaware households produce approximately sixty (60) percent of residential solid waste generated in Delaware;

WHEREAS, the Recycle Delaware Program captures and recycles less than five (5) percent of the residential solid waste generated by Delaware households;

WHEREAS, curbside collection of recyclables can be expected to result in both a higher recycling rate and higher costs to homeowners;

WHEREAS, the most successful curbside collection efforts have wide public support;

WHEREAS, while many Delawareans have expressed a desire for curbside collection of recyclables, it is unclear whether Delawareans statewide support curbside recycling; and

WHEREAS, it would be helpful for the General Assembly and the Governor to have a better understanding of the public's view on curbside recycling programs.

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 as follows:

1. There is hereby established a Citizens' Work Group on Recycling.

2. The Work Group shall be composed of representatives from environmental organizations, civic associations, local governments, and other groups that represent the interests of Delaware's citizens.

3. The following organizations shall be invited to appoint a representative: the League of Women Voters, the Civic League of New Castle County, the Delaware Nature

Society, the Delaware Chapter of the Sierra Club, the Christina Conservancy, the Delaware Audubon Society, Common Cause of Delaware, the Delaware Environmental Alliance for Senior Involvement (DeIEASI). In addition, two representatives from the League of Local Governments, the Kent County Administrator or his designee, the Director of the Delaware Economic Development Office or his designee, a representative from waste hauling industry, a representative of the Environmental Committee of the State Chamber of Commerce and a representative of the Delaware Solid Waste Authority shall serve on the Work Group.

4. The Chairperson shall be the Director for the Division of Air and Waste Management for the Department of Natural Resources and Environmental Control (DNREC) or his designee. DNREC shall provide staff to support the Work Group.

5. The Work Group shall commission a public opinion survey to determine the level of interest in, and willingness to pay for, curbside recycling, and shall develop and recommend a course of action to increase recycling in the state, taking into consideration the results of the survey.

6. The cost of the public survey shall be borne by the Delaware Solid Waste Authority.

7. The Work Group shall submit its findings and recommendations to the Governor and the General Assembly no later than February 15, 2000.

Approved this 21st day of April, 1999

Thomas R. Carper
Governor

Attest:

Edward J. Freel
Secretary of State

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Action Agenda Implementation Committee	Ms. Sarah Brown	4/29/02
	Ms. Peggy Figun	4/29/02
	Ms. Dorothy Frank	4/29/02
	Ms. Marion Stewart	4/29/02
	Ms. Catherine Trask	4/29/02
Advisory Council for Children, Youth and Their Families	Ms. Nancy Hawpe	5/13/01
	Mr. Thomas Tulley	5/13/01
	Ms. Catherine S. Vouras	5/13/01
Architectural Accessibility Board	Ms. Dianna Wright	6/03/02
Board of Architects	Mr. Joseph Slights, III	4/29/02
Board of Dental Examiners	Ms. Foy Jean Bernard	4/19/02
Board of Examiners Of Private Investigators and Security Agencies	Mr. William Denman	5/04/02
Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers	Mr. Frank Divita	5/07/02
	Mr. Kenneth Jones	5/07/02
Board of Funeral Services	Ms. Barbara Robbins	4/29/02
Board of Medical Practice	Ms. Carolyn McKown	4/14/02
Board of Pension Trustees	Mr. Donald F. McArdle	5/04/02
Committee on Employment of People with Disabilities	Mr. Wayne Carter	5/11/02
	Mr. Anthony Maczynski	5/11/02
	Ms. Linda Williams	5/11/02
Council on Alcoholism, Drug Abuse and Mental Health	Mr. James Kane	4/29/02
Council on Environmental Control	Mr. Dean Belt	4/22/02
	Ms. Denise Crafts	12/08/01
Council on Mental Retardation	Mr. Albert Cruciano, Jr.	4/29/02
	Mr. Robert Osgood	4/29/02
	Mr. Thomas Rust	4/29/02
	Mr. Hugh Kelly	4/29/02
Council on Real Estate Appraisers	Mr. Charles Brown	5/07/02
	Mr. J. Frank Perdue, Jr.	5/07/02
Council on Social Services	Ms. Mable Cephas	5/11/02
	Mr. Kevin Hooper	5/13/02
	Mr. James Villarreal	5/11/02

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Court of Common Pleas	The Honorable Joseph W. Maybee Commissioner, Kent and Sussex Counties	4/21/03
Delaware Association of Professional Engineers	Mr. Edward Lewandowski	5/11/03
Delaware Bicycle Council	Ms. Carol D. White	4/22/02
Delaware Board of Nursing	Ms. Helen Perkins	4/29/02
Delaware Commission for Women	Dr. Theresa L. I. Del Tufo	11/15/99
Delaware Health Resources Board	Ms. Yrene Waldron	5/13/02
Delaware Perinatal Board	Ms. Bridget Adams, R.N. Dr. Ulder J. Tillman	Pleasure of the Governor Pleasure of the Governor
Developmental Disabilities Planning Council	Dr. Theresa L. I. Del Tufo Ms. Phyllis Guinivan Ms. Linda Hance Mr. John Jefferson Ms. Jean Knotts Ms. Lorraine Loera	4/29/02 4/29/02 4/29/02 4/29/02 4/29/02 4/29/02
Family Court of the State of Delaware	Ms. Pamela Deeds Holloway, Commissioner	4/12/03
Foster Care Review Board	Ms. Gail Allen	4/14/02
Foster Care Review Board	Ms. Mary Austria	4/14/02
Foster Care Review Board	Ms. Barbara Bancroft	4/14/02
Foster Care Review Board	Mr. Charles Brogdon	4/14/02
Foster Care Review Board	Ms. Judith Chahill	4/14/02
Foster Care Review Board	Ms. Natalie Crawford	4/14/02
Foster Care Review Board	Ms. Evelyn Figueroa	4/14/02
Foster Care Review Board	Ms. Stacia Girley	4/14/01
Foster Care Review Board	Ms. Mary Jane Johnson	4/14/02
Foster Care Review Board	Ms. Joanne C. Littlefield	4/14/01
Foster Care Review Board	Ms. Christine Perrone	4/14/02
Foster Care Review Board	Ms. Patricia Schloss	4/14/01
Foster Care Review Board	Ms. Ann Southmayd	4/14/02
Foster Care Review Board	Ms. Dana Stonesifer	4/14/02
Foster Care Review Board	Ms. Candice Swetland	4/14/02
Foster Care Review Board	Ms. Shirley Taylor	4/14/02
Foster Care Review Board	Ms. Louise Warrington	4/14/02
Foster Care Review Board	Ms. Helen Willauer	4/14/02
Governor's Advisory Council for Exceptional Citizens	Ms. Lisa Gonzon	Pleasure of the Governor
Governor's Advisory Council for Exceptional Citizens	Mr. Bernhard Greenfield	Pleasure of the

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
	Ms. Marni Hansel	Governor Pleasure of the Governor
	Ms. Eleanor Kiesel	Pleasure of the Governor
	Ms. Meri Jo Montague	Pleasure of the Governor
Governor's Cabinet Committee on State Planning	The Honorable Nicholas A. DiPasquale	Pleasure of the Governor
Governor's Council on Agriculture	Mr. Claude Hoffman	4/29/02
	Mr. Dale Ockels	4/29/02
	Mr. Kenneth Wicks	12/30/00
Governor's Magistrate Screening Committee	Mr. Mark F. Dunkle, Chairman	Pleasure of the Governor
Governor's Task Force on School Libraries	Ms. Patricia Birch	4/14/02
	Mr. Patrick J. Dunn	4/14/02
	Ms. Lisa Eline	4/14/02
	Ms. Jean Gandek	4/14/02
Human Relations Commission	Ms. Katharine Cropper	4/22/03
	Ms. Bernice Edwards	4/22/03
	Mr. Ralph Figueroa	4/22/03
	Ms. Marian Harris	4/22/03
	Ms. Shirley Horowitz	4/22/03
	Mr. Douglas James	4/22/03
Human Relations Commission	Ms. Olga Ramierz	4/22/03
	Ms. Judith Renzulli	4/27/03
	Mr. John Stenger	4/22/03
	Ms. Sharon Yarborough	4/22/03
Industrial Accident Board	Ms. Romaine Seward	7/15/03
Justice of the Peace for Kent County	Mr. Harvey D. Leighty	5/21/03
Justice of the Peace for Sussex County	Mr. John C. Martin	5/16/03
New Castle County Board of Elections	Mr. William A. Baker, Sr.	7/05/00
Paramedic Advisory Council	Sergeant Jeffrey Evans	4/19/02
	Dr. Brian E. Burgess	5/13/02
	Dr. Craig D. Hochstein	5/13/02
	Dr. John Sewell	5/13/02
Parks and Recreation Council	Mr. Joseph D. Smack	4/14/02
	Mr. William J. Hopkins	5/11/02

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Parks and Recreation Council	Mr. Ronald F. Whittington	5/13/02
Real Estate Commission of Delaware	Mr. Albert DiClemente	5/11/02
Riverfront Development Corporation	Mr. Robert Harra, Jr., Board of Directors	Pleasure of the Governor
Small Employer Health Reinsurance Board	Mr. William Eaton	4/29/02
	Mr. Robert Houser	4/29/02
	Mr. Joseph O'Callaghan	4/29/02
	Ms. Barbara Remus	4/29/02
	Ms. Rebecca Smart	4/29/02
State Board of Accountancy	Ms. Sally Stokes	5/13/02
State Board of Chiropractic	Dr. Hal Bowen	5/11/02
State Board of Examiners of Optometry	Dr. Michele Haranin	4/14/02
State Board of Plumbing Examiners	Ms. B. Lynn Mangene	4/14/02
	Mr. Dean Sherman	4/14/02
	Mr. Richard Miller	5/07/02
State Board of Registration for Land Surveyors	Mr. Michael Early	4/19/02
State Examining Board of Physical Therapists	Mr. Philip Barkins	4/14/02
	Mr. Lynn Doherty	4/29/02
State Rehabilitation Advisory Council	Ms. Theda Ellis	5/07/02
	Mr. Nicholas Fina	5/06/02
	Ms. Teresa Gallagher	5/06/02
	Mr. Aaron Harper	5/07/02
	Mr. Larry Henderson	5/07/02
	Mr. Virgil Horne, Jr.	5/06/02
	Ms. Corrine Messick	5/07/02
	Ms. Lorrie Prettyman	5/07/02
	Ms. Sandra Reyes	5/06/02
	Mr. Louis Roca	5/06/02
	Mr. Larry Thompson	5/06/02
	Statewide Independent Living Council	Mr. Griff Campbell
Mr. Wayne Carter		4/29/02
Ms. Jeanne Hoyle		4/29/02
Ms. Dana Sawyer		4/29/02
Ms. Theresa Gallagher		5/03/02
Welfare Employment Committee	Mr. Donald J. Hill	4/29/02

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES
SURFACE WATER DISCHARGES SECTION**

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

REGISTER NOTICE

Brief Synopsis of the Subject, Substance and Issues:

Delaware's Regulations Governing the Control of Water Pollution were initially adopted in 1974 and amended in 1983. Section 9 of the regulation was amended in 1993 and 1998 to include permit requirements for discharges of storm water associated with industrial activities. The regulations effectuate the statutory requirements in 7 Del. C. §6003 and outline or define those activities that require a permit. The Division of Water Resources intends to revise the current regulations to address activities that generate and discharge pollutants, potentially affecting the quality of Delaware's surface waters. The new regulations will be consistent with federal requirements for the development and issuance of NPDES pollutant discharge permits and include all statutory and regulatory changes that have occurred since the rules were last revised.

Possible Terms of the Agency Action:
N/A

Statutory Basis or Legal Authority to Act:
7 Del C. Section 6010

List of Other Regulations that may be Impacted or Affected
by the Proposal:
N/A

Notice Of Public Comment:

The Department of Natural Resources and Environmental Control (DNREC), Division of Water Resources, Surface Water Discharges Section, will commence the public participation process for revisions to the State of Delaware Regulations Governing the Control of Water Pollution, (as amended June 23, 1983, with revisions to Section 9 in 1993 and 1998) by holding a series of public workshops prior to a public hearing. All persons having an interest in the regulations are invited to attend the workshops and discuss the possible changes with Division of Water Resources staff. The first workshop will be held on Monday,

September 13, 1999 at 6:00 p.m. in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware.

Delaware's Regulations Governing the Control of Water Pollution were initially adopted in 1974 and amended in 1983. The regulations effectuate the statutory requirements in 7 Del. C. §6003 and outline or define those activities that require a permit. The DNREC intends to revise the current regulations to address activities that potentially affect the quality of Delaware's surface waters. The new regulations will be consistent with federal requirements for the development and issuance of NPDES pollutant discharge permits and include all statutory and regulatory changes that have occurred since the rules were last revised. The areas or issues being considered in this rulemaking may include, but are not limited to the following:

- Updates to reflect the federal statutory and regulatory changes that have occurred since the regulations were last adopted/amended;
- Address the programmatic or administrative differences between state and federal regulations (NPDES permit application, permit development and processing requirements);
- Adopt regulations to support the state's pretreatment posture (EPA to retain responsibility for administering the federal pretreatment program);
- Include §§ 5.3 and 5.4 from Delaware's Surface Water Quality Standards that EPA disapproved (i.e., intake credits or allowances for contaminants in water supply; allowances for pollutants resulting from "normal erosion and corrosion");
- Adopt administrative procedural regulations to implement §401 of the federal Clean Water Act (water quality certification);
- Adopt NPDES General Permit Program Regulations for several classes of pollutant discharges (i.e., cooling water discharges; aquaculture; and the remediation of leaking underground storage tanks);
- Provide exemptions for de minimis discharges or activities that could potentially result in the discharge of pollutants (e.g., well or pump testing, dewatering of construction sites or wellpointing, pipe and tank cleaning operations, individual residential vehicle washing, dechlorinated backwash from an individual dwelling swimming pool, foundation drains, emergency fire fighting activities);
- Formalize the annual assessment of wastewater infrastructure needs; and
- Include provisions to promote and provide incentives for pollution prevention.

A second public workshop has been tentatively scheduled for January 10, 2000. To complete the public participation process, the DNREC will conduct a public hearing to hear testimony and receive comments on the final proposed amendments to the State of Delaware Regulations Governing the Control of Water Pollution. Proper notice of the hearing will be published in the Delaware Register, the Delaware State News and the News Journal.

For additional information please contact the Surface Water Discharges Section at (302) 739-5731.

**TRIENNIAL REVIEW OF STATE OF DELAWARE
SURFACE WATER QUALITY STANDARDS**

REGISTER NOTICE

Brief Synopsis of the Subject, Substance and Issues:

The Department of Natural Resources and Environmental Control, Division of Water Resources, is commencing a triennial review of the State of Delaware Surface Water Quality Standards as required by the federal Clean Water Act. An initial public hearing will be conducted for the purpose of reviewing applicable water quality standards and to receive public input on appropriate modifications prior to developing final draft changes. Following the initial public hearing, the Division of Water Resources may propose amendments to the current water quality standards.

Possible Terms of the Agency Action:

N/A

Statutory Basis or Legal Authority to Act:

7 Del C. Section 6010

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

N/A

Notice Of Public Comment:

A Triennial Review Public Hearing concerning the State of Delaware Surface Water Quality Standards will be conducted by DNREC on Wednesday, September 1, 1999 at 1:00PM in the auditorium of the Richardson & Robbins Building, 89 Kings Highway, Dover, DE. The public hearing will be structured to assure that as many participants as possible have the opportunity to speak. There will a discussion of possible changes and a time for questions and answers between all interested parties and the staff of the Division of Water Resources. Written comments will be

accepted at the public hearing and for up to 60 days thereafter.

All comments should be directed to Bradford L. Smith, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, Silver Lake Office Plaza, Suite 220, 820 Silver Lake Boulevard, Dover, DE 19904. Copies of the State of Delaware Surface Water Quality Standards and the Department's most recent Water Quality Inventory are available prior to the workshop by contacting Betty Turner at (302) 739-4950.

Prepared By:

John Schneider, Watershed Assessment Section, 739-4590

DEPARTMENT OF EDUCATION

The Department of Education will hold its monthly meeting on Thursday, June 18, 1999 at 11:00 a.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF PUBLIC HEALTH****PUBLIC NOTICE****Communicable Disease Regulations**

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16, Part 1, Subchapter II, #122 Et. Seq. the Delaware Department of Health and Social Services/ Division of Public Health is amending its Communicable Disease Regulations. These regulations were last amended April 13, 1995.

A summary of the content of the revisions is incorporated in this notice. Anyone wishing a complete copy of the Regulations with recommended changes noted should call 302-739-3033 requesting same or write to the Division at the address listed below.

A Public Hearing will be held on Wednesday, June 23, 1999, in the third floor conference room of the Jesse Cooper Building on the corner of Federal and Water Streets from 4pm to 6pm. Persons wishing to be heard on this matter should appear in person at that time. Parties must enter by 5pm in order to be admitted.

Persons who wish to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulations must submit same to the Office of the Director, Division of Public Health, P.O., Box 637, Dover, DE 19901 by close of business June 25, 1999.

**DIVISION OF PUBLIC HEALTH
NOTICE OF PUBLIC HEARING**

The Division of Public Health of the Department of Health and Social Services will hold a public hearing to discuss proposed revision of the Delaware Regulations defining Metabolic Disorders and establishment of Case Review Committee, and establishment of Insurance Providers directory of benefits for these disorders. These

proposed regulations describe the revised definitions for Metabolic Disorders, the rationale for the establishment of a Case Review Committee to review all cases diagnosed with a metabolic disorder, ensuring formula is available for those citizens without insurance coverage, and to establish a directory outlining insurance providers coverage and contact department to expedite engagement for clients.

This public hearing will be held in Room 309, Jesse S. Cooper Building, Federal and Water Streets, Dover, Delaware on June 24, 1999 at 2:00 p.m.

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

Jo Ann Baker
Division of Public Health
P.O. Box 637
Dover, DE 19903
(302) 739-3111

Anyone wishing to present their oral comments at this hearing should contact Jo Ann Baker, Hearing Officer, by June 14, 1999. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by June 30, 1999 to:

Jo Ann Baker
Division of Public Health
P.O. Box 637
Dover, DE 19903

**DIVISION OF SOCIAL SERVICES
Public Notice**

Delaware Health and Social Services is proposing changes to regulations contained in the Division of Social Services Manual Section 2023 and 9059. These changes are initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512. Written materials and suggestions by interested persons for related to this proposal must be forwarded by June 30, 1999, to the Director, Division of Social Services, P. O. Box 906, New Castle, DE 19720.

**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 general policy and practitioner manual.

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 June 30, 1999.

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Medicaid / Medical Assistance Program

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

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 June 30, 1999.

DIVISION OF SOCIAL SERVICES

Division of Social Services

A Better Chance Program

Public Notice

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 Section 3002, 3031. These changes arise from Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (national welfare reform), as an option and was first announced in January 1995, as part of the original A Better Chance (ABC) waiver design.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P. O. Box 906, New Castle, DE, by June 30, 1999.

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

consideration of the comments and written materials filed by other interested persons.

INSURANCE DEPARTMENT

NOTICE OF PUBLIC HEARING

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Thursday, June 24th at 4:00 p.m. in Room A116, Delaware Technical & Community College, Stanton Campus, 400 Stanton-Christiana Road, Newark, DE.

The purpose of the Hearing is to solicit comments from the insurance industry and the general public on proposed Insurance Department Regulation 82, Standards of Payment for Multiple Surgical Procedures.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del. C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Department of Insurance no later than Friday, June 18th, 1999 and should be addressed to Fred A. Townsend, III, Deputy Insurance Commissioner, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or those intending to provide oral testimony must notify Fred A. Townsend, III at 302.739.4251, ext. 157 or 800.282.8611 no later than Friday, June 18th, 1999.

INSURANCE DEPARTMENT

NOTICE OF PUBLIC HEARING

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Thursday, June 24th at 4:00 p.m. in Room A116, Delaware Technical & Community College, Stanton Campus, 400 Stanton-Christiana Road, Newark, DE.

The purpose of the Hearing is to solicit comments from the insurance industry and the general public on proposed Insurance Department Regulation 83, Standards of Payment for Assistants at Surgery.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del. C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Department of Insurance no later than Friday, June 18th, 1999 and should be addressed to Fred A. Townsend, III, Deputy Insurance Commissioner, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or those intending to provide oral testimony must

notify Fred A. Townsend, III at 302.739.4251, ext. 157 or 800.282.8611 no later than Friday, June 18th, 1999.

DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**

DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION

REGISTER NOTICE

Brief Synopsis of the Subject, Substance and Issues:

The Department of Natural Resources and Environmental Control, in accordance with 7 Del. C. §6010, is proposing to revise Regulation No. 3 - Ambient Air Quality Standards, Section 11.2, in the Regulations Governing the Control of Air Pollution. This amendment adds both a primary and a secondary air quality standard for fine particulate matter.

Possible Terms of the Agency Action:

The Regulation has no expected sunset.

Statutory Basis or Legal Authority to Act:

7 Del C. Section 6010

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

None

Notice Of Public Comment:

The Secretary of The Department of Natural Resources and Environmental Control is proposing to revise Regulation No. 3 - Ambient Air Quality Standards, Section 11.2, in the Regulations Governing the Control of Air Pollution. This amendment adds both a primary and a secondary air quality standard for fine particulate matter. A public hearing to consider this proposal will be held on July 8, 1999, at the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE, at 6:00 PM.

The proposed revised regulations are available for public inspection at The Department of Natural Resources and Environmental Control, Air Quality Management Office, 156 South State Street, Dover, Delaware. For additional information please call Ray Malenfant at (302) 739-4791.

REGISTER NOTICE

Brief Synopsis of the Subject, Substance and Issues:

The Department of Natural Resources and Environmental Control, in accordance with 7 Del. C. §6010, is proposing to add a new regulation, Regulation No. 40 - National Low Emissions Vehicle Program, to the Regulations Governing the Control of Air Pollution. This new regulation finalizes Delaware's commitment to participate in this federal program, and derive all the emission reductions from that program. The letter of submittal to EPA of this regulation is also considered as an exhibit to this proposal.

Possible Terms of the Agency Action:

The Regulation has no expected sunset.

Statutory Basis or Legal Authority to Act:

7 Del C. Section 6010

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

None

Notice Of Public Comment:

The Secretary of The Department of Natural Resources and Environmental Control is proposing to add a new regulation, Regulation No. 40 - National Low Emissions Vehicle Program, to the Regulations Governing the Control of Air Pollution. This new regulation finalizes Delaware's commitment to participate in this federal program, and derive all the emission reductions from that program. The letter of submittal to EPA of this regulation is also considered as an exhibit to this proposal. A public hearing to consider this proposal will be held on July 8, 1999, at the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE, at 6:00 PM.

The proposed revised regulations are available for public inspection at The Department of Natural Resources and Environmental Control, Air Quality Management Office, 156 South State Street, Dover, Delaware. For additional information please call Ray Malenfant at (302) 739-4791.

DIVISION OF WATER RESOURCES**Proposed Amendments to the State of Delaware
Surface Water Quality Standards****REGISTER NOTICE****Brief Synopsis of the Subject, Substance and Issues:**

On February 26, 1993, the State of Delaware adopted revised Surface Water Quality Standards regulations and submitted the promulgated revisions to the U.S. Environmental Protection Agency (EPA). In an April 13, 1998, letter, EPA notified the State of Delaware that certain provisions of the promulgated regulations were inconsistent with the Clean Water Act (CWA) and EPA regulations. Those provisions were disapproved. In an enclosure to the April 13, 1998 letter, EPA described their objections to the provisions, provided the regulatory basis for the disapproval, and identified changes that must be made in order to meet the requirements of the CWA. To ensure compliance with the CWA and EPA regulations, the State of Delaware, in accordance with 7 Del. C. §6010, is proposing amendments to the Table of Contents, Sections 2, 5.3, 5.4, 5.5, 5.6, 8.2, 9.3, 10, 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 12.1 and Table 1 of the State of Delaware Surface Water Quality Standards.

Possible Terms of the Agency Action:

N/A

Statutory Basis or Legal Authority to Act:7 Del. C. Section 6010**List of Other Regulations That May be Impacted or Affected by the Proposal:**

Regulations Governing the Control of Water Pollution

Notice Of Public Comment:

The Department of Natural Resources and Environmental Control, Division of Water Resources, will hold a public hearing on July 1, 1999, beginning at 2:00 p.m., in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to receive testimony on the proposed amendments to the State of Delaware Surface Water Quality Standards.

The proposed amendments are published here today. For additional information, or to request copies of the State of Delaware Surface Water Quality Standards, proposed amendments, or the EPA April 13, 1998 letter, please contact Betty Turner, Watershed Assessment Section, at 302-739-4950 (FAX: 302-739-6140; e-mail: bturner@state.de.us).

The procedures for public hearings are established in 7 Del. C. § 6006 and 29 Del. C. §10117. Inquiries regarding the public hearing should be directed to R. Robert Thompson

at 302-739-4403. Statements and testimony may be presented orally or in written form at the hearing. It is requested that those interested in presenting statements register in advance by mail with the Hearing Officer. The deadline for inclusion of written comments in the hearing record is the conclusion of the hearing. Written statements may be presented prior to the hearing and should be addressed to: R. Robert Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

**STATE FIRE PREVENTION
COMMISSION**

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 Del. C. §6603 and 29 Del. C. 101 on Tuesday, June 22 1999, at 2:00 P.M. and 7:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following Regulations.

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904, or the Administrative Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located in the First Federal Plaza Building, 704 King Street, Suite 200, Wilmington, Delaware, 19801, and Road 321, Georgetown, Delaware, 19947.

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing, and the Commission will consider those responses received before 10:a.m. on June 22, 1999, or by offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charge for copies of the proposed changes.

**DELAWARE RIVER BASIN
COMMISSION****P.O. Box 7360 West Trenton**

The Delaware River Basin Commission will meet on Wednesday, June 23, 1999, in Shawnee-on-Delaware, Pennsylvania. For more information contact Susan M. Weisman at (609) 883-9500.

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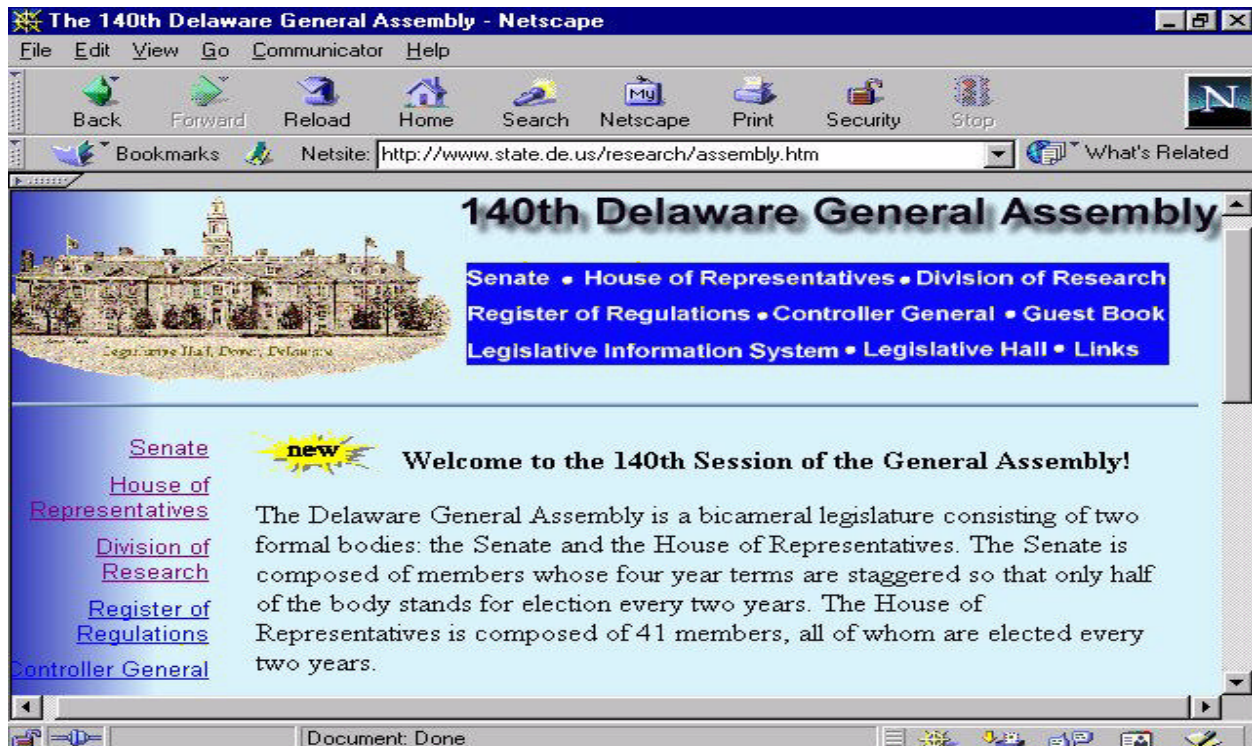
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