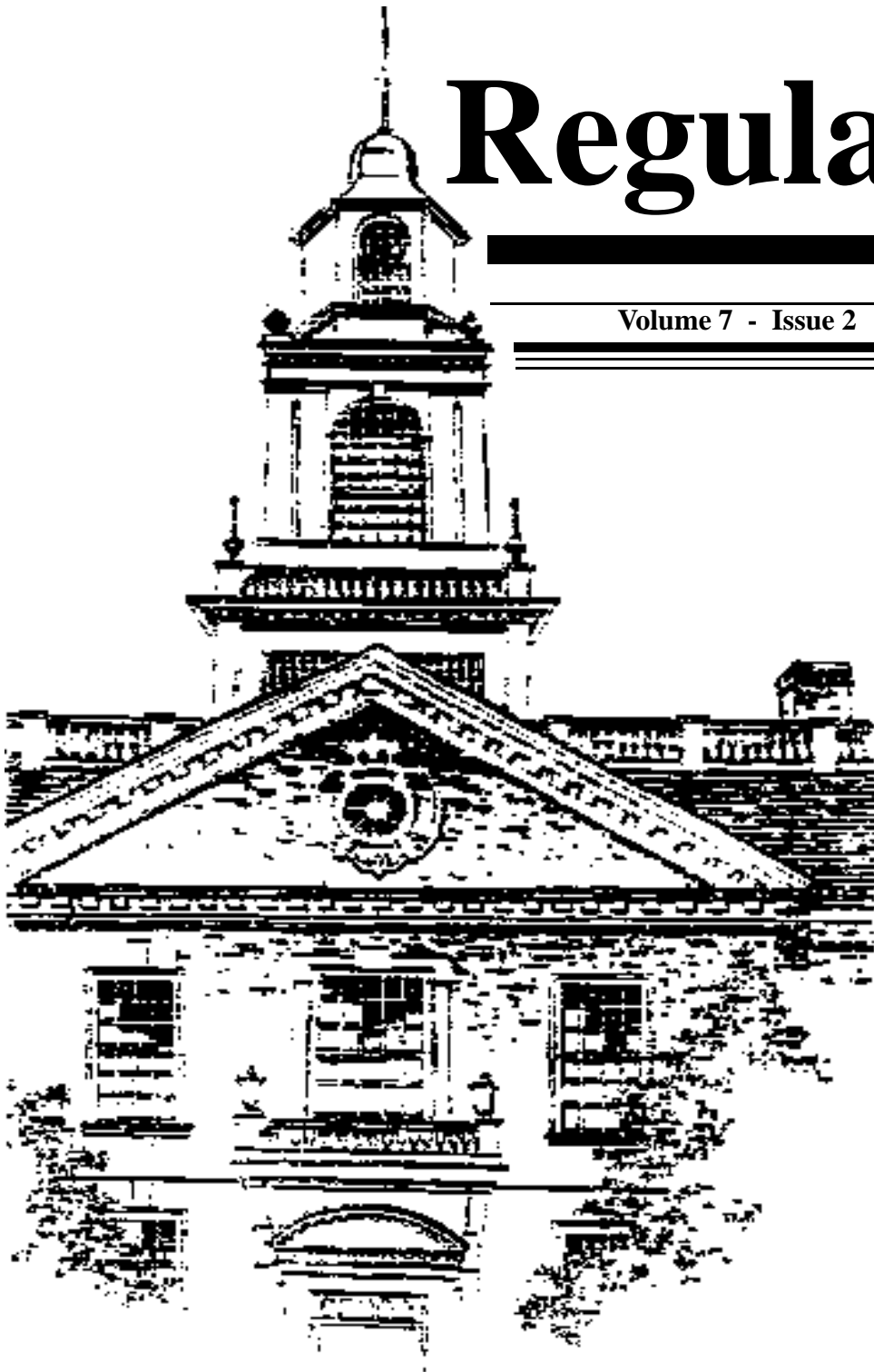

Delaware Register of Regulations



Issue Date: August 1, 2003

Volume 7 - Issue 2

Pages 111 - 231

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Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before July 15, 2003.

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DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

6 DE Reg. 1541-1542 (06/01/03)

Refers to Volume 6, pages 1541-1542 of the Delaware Register issued on June 1, 2003.

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The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

Except as provided in the preceding section,

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:40 P.M.

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Symbol Key

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

Proposed Regulations

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 AGRICULTURE

Statutory Authority: 29 Delaware Code,
Sections 4815(b)(3)b.2.D & 8103(8)
(29 **Del.C.** §§ 4815(b)(3)b.2.D & 8103 (8))

Standardbred Breeder's Fund Regulations

The Department proposes these amendments to the Standardbred Breeder's Fund Regulations pursuant to 29 **Del.C.** §4815(b)(3)b.2.D and 29 **Del.C.** §8103(8). Its purpose in proposing these amendments is to comply with Delaware Harness Racing Commission Rules, to make the program language more specific under certain racing conditions, to promote fairness, and to allow the races to be contested within the normal racing card at Harrington Raceway and Dover Downs. These proposed amendments to the regulations will be considered at a public hearing scheduled for Friday, September 5, 2003 at 1:00 P.M. at the Delaware Department of Agriculture Building in Conference Room 1. Copies of the proposed amendments may be obtained from Ms. Judy Davis-Wilson, Director, Delaware Standardbred Breeder's Fund by calling (302) 698-4610. Public comments may be submitted in writing to Ms. Davis-Wilson on or before September 5, 2003. Also, written submissions and/or oral comments are welcomed at the public hearing. The Delaware Department of Agriculture is located at 2320 South DuPont Highway, Dover, Delaware.

1.0 Introduction

1.1 These regulations are authorized pursuant to §4815(b)(3)b.2.D of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware

Standardbred Breeder's Program (herein "the Program") for:

- 1.1.1 Standardbred horses;
- 1.1.2 bred in a manner prescribed in Section 2.0 herein;
- 1.1.3 the product of a registered Delaware stallion;
- 1.1.4 who are registered and whose sire and mare are registered with the Delaware Harness Racing Commission (herein "the Commission") and the Administrator of the Breeder's Program (herein "the Administrator") as such; and,
- 1.1.5 listed in their registry books.

1.2 Those horses eligible to race under said Delaware Standardbred Breeder's Program shall be any foal of any registered Delaware stallion standing at a Delaware breeding farm and either owned by a resident of the State of Delaware or owned by a non-resident who holds a lease for a period of the breeding season and will stand the stallion for that full season on a Delaware breeding farm. A copy of any such lease shall be filed with the United States Trotting Association, the Administrator of the Breeder's Program, and the Delaware Harness Racing Commission.

1.3 The Board of the Delaware Standardbred Breeder's Program (herein "the Board") is authorized to do all that is reasonable and necessary for the proper administration of the Program and shall prepare, issue and promulgate rules and regulations providing for:

- 1.3.1 Classes and divisions of races, eligibility of horses and owners therefor and purses and bonuses to be awarded;
- 1.3.2 Nominating, sustaining and entry fees on horses and races;
- 1.3.3 Such temporary programs including

eligibility of horses, breeding, and other matters as may be necessary to make the Program operable as soon as possible;

1.3.4 Registration and certification of Delaware stallions, mares bred to such stallions and foals produced thereby; and,

1.3.5 Such other matters as the board determines to be necessary and appropriate for the proper administration and implementation of the Program.

1.4 The funds for the Delaware Standardbred Breeder's Program pursuant to §4815(b)(3) of Title 29 of the Delaware Code and any nominating, sustaining and entry fees provided for herein shall be administered by the Delaware Department of Agriculture by deposit in a trust account entitled Delaware Standardbred Breeders' Fund. The Board of the Delaware Standardbred Breeder's Program shall approve an annual budget including the payment of purses and awards, cost of administration, reimbursement of expenses of members of the Board, promotional expenses, and any other appropriate expenses. The budget shall be administered by the Secretary of Agriculture or his designee in consultation with the Board and in a manner consistent with the state laws and procedures. A report shall be prepared and filed annually by the secretary with the Delaware Harness Racing Commission and the Board of the Breeder's Program Fund setting forth an itemization of all deposits to and expenditures from said fund.

1.5 Races for the Program shall be run at each licensed harness track in the State of Delaware. Said races and purses and awards awarded therefore shall be pursuant to the rules and regulations of the Board of the Delaware Standardbred Breeder's Program hereunder, and the Delaware Harness Racing Commission.

1.6 The Board of the Delaware Standardbred Breeder's Program can amend these regulations through a vote of 2/3 majority of the entire board. Changes to the rules of eligibility for the Delaware Standardbred Breeder's Program will be effective at the beginning of the next breeding season and the corresponding racing season.

2.0 Definitions. The following words and terms, when used in this part for the purposes of the Delaware Standardbred Breeder's Fund Program, have the following meanings, unless the context clearly indicates otherwise:

"Bred" shall refer to any form of insemination inside the State of Delaware by a Delaware sire, including insemination using semen transported within the State of Delaware, provided that such semen is not frozen or desiccated in any way or at any time. Bred shall also refer to foals of mares bred outside the State of Delaware by a Delaware sire through interstate semen transportation when such semen is not frozen or desiccated in any way or at any time, provided that owners of mares that produce foals from Delaware sires eligible for this program that are bred through interstate semen transportation shall not be eligible for

bonuses paid to owners of mares under the Delaware Standardbred Breeder's Program set forth in Section 4 herein. A foal conceived through embryo transplantation is not eligible for nomination to the Delaware Standardbred Breeder's Program under any circumstances.

"Breeder" is the owner of the dam at the time of breeding through foaling.

"Breeding Season" season runs from February 15th to December 31st of the calendar year.

"Delaware-bred horse" is a standardbred by a Delaware sire and registered with the Harness Racing Commission and Administrator of the Breeder's Program, provided that for the purposes of determining eligibility for race years 2002 and 2003 Delaware-bred horses shall also include any foal of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident registered with the Harness Racing Commission and Administrator of the Breeder's Program by August 15th of the yearling year.

"Delaware resident" is as defined in §10032 of Title 3 of the Delaware Code.

"Delaware sire" is a standardbred stallion that regularly stands for a breeding season in Delaware, does not compete for purses, and is registered with the Harness Racing Commission and Administrator of the Breeder's Program. A Delaware sire may be: a) owned by a resident of the State of Delaware and standing the entire breeding season in the State of Delaware; or b) owned by a resident of a state other than Delaware, but standing the entire breeding season in Delaware, verified by a copy of a the lease filed with the Administrator of the Program and the Harness Racing Commission at the time of registration for the Program, as provided in section 1.1 above; or c) owned jointly by a resident (or residents) and non-resident (or non-residents) of Delaware and standing the entire breeding season in Delaware with the same lease requirements as in b) above.

"Private Treaty" No stallion participating in the Delaware Standardbred Breeder's Program may be offered under private treaty. Each stallion registered in the Delaware Standardbred Breeder's Program must make public the maximum possible breeding fee.

2.1 Such definitions shall not affect the use of that term by the Delaware Harness Racing Commission for purposes other than for the Breeder's Fund Program.

3.0 Eligibility for Delaware-bred races.

3.1 To be eligible for races under the Program for race years 2002 and 2003, a horse, which shall be registered with the Administrator and Commission by August 15th of its yearling year, shall be: 1) the product of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident, which mare shall be registered with the Administrator and Commission by August 15, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001; and/or, 2) the product of a

Delaware-sire, which sire shall be registered with the Administrator and Commission by March 1, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001.

3.2 To be eligible for races under the Program for race year 2004, the horse shall be a Delaware sired 2 year old registered with the Administrator and Commission by August 15th of its yearling year or a 3 year old product of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident, which mare shall have been registered with the Administrator and Commission by August 15, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001 or a 3 year old product of a Delaware-sire, which sire shall have been registered with the Administrator and Commission by March 1, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001.

3.3 To be eligible for races under the Program for race year 2005 and thereafter, the horse shall be a Delaware sired 2 or 3 year old registered with the Administrator and Commission by August 15th of its yearling year.

4.0 Eligibility of breeders for bonus payments.

Bonus payments of eight percent (8%) of money earned in the Program by the foals shall be paid to the owner of the mare at the time of breeding that is bred to Delaware sires to produce that foal. Bonus payments of two percent (2%) of money earned in the Program by the foals shall be paid to owners of stallions standing in Delaware. In order for a Delaware-bred horse to be eligible to earn an award for its breeder, in a race conducted by a licensed harness race track in Delaware, the foals, mares, and stallions shall be registered in accordance with these regulations with the Harness Racing Commission and Administrator of the Breeder's Program prior to entry for the race. In race year 2002, bonus payments shall be restricted to 2-year-olds. For race years 2003 and thereafter, bonus payments shall not exceed \$70,000. In the event such payments would exceed these limits, owners eligible for bonus payments shall receive a prorated share of those monies allocated toward the payment of bonus payments.

5.0 Eligibility of owners of Delaware sires for awards.

In order for a Delaware sire to be eligible to earn an award for its owner, the sire shall have been registered as a sire of Delaware with the Harness Racing Commission and Administrator of the Breeder's Program during each breeding season when the sire inseminated the dams that, as a result of that insemination, produced Delaware-breds. To be eligible for a sire award, it is necessary that the foal entitling the sire owner to the award be itself registered in accordance with these regulations.

6.0 Records of registration.

Foals and sires eligible for registration shall be registered on official registration forms approved by the Harness Racing Commission and maintained by the Administrator of the Breeder's Program. The registrar shall certify thereon the name and address of the owner, breeder, farm where mare was inseminated, farm on which this horse was foaled, owner of stallion at time the mare was inseminated, owner of the mare at the time of breeding, notice of semen transfer, stallion by which the mare was inseminated following the birth of the standardbred to be registered, breeder social security or tax identification number, United States Trotting Association registration number, name of foal, color and sex of foal, date of foaling, sire, dam, sire of the dam, signature of the owner, or breeder or authorized representative and the date of application. The registration record shall be maintained at the Administrator of the Breeder's Program and be open to public inspection during normal business days and hours at the State Department of Agriculture. Immediately upon completion and filing of the form, the Administrator of the Breeder's Program shall cause a correct copy of it to be filed with the offices of the State Department of Agriculture.

7.0 Appeals.

A person having an interest in a matter concerning the registration of a horse in the Breeder's Program shall have the right to file objections or exceptions to a registration and to the facts set forth therein within 30 days of the filing of the copy of the registration with the Administrator and the Delaware Harness Racing Commission. The objections or exceptions shall be filed in writing with the Administrator of the Breeder's Program and a duplicate delivered to the Harness Racing Commission within the 30-day time period. An interested party aggrieved of an action taken by the Administrator may appeal to the Commission in the manner prescribed for appeals. The Commission shall hear and determine an appeal de novo. In the absence of objections or exceptions timely made, a registration shall be deemed final and binding and an official record of the Commission at the expiration of the 30th day of the delivery to the Commission. The Commission shall thereafter have the right on its own motion to correct an error or inaccuracy that it may find within the records.

8.0 Records of expenses.

The Administrator of the Breeder's Program shall maintain a complete record of reasonable and necessary expenses and will submit quarterly estimates to the Board and the Secretary of Agriculture, on the basis of which the Secretary may disburse advances. The quarterly estimated statements of expenses and advances shall be reconciled annually with a certified statement of expenses to be prepared by an auditor approved in advance by the Board.

The Board may thereafter review them and after approval of allowable items shall then reimburse the Administrator of the Breeder's Program for expenses the Board finds reasonable and appropriate to this program. If advances on account of expenses exceed actual expenses as approved at the end of a given year, the excess shall be deemed disbursed on account of the ensuing year's expenses.

9.0 Purses and Bonus Awards

9.1 A purse or bonus awarded under this section shall be in accordance with the standards for purses at each racing meet as approved by order of the Commission. The racing association shall maintain a separate ledger of such purses and bonuses and shall transmit a certified copy of allowances, bonus payments, and purses made no later than the 10th day of each month of the meet to the Commission. After the Commission has reviewed and approved them, it shall reimburse the racing association for the advances made which the Commission finds proper.

9.2 Administrator of the Breeder's Program shall compile awards earned by breeders and owners of Delaware sires and maintain a separate ledger of them. A certified report of awards earned shall be forwarded to the Commission on a monthly basis during the racing season. The list of awards will be forwarded to Administrator of the Breeder's Program who shall ensure payment to the awardees, subject to approval by the Commission.

9.3 A person interested in the awards, allowances, prizes and purses and objecting to calculations or determinations thereof as shown on the records of the Administrator of the Breeder's Program and the Harness Racing Commission shall be responsible for taking written appeals to the Commission in the manner provided for appeals from decisions of the Administrator pertaining to registrations.

9.4 The Board will have the right to review and approve fees and charges imposed by the Administrator of the Breeder's Program. The charge or fee may not be imposed without prior approval by the Board.

9.5 Records, funds and accounts of funds, prizes, purses, allowances and awards under this program shall be maintained separate from other records, funds and accounts and may not become co-mingled with other matters. The records, funds and accounts shall be kept continuously open for inspection by the Administrator of the Breeder's Program.

10.0 Responsibilities-Owners or lessees of standardbred stallions and mares

10.1 An owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Delaware Standardbred Breeders' Fund Program, shall register the stallion by December 1st of the approaching breeding season with the Delaware Harness

Racing Commission and the Administrator of the Breeder's Program or by January 1st of the approaching breeding season with an additional supplemental fee equal to the standard registration fee. For breeding season 1999 and 2000, an owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Delaware Standardbred Breeders' Fund Program, shall register the stallion by March 1, 2000. Unless the stallion is contracted to stand at stud in the southern hemisphere, the stallion shall stand in the State of Delaware for the remainder of the breeding season. If a stallion is contracted to stand at stud in the southern hemisphere, a copy of said contract must be provided to the Administrator of the Program and the Harness Racing Commission at the time of application for eligibility in the Program or, in the event the contract is entered into at a subsequent date, within ten days of entering into the contract. A virgin standardbred stallion entering stud for the first time shall be registered prior to his first breeding and shall stand in the State of Delaware the remainder of the breeding season, unless he is contracted to stand at stud in the southern hemisphere. A stallion shall be registered on an application for standardbred stallion certificate for eligibility established by the Administrator of the Breeder's Program in consultation with the Harness Racing Commission.

10.2 An owner or lessee of a stallion eligible for the Delaware Standardbred Breeders' Fund Program shall designate a resident of Delaware as the authorized agent who shall be responsible for the registrations and records of the farm; and complying with the requirements of the Delaware Standardbred Breeders' Fund Program. The "Authorized Agent" form shall be filed with the stallion registration.

10.3 In order for foals of 100% wholly owned mares at the time of breeding through foaling by a Delaware resident to be eligible for races under the Program for race years 2002 and 2003, said mares shall be registered with the Administrator and Commission by August 15, 2000 for the breeding seasons of 1999 and 2000. No fee shall be charged for registering said mare.

11.0 Sire Registration Fees

11.1 Sires shall initially register for the Delaware Standardbred Breeder's Program no later than December 1st of the approaching breeding season, or no later than January 1st with an additional supplemental registration fee equal to the regular registration fee. For sires registering in breeding season 2000, sires shall initially register for the Delaware Standardbred Breeder's Program no later than March 1, 2000.

11.2 All fees must accompany this registration and must be submitted by registered or certified mail.

11.3 Registration fees for the Delaware Standardbred Breeder's Program are non-refundable.

11.4 Sire registration fee for a stallion shall be

\$500.00. Sire registration for those sires standing in the State of Delaware and registering for breeding seasons prior to 2001 in accordance with these regulations shall be charged a single fee of \$250.00.

11.5 The annual stallion registration fee may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Delaware Standardbred Breeder's Program.

11.6 The annual stallion registration fee may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Delaware Standardbred Breeder's Program. An owner of a standardbred stallion registered with the Administrator and Commission shall submit by December 1st of each year the stallion registration fee, or January 1st with the supplemental fee provided in section 10 above and a report for each stallion that states each mare bred by said stallion during the preceding twelve (12) months. For breeding seasons prior to breeding season 2001, an owner of a standardbred stallion registered with the Administrator and Commission shall submit by March 1, 2000 the stallion registration fee of \$250 and any other documentation required by the Administrator and Commission to verify where the stallion stood during the period for which the stallion or its progeny seek to register.

12.0 Sire Renewal Fees

12.1 The registration of a stallion that remains in the state for more than one (1) breeding season shall be renewed annually.

12.2 The annual renewal fee for registration of stallions to the Delaware Standardbred Breeders' Fund Program shall be \$500.

12.3 The annual stallion registration fee may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Delaware Standardbred Breeder's Program. An owner of a standardbred stallion registered with the Administrator and Commission shall submit by December 1st of each year the stallion registration fee and a report for each stallion that states each mare bred by said stallion during the preceding twelve (12) months.

13.0 Penalties and Suspension from the Program

13.1 If an owner or a lessee of a registered stallion fails to furnish information the Administrator of the Breeder's Program has requested relating to the registration or renewal of registration of a horse, the Administrator of the Breeder's Program shall:

13.1.1 Suspend or deny the registration of the stallion; and

13.1.2 Schedule a hearing within thirty days of the denial or suspension.

13.1.2.1 After the hearing, the Administrator of the Breeder's Program shall determine within ten working days whether the failure to furnish information was willful; and:

13.1.2.1.1 Suspend the registration; or

13.1.2.1.2 Rescind its suspension of the registration; or

13.1.2.1.3 Deny or revoke the registration; or

13.1.2.1.4 Deny or revoke the registration and bar from further registration, horses owned by the person who executed the application containing false or misleading information.

13.1.2.2 If the Administrator of the Breeder's Program determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion contains false or misleading information, the Administrator shall:

13.1.2.2.1 Suspend or deny the registration of the stallion; and

13.1.2.2.2 Summon the person who executed the application, and any person who has knowledge relating to the application, to appear before the Administrator at a hearing;

13.1.2.3 After the hearing, the Administrator of the Breeder's Program shall determine within ten working days whether the person knew or had reason to know that the information was false or misleading, and:

13.1.2.3.1 Rescind its suspension or denial of the registration; or

13.1.2.3.2 Suspend, deny, or revoke the registration; or

13.1.2.3.3 Deny or revoke the registration and bar from further registration, horses owned by the person who executed the application containing false or misleading information.

13.1.2.4 If a person summoned by the Administrator of the Breeder's Program fails to respond to the summons within ten working days, the Administrator of the Breeder's Program shall

13.1.2.4.1 suspend or deny the registration of the stallion;

13.1.2.4.2 notify the person in writing of the action taken by the Commission; and

13.1.2.4.3 may deny or revoke the registration and bar from further registration, horses owned by the person who executed the application containing false or misleading information.

13.2 Appeals of decisions to deny or suspend

registrations by the Administrator of the Breeder's Program may be appealed to the Delaware Harness Racing Commission within thirty days of the action by the Administrator of the Breeder's Program, subject to the same rules and procedures for handling appeals established for the Delaware Harness Racing Commission.

14.0 Races

14.1 The purses for all races, including walkovers, under this Breeder's Program shall be distributed on the following percentage basis: 50-25-12-8-5. Points to qualify for the finals shall be distributed on the same percentage basis. In fields with more than five horses, places six through nine shall receive 4-3-2-1 points, respectively.

14.2 In the case of dead heats, points for the two positions shall be divided equally among those horses finishing in a dead heat. For example, if two horses finish in a dead heat for second, those horses would divide 25 plus 12 points to receive 18.5 percent of the purse or 18.5 qualifying points each. In the case of a tie in points, the fastest time in either elimination shall determine the horse eligible to enter the final. In the case of horses tied in points that have recorded identical times, the amount of the horses' lifetime earnings will decide the horse eligible to enter the final. In the case where points, times, and lifetime earnings are equal, the eligible horse shall be drawn by lot. All horses must start in on elimination in order to start in the final.

14.3 The percentage basis established by subsection (1) of this section shall apply at each of the associations licensed by the Delaware Harness Racing Commission.

14.4 If circumstances prevent the racing of an event, and the race is not drawn, all stake payments shall be refunded to the purse account of the Delaware Standardbred Breeder's Fund Program.

14.5 The monies provided for purses and bonus payments shall be distributed evenly between the races of each:

- 14.5.1 Age;
- 14.5.2 Sex; and
- 14.5.3 Gait.

14.6 The minimum purses for elimination races for both pacers and trotters shall be \$5,000. The minimum purses for finals shall be \$30,000. The Board of the Delaware Standardbred Breeder's Program, pursuant to a recommendation from the Administrator of the Program, may agree to increase purses should funds and other conditions permit.

14.7 No horse is eligible to declare unless it has at least one charted satisfactory performance line within 30 days of declaration and must meet the following qualifying standards:

2 Year Olds Pacers Trotters 2:10 2:14	3 Year Olds Pacers Trotter 2:06 2:12
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14.8 Horses that meet the qualifying standards for a preliminary leg at each racetrack are qualified for all subsequent legs and the final at that racetrack.

14.9 The Administrator of the Delaware Standardbred Breeder's Fund Program shall be responsible for races conducted under the Delaware Standardbred Breeder's Fund Program and shall ensure that:

14.9.1 each track declares the time specified for races under this program by proper notice and racing dates are issued for sires stakes after the track's race dates are set.

14.9.2 entry for races run under the Delaware Standardbred Breeder's Fund Program is required to be received by the Racing Office by noon three days in advance of the scheduled race date in a box designated for this purpose.

14.9.3 The Eligibility and class of all horses running in races is carefully screened.

14.9.4 The Administrator, or his/her designee, is present for the judges' draw for all races conducted under the Delaware Standardbred Breeder's Fund Program

14.10 Beginning in 2004, the minimum purse for elimination races for 2-year old trotters and pacers shall be \$7,500.00 and the minimum purse for finals shall be \$75,000.00.

14.11 Beginning in 2005, the minimum purse for elimination races for 2 and 3-year old trotters and pacers shall be \$7,500.00 and the minimum purse for finals shall be \$75,000.00

15.0 Nominations and Sustaining Payments.

15.1 Nomination and sustaining payments shall be made to the Delaware Standardbred Breeder's Fund in U.S. funds.

15.2 A fee payment required by this section shall be postmarked no later than the due date that is specified for the fee by this section.

15.3 Beginning with the yearlings of 2001, the yearling nomination fee shall be:

15.3.1 Forty (40) dollars each; and

15.3.2 Due by August 15 of the yearling year.

15.4 A nomination shall be accompanied by a photocopy of the United States Trotting Association registration certificate. Supplemental fees of \$25 shall be assessed if the USTA registration certificate does not accompany the nomination. No nomination shall be accepted where a USTA registration certificate is not obtained and submitted within 60 days of nomination to the Delaware Standardbred Breeder's Program.

15.5 If the August 15 deadline to nominate a yearling is missed, a late supplemental payment of \$350 shall be required. The late supplemental payment shall be accepted if a) it is received by April 1 of the two (2) year old year; and b) the two (2) year old March 15th payment has been made.

15.6 Sustaining payments shall be as follows:

15.6.1 Two (2) Year Old payments.

March 15th \$100.00 (must be made to ensure eligibility as a three (3) year old);

May 15th \$200.00;

Declaration Fee (for each track) \$500.00

15.6.2 Three (3) year old payments.

March 15th \$300.00

Declaration fee (for each track) \$500.00

16.0 Investment Plan and Use of Fees

16.1 All proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") and any interest earned on these monies shall be invested in an endowment account until race year 2002.

16.2 For race year 2002, five hundred thousand dollars (\$500,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") and any interest earned on that money in the preceding twelve (12) months shall be deposited in a separate purse account for purses and bonus for that race year. For race year 2002, one million five hundred thousand dollars (\$1,500,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") shall be deposited in the endowment account.

16.3 For race year 2003 and each race year thereafter, one million dollars (\$1,000,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") and any interest earned on that money in the preceding twelve (12) months shall be deposited in a separate purse account for purses and bonus for that race year. Beginning January 1, 2003 and for each race year thereafter, one million dollars (\$1,000,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") shall be deposited in the endowment account.

16.4 Any monies from the purse account for the Delaware Standardbred Breeder's Fund Program at the end of the race year shall revert to the endowment account of the Delaware Standardbred Breeder's Fund Program.

16.5 For race year 2004 and each race year thereafter, two million dollars (\$2,000,000) of the monies received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, and any interest earned on that money in the

preceding twelve (12) months, shall be deposited in a separate purse account for purses and bonuses for race year 2004 and for each year thereafter.

See 5 DE Reg. 1274 (12/1/01)

DEPARTMENT OF EDUCATION

14 DE Admin. Code 275

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

275 Charter Schools

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 275 Charter Schools. A change was made in 4.5.3 on the requirements of the charter school applicant to provide for the health and safety of students, employees and guests. An addition was made as 8.1.1 that now addresses the enrollment preferences for founding members of the charter school. Changes to 10.3 were made to clarify the circumstances that are necessary for the renewal of school charters and the words Relative Caregiver were capitalized in the definitions in 2.0.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments to the regulation specifically address the management of charter schools which can be a factor in improving student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments to the regulation address the management of the charter schools in order to assure equity of treatment for charter school students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does address health and safety in the changes made to section 4.5.3 of the regulation.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses charter school administration which assists in protecting students' legal rights.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The amended regulation is necessary in order to clarify certain elements of school charters.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be additional costs to the charter schools for compliance with this regulation especially the amendments concerning provisions for the health and safety of students employees and guests.

275 Charter Schools

1.0 Purpose and Effect

1.1 The purpose of these regulations is to provide rules to govern the implementation of Chapter 5 of Title 14 of the Delaware Code (hereafter, the "Charter School Law").

1.2 These regulations establish the requirements for applying for a charter to operate a public school, and for opening and operating the school, when a charter is granted by the Department of Education with the approval of the State Board of Education.

1.3 These regulations affect students who attend Charter Schools, the parents and other care givers of these students, the directors, staff and administrators of the Charter Schools, and the students, staff, administrators and boards of the reorganized school districts of the State.

1.4 These regulations shall bind all Charter Schools and are incorporated into all charters approved by the Department with the consent of the State Board.

See 6 DE Reg. 274 (9/1/02)

2.0 Definitions. The following definitions apply for purposes of interpreting the Charter School Law and these regulations:

Accountability Committee: Any Charter School Accountability Committee established by the Department to review and report to the Department as provided in Sections 511 and 515 of the Charter School Law.

Applicant: A legal entity organized under the Delaware General Corporation Law that has applied to the Department for, but not yet received, a charter to operate a charter school, or the renewal or modification of such a charter, as the context indicates.

Audit: An informal financial, programmatic, or compliance audit of a charter school.

Charter Holder: The legal entity organized under the Delaware General Corporation Law to which a charter is issued by the Department with the approval of the State Board.

Charter School: A non-home based full time public school that is operated in an approved physical plant under a charter granted by the Department with the approval of the State Board for the personal physical attendance of all students.

DSTP: The Delaware Student Testing Program established at 14 Del.C. §151, et.seq., and, as the context requires, the assessments administered pursuant to the program.

Department: The Delaware Department of Education

First Instructional Day: The first day a Charter School is open with students in attendance.

Formal Review: The lawful investigation of a Charter School to determine whether the school is violating the terms of its charter. Formal reviews may include, but are not limited to, on site visits, inspection of educational records and other documents, and interviews of parents, Charter School employees and others with knowledge of the school's operations and educational programs.

Founding Board of Directors: The duly elected Board of Directors of an Applicant at the time the original application for a charter is filed with the Department.

Parent: The natural or adoptive parent, or the legal guardian, of a student enrolled in the charter school. "Parent" also includes individuals authorized to act as ~~"relative caregivers"~~ Relative Caregivers under the provisions of 14 Del.C. §202(e)(2).

Performance Review: Reserved

Renewal: The approval of an application to continue operating an existing Charter School for an additional five year period, available after the school has been in operation for three years.

Secretary: The Secretary of the Delaware Department of Education.

State Board: The Delaware State Board of Education.

See 6 DE Reg. 274 (9/1/02)

3.0 Application Process

3.1 Application Deadlines: Applications to establish new Charter Schools must be submitted to the Department between November 1st and December 31st for schools preparing to admit students the second September 1st thereafter.

3.2 All applications, whether for an original charter, a modification of a charter or the Renewal of a charter, shall be made on forms approved by the Department.

3.3 The Department may require a criminal background check on any person involved in the preparation of an application, whether for an original charter, a major modification or a charter Renewal, and on any person involved in the development of the proposed Charter School.

3.4 An original and ten (10) copies of a completed application must be received by the Department by the application deadline in order for the application to be considered. Incomplete applications, or applications received after the deadline, will not be considered.

3.5 All written communications from the Department or the Accountability Committee to an Applicant shall be sent to the contact person identified in the application, at the address provided in the application. An Applicant is responsible for notifying the Department in writing of any change in the contact person or contact address after its application is submitted.

3.6 An application is not complete unless all of the following requirements are met:

3.6.1 All questions on the application form are answered.

3.6.2 All documentation required by the application form or subsequently requested by the Department or the Accountability Committee is received.

3.7 No application for a new Charter School will be accepted by the Department in any year in which the Department with the approval of the State Board has decided not to accept applications.

3.8 Applications will not remain pending from year to year. Applications that do not result in the issuance of a charter must be resubmitted in full in subsequent years to be considered in subsequent years.

3.9 The State Board of Education may designate one or more of its members to sit as non-voting members of the Accountability Committee.

3.10 In deciding whether to approve or disapprove any application for an original charter, a major modification of a charter or the Renewal of a charter, the Secretary and State Board shall base the decision on the record. The record shall consist of the application and any documents filed therewith in support of the application, the preliminary and final report of the Accountability Committee, any response or other evidence, oral or otherwise, provided by the Applicant to the Accountability Committee prior to the issuance of its final report, any comments received at any

public hearing conducted pursuant to the provisions of the Charter School Law, including comments made at any such hearing by the applicant in response to the Accountability Committee's final report and any written or electronic comments received at or before any such public hearing. No other evidence shall be considered. Written and electronic comments must be received by the Education Associate for Charter Schools no later than the beginning of the public hearing to be included in the record.

See 6 DE Reg. 274 (9/1/02)

4.0 Standards and Criteria for Granting Charter**4.1 Applicant Qualifications**

4.1.1 The Applicant must demonstrate that its board of directors has and will maintain collective experience, or contractual access to such experience, in the following areas:

4.1.1.1 Research-based curriculum and instructional strategies, to particularly include the curriculum and instructional strategies of the proposed educational program.

4.1.1.2 Business Management, including but not limited to accounting and finance.

4.1.1.3 Personnel management.

4.1.1.4 Diversity issues, including but not limited to outreach, student recruitment, and instruction.

4.1.1.5 At-risk populations and children with disabilities, including but not limited to students eligible for special education and related services.

4.1.1.6 School operations, including but not limited to facilities management.

4.1.2 The application must identify the certified teachers, the parents and the community members who have been involved in the preparation of the application and the development of the proposed Charter School.

4.1.3 The Applicant's bylaws must be submitted with the application and must demonstrate that:

4.1.3.1 The Charter Holder's board of directors will include a certificated teacher employed as a teacher at the Charter School and a Parent of a currently enrolled student of the school no later than the school's First Instructional Day;

4.1.3.2 The Applicant's business is restricted to the opening and operation of: Charter Schools, before school programs, after school programs and educationally related programs offered outside the traditional school year.

4.1.3.3 The board of directors will meet regularly and comply with the Freedom of Information Act, 29 Del.C. Chapter 100 in conducting the Charter School's business.

4.2 Student Performance**4.2.1 Minimum Requirements**

4.2.1.1 The Applicant must agree and certify that it will comply with the requirements of the State Public

Education Assessment and Accountability System pursuant to 14 Del. C. §§ 151, 152, 153, 154, and 157 and Department rules and regulations implementing Accountability, to specifically include the Delaware Student Testing Program.

4.2.1.2 The Applicant must demonstrate that it has established and will apply measurable student performance goals on the assessments administered pursuant to the Delaware Student Testing Program (DSTP), and a timetable for accomplishment of those goals.

4.2.1.3 At a minimum, the Applicant must agree and certify that the Charter School's average student performance on the DSTP assessments in each content area will meet the statewide average student performance of students in the same grades for each year of test administration.

4.2.2 Special Student Populations

4.2.2.1 An Applicant for a charter proposing enrollment preferences for students at risk of academic failure shall comply with the minimum performance goals established in Subsections 4.2.1.2 and 4.2.1.3. This requirement may be waived where the Applicant demonstrates to the satisfaction of the Department and State Board that the Charter School will primarily serve at risk students and will apply performance goals and timetables which are appropriate for such a student population.

4.2.2.2 An Applicant for a charter proposing an enrollment preference other than a preference for students at risk of academic failure shall comply with the Section. 4.2.1. In addition, the Department, with the approval of the State Board, may require such an Applicant to establish and apply additional and higher student performance goals consistent with the needs and abilities of the student population likely to be served as a result of the proposed enrollment preferences.

4.2.3 If the Applicant plans to adopt or use performance standards or assessments in addition to the standards set by the Department or the assessments administered pursuant to the DSTP, the application must specifically identify those additional standards or assessments and include a planned baseline acceptable level of performance, measurable goals for improving performance and a timetable for accomplishing improvement goals for each additional indicator or assessment. The use of additional performance standards or assessments shall not replace, diminish or otherwise supplant the Charter School's obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the DSTP.

4.3 Educational Program

4.3.1 The application must demonstrate that the school's proposed program, curriculum and instructional strategies are aligned to State content standards, meet all grade appropriate State program requirements, and in the case of any proposed Charter High School, includes driver

education. The educational program shall include the provision of extra instructional time for at risk students, summer school and other services required to be provided by school districts pursuant to the provisions of 14 Del.C. §153. Nothing in this subsection shall prevent an Applicant from proposing high school graduation requirements in addition to the state graduation requirements.

4.3.2 The application must demonstrate that the Charter School's educational program has the potential to improve student performance. The program's potential may be evidenced by:

4.3.2.1 Academically independent, peer reviewed studies of the program conducted by persons or entities without a financial interest in the educational program or in the proposed Charter School;

4.3.2.2 Prior successful implementation of the program; and

4.3.2.3 The Charter School's adherence to professionally accepted models of student development.

4.3.3 The application must demonstrate that the Charter School's educational program and procedures will comply with applicable state and federal laws regarding children with disabilities, unlawful discrimination and at risk populations, including but not limited to the following showings.

4.3.3.1 The school's plan for providing a free appropriate public education to students with disabilities in accordance with the Individuals with Disabilities Education Act, with 14 Del. C. Ch. 31 and with Department Regulation 925, specifically including a plan for having a continuum of educational placements available for children with disabilities.

4.3.3.2 The school's plan for complying with Section 504 of the Rehabilitation Act of 1973 and with the Americans with Disabilities Act of 1990.

4.3.3.3 The school's plan for complying with Titles VI and VII of the Civil Rights Act of 1964.

4.3.3.4 The school's plan for complying with Title IX of the Education Amendments of 1972.

4.4 Economic Viability.

4.4.1 The application must demonstrate that the school is economically viable and shall include satisfactory documentation of the sources and amounts of all proposed revenues and expenditures during the school's first three years of school operation after opening for instructional purposes. There must be a budgetary reserve for contingencies of not less than 2.0% of the total annual amount of proposed revenues. In addition, the application shall document the sources and amounts of all proposed revenues and expenditures during the start-up period prior to the opening of the school.

4.4.2 The Department may require that the Applicant submit data demonstrating sufficient demand for Charter School enrollment if another Charter School is in the

same geographic area as the Applicant's proposed school. Such data may include, but is not limited to, enrollment waiting lists maintained by other Charter Schools in the same geographic area and demonstrated parent interest in the Applicant's proposed school.

4.4.3 The application shall identify with specificity the proposed source(s) of any loan(s) to the Applicant including, without limitation, loans necessary to implement the provisions of any major contract as set forth below, and the date by which firm commitments for such loan(s) will be obtained.

4.4.4 The application shall contain a timetable with specific dates by which the school will have in place the major contracts necessary for the school to open on schedule. "Major contracts" shall include, without limitation, the school's contracts for equipment, services (including bus and food services, and related services for special education), leases of real and personal property, the purchase of real property, the construction and/or renovation of improvements to real property, and insurance. Contracts for bus and food services must be in place no later than August 1st of the year in which the school proposes to open and August 1st of each year thereafter. Contracts for the lease or purchase of real property, and/or the construction and/or renovation of improvements to real property must be in place sufficiently far in advance so that the Applicant might obtain any necessary certificate of occupancy for the school premises no later than June 15th of the year in which the school proposes to open.

4.4.5 Reserved

4.5 Attendance, Discipline, Student Rights and Safety

4.5.1 The application must include a draft "Student Rights and Responsibilities Manual" that meets applicable constitutional standards regarding student rights and conduct, including but not limited to discipline, speech and assembly, procedural due process and applicable Department regulations regarding discipline.

4.5.1.1 The "Student Rights and Responsibilities Manual" must comply with the Gun- Free Schools Act of 1994 (20 U.S.C.A. §8921) and Department Regulation 878

4.5.1.2 The application must include a plan to distribute the "Student Rights and Responsibilities Manual" to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the "Student Rights and Responsibilities Manual" at the time of enrollment.

4.5.2 The application must include the process and procedures the Charter School will follow to comply with the following laws:

4.5.2.1 Chapter 27 of Title 14 of the **Delaware Code** and applicable Department regulations regarding school attendance, including a plan to distribute

attendance policies to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the attendance policy at the time of enrollment.

4.5.2.2 Chapter 85 of Title 11 of the **Delaware Code** and applicable Department regulations regarding criminal background checks for public school related employment.

4.5.2.3 Section 4112 of Title 14 of the **Delaware Code** and applicable Department regulations regarding the reporting of school crimes.

4.5.2.4 The Family Educational Rights and Privacy Act (FERPA) and implementing federal and Department regulations regarding disclosure of student records.

4.5.2.5 The provision of free and reduced lunch to eligible students pursuant to any applicable state or federal statute or regulation.

4.5.3 ~~The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. However, the services of at least one (1) full time nurse must be provided for each facility in which students regularly attend classes. The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. The Applicant must either agree and certify that the services of at least one (1) full time registered nurse will be provided for each facility in which students regularly attend classes, or demonstrate that it has an adequate plan for providing for the health and safety of the students. Any such plan must include the Charter School's policies and procedures for routine student health screens and school entry requirements, for administering medications and treatments to students (including any proposed self-administration), for monitoring chronic student medical conditions and for responding to student health emergencies.~~

5.0 Nature of Charter

5.1 When granted, a charter is an authorization for the Charter Holder to open and operate a Charter School in accordance with the terms of the charter, including the terms of any conditions placed on the charter by the Department with the approval of the State Board.

5.1.1 It is the responsibility of the Charter Holder to notify the Department in writing of its compliance with any time frames or other terms or conditions contained in or imposed on the charter. The Department may require the Charter Holder to produce satisfactory evidence, including written documentation, of compliance.

5.2 Compliance with the charter, including compliance with the terms of any conditions placed on the charter, is a condition precedent to the authority to open and operate the

Charter School. Failure to comply with the terms of the charter and any conditions placed on the charter, including deadlines, operates as a forfeiture of the authority to open the Charter School regardless of previous approval. These regulations are incorporated into and made a part of each charter approved by the Department with the consent of the State Board. A Charter School's failure to comply with these regulations may be treated as a failure on the part of the school to comply with its charter.

See 6 DE Reg. 274 (9/1/02)

6.0 Funding

6.1 The Department may withhold State and local funding from a Charter Holder not in compliance with the terms of the charter being funded, including compliance with any conditions placed on such charter.

6.2 The Department may withhold State and local funding from a Charter Holder while one or more of its charters is under formal review.

6.3 State and local funding of any charter on probationary status will be released in accordance with the terms of the probation.

6.4 Federal funding for a Charter Holder and under the control of the Department will be disbursed according to the laws, regulations and policies of the federal program providing the funding and the terms of any applicable federal grant approval including state requirements.

See 6 DE Reg. 274 (9/1/02)

7.0 Reserved

See 6 DE Reg. 274 (9/1/02)

8.0 Enrollment Preferences, Solicitations and Debts

8.1 Enrollment Preferences

8.1.1 ~~Reserved~~ An Applicant to establish a new Charter School shall indicate in its application whether children of the Charter School's founders will be given an enrollment preference. If a founders' preference will be given, the application shall include the standard adopted by the Founding Board of Directors to determine the founders. The standard used to determine the founders shall be consistent with the requirements of Section 506(b)(4) of the Charter School Law. If the application is approved, the Charter Holder shall provide the Department with the identity of its founders no later than March 1 immediately preceding the First Instructional Day.

8.2 Solicitations.

8.2.1 Any person or entity soliciting contributions, gifts or other funding on behalf of or for the benefit of an existing or potential Charter School shall notify the person or entity solicited that enrollment of an individual student in the Charter School is not contingent on, or assured by, any such contribution, gift or other funding.

8.2.2 Written notices of fund raising activities

for the benefit of a Charter School must contain the following statement: "The [name of school] is a public school. Contributions and gifts are not required for admission to the school and will in no way affect or improve a student's opportunity for admission."

8.3 Debts

8.3.1 Any person or entity offering a loan to a Charter School must be advised by the school that debts of the school are not debts of the State of Delaware and that neither the State nor any other agency or instrumentality of the State is liable for the repayment of any indebtedness.

See 6 DE Reg. 274 (9/1/02)

9.0 Reserved

See 6 DE Reg. 274 (9/1/02)

10.0 Renewals

10.1 Charters are granted for an initial period of 3 years of operation and are renewable every 5 years thereafter. A Charter School shall file [it's its] application for Renewal not less than six months prior to the end of any Renewal Period.

10.2 Renewals are only available to the current Charter Holder and may not be used to transfer a charter to a different legal entity.

10.3 ~~Charters shall be renewed only if the school receives a satisfactory Performance Review. Renewals will be deferred until any then pending formal review process is completed.~~ Charters shall be renewed only if the school receives a satisfactory Performance Review and is not on formal review.

11.0 Public Hearings

11.1 Any public hearing conducted by the Department pursuant to the provisions of the Charter School Law shall be conducted as a joint public hearing with the State Board of Education.

See 6 DE Reg. 274 (9/1/02)

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

615 School Attendance

A. Type of Regulatory Action Required
Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 610 School Attendance in order to clarify the language and to add the phrase "and whenever a student enrolls or re-enrolls in the

school during the school year”. The addition of this phrase concerning when this policy is explained to students makes this regulation compatible with the regulations on Student Rights and Responsibilities.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses school attendance which does have an impact on student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses attendance not equity issues.

3. Will the amended regulation help to ensure that all students’ health and safety are adequately protected? The amended regulation addresses attendance not health and safety issues.

4. Will the amended regulation help to ensure that all students’ legal rights are respected? The amended regulation addresses notification issues concerning attendance policies which helps to ensure that the students’ legal rights are respected.

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does require some additional notification of students concerning attendance policies.

7. Will the 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, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The regulation is necessary to assure all students have a clear understanding of school attendance policies.

10. What is the cost to the State and to the local school

boards of compliance with the regulation? There may be some minimal cost to the school districts for additional copies of the documents used to disseminate information on student attendance policies.

615 School Attendance

1.0 Each school district shall have an attendance policy that is in accordance with the requirements of the Delaware Code and which defines and describes the district’s rules concerning attendance for students K-12. Each district shall distribute and explain these policies to every student at the beginning of each school year and whenever a student enrolls or re-enrolls in the school during the school year.

See 2 DE Reg. 685 (10/1/98)

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

881 Releasing Students to Persons Other Than Their Parents or Legal Guardians

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend regulation 881 Releasing Students to Persons Other Than Their Parents or Legal Guardians in order to add the category of “Relative Caregiver” as per 14 Del. C. §202 (e)(2) to the list of individuals who may have legal care of a child.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation simply adds the category of Relative Caregiver to the list of individuals who may have legal care of a child.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation simply adds the category of Relative Caregiver to the list of individuals who may have legal care of a child.

3. Will the amended regulation help to ensure that all students’ health and safety are adequately protected? This amended regulation continues to attempt to protect children from being sent home from school with unauthorized persons.

4. Will the amended regulation help to ensure that all students’ legal rights are respected? The amended regulation continues to attempt to protect the rights of both the child and the individual picking up the child at school.

5. Will the amended regulation preserve the necessary

authority and flexibility of decision making at the local board and school level? The amended regulation preserves the necessary authority and flexibility of decision making at the local board and school level.

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

7. Will the 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, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The regulation is designed to assist in protecting the safety of school children.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no cost to the local school boards of compliance with the regulation.

**881 Releasing Students to Persons Other Than Their
~~Parents or Legal Guardians~~ Parents/Guardians or
Relative Caregiver**

1.0 Each local school district shall have a policy which outlines the procedures for releasing students from schools to persons other than ~~parents or legal guardians~~ their parents/guardians or Relative Caregiver.

See 2 DE Reg. 778 (11/1/98)

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF LONG TERM CARE RESIDENTS
PROTECTION**

Statutory Authority: 16 Delaware Code,
Section 1101 (16 Del. C. §1101)

PUBLIC NOTICE

**Neighborhood Homes for Persons with Developmental
Disabilities**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection (DLTCRP), has drafted regulations replacing in their entirety regulations pertaining to Neighborhood Homes. In addition to replacing regulations currently enforced by DLTCRP, these regulations incorporate Certification Standards enforced by the Division of Developmental Disabilities Services (DDDS), but not previously promulgated as regulations. These proposed regulations also replace the DDDS Certification Standards in their entirety. The proposed regulations address provisions required of Neighborhood Homes including general licensing requirements, provider performance standards, services required for persons residing in Neighborhood Homes, environmental, medical, transportation, and safety standards.

These regulations were the subject of public hearings on July 1 and July 2, 2003. Some comments received during those public hearings have led to revisions in the proposed regulations, and those revisions are incorporated in the accompanying regulations. Other comments received at the July public hearings will be discussed in the summary of evidence when the final order is issued.

Invitation For Public Comment

Public hearings will be held as follows:

Wednesday, September 3, 2003, 9:00 AM
Room 301, Main Building
Herman Holloway Campus
1901 North DuPont Highway
New Castle

Thursday, September 4, 2003, 10:00 AM
Department of Natural Resources &
Environmental Control Auditorium
89 Kings Highway
Dover

For clarification or directions, please call Gina

Loughery at 302-577-6661.

Written comments are invited on these proposed regulations and should be sent to:

Katie McMillan
Division of Long Term Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the September 4 public hearing.

~~LAWS AND REGULATIONS PERTAINING TO
SANATORIA, REST HOMES, NURSING HOMES,
BOARDING HOMES
AND RELATED INSTITUTIONS~~

~~NEIGHBORHOOD HOME REGULATIONS
STATE OF DELAWARE~~

~~State Board of Health Regulations
adopted pursuant to 16 Del.C. §1109
January 10, 1992, revised and adopted by
the State Board of Health on April 2, 1993
These regulations are effective for all providers whose
licenses expire on January 31, 1993, or thereafter.~~

~~TITLE 16 HEALTH AND SAFETY
PART II, CHAPTER II, SANATORIA, REST HOMES,
NURSING HOMES, BOARDING HOMES, AND
RELATED INSTITUTIONS~~

Sections:

- 1101. Definitions
- 1102. Licensing Requirement
- 1103. Existing Institutions
- 1104. Application for License
- 1105. Inspections
- 1106. Issuance of Licenses
- 1107. Suspension or Revocation of Licenses
- 1108. Renewal of License after Suspension or Revocation
- 1109. Regulations
- 1110. Penalties

1101. Definitions

~~Sanatorium, rest home, nursing home, boarding home, and related institutions, within the meaning of this chapter, mean any institution, building, or agency in which accommodation is maintained, furnished, or offered for any fee, gift, compensation or reward for the care of more than one (1) aged, infirm, chronically ill, adult psychiatrically~~

~~disabled, or convalescent person. The word "person" shall not include mother, father, sister, brother, niece, nephew, mother-in-law*, father-in-law, sister-in-law, or brother-in-law of any individual operating a facility under this chapter.~~

1102. License Requirement

~~No person shall establish, conduct or maintain in this State any sanatorium, rest home, nursing home, or boarding home for the care of human beings without first obtaining a license from the State Board of Health.~~

1103. Existing Institutions

~~No person may continue to operate an existing sanatorium, rest home, nursing home, boarding home, or related institution unless such operation shall be approved and regularly licensed by the State Board of Health as provided in this chapter.~~

1104. Application for License

~~Application for license to establish, maintain, or operate a sanatorium, rest home, nursing home, boarding home, or related institution shall be made to the State Board of Health on forms provided by the State Board of Health stating that the applicant is over eighteen (18) years of age, the type of institution to be operated, the location thereof, and the name of the person in charge.~~

1105. Inspections

~~Every institution for which a license has been issued under this chapter shall be periodically inspected by a representative of the State Board of Health.~~

1106. Issuance of Licenses

~~(a) Licenses shall be issued in the following categories:
(1) Annual License. An annual license (12 months) may be renewed yearly if the holder is in full compliance with the provisions of this chapter and the rules and regulations of the State Board of Health.~~

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

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

~~(b) Fees for issuance and renewal of licenses and provisional licenses issued pursuant to the provisions of this~~

chapter shall be established as stated below and shall be remitted to the General Fund of the State.

(1) Application fees for nursing homes shall be \$250 for nursing homes with 100 beds or fewer, and \$375 for nursing homes with more than 100 beds. Application fees for intermediate care group homes for mentally retarded persons shall be \$50; application fees for neighborhood group homes shall be \$25; application fees for family care homes shall be \$25. The fee must accompany an application for licensure.

(2) A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and a payment of an annual licensure fee of: \$150 for nursing homes with 100 beds or fewer; \$250 for nursing homes with more than 100 beds; \$50 for intermediate care group homes for the mentally retarded; \$25 for neighborhood group homes; \$25 for family care homes.

(3) A provisional or restricted license as authorized by the State Board of Health shall be issued when health requirements are not met. Fees shall be the same as stated in paragraph (2) of this subsection. For health care facilities that have been issued a provisional or restricted license, there shall be resubmission of the application fee for reinspection prior to the issuance of an annual license.

1107. Suspension or Revocation of Licenses

The State Board of Health may suspend or revoke a license issued under this chapter on any of the following grounds:

(1) Violation of any of the provisions of this chapter or the rules or regulations issued pursuant thereto.

(2) Permitting, aiding or abetting the commission of any illegal act in the institution.

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

Before any license issued under this chapter is suspended or revoked, thirty (30) days notice shall be given in writing to the holder of the license, during which time he may appeal for a hearing before the State Board of Health.

1108. Renewal of License after Suspension or Revocation

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

1109. Regulations

The State Board of Health may adopt, amend, or repeal regulations governing the operation of the institutions defined in Section 1101 of this Title and shall establish reasonable standards of equipment, capacity, sanitation, and any other conditions which might influence the health or welfare of the residents of such institutions.

1110. Penalties

Whoever operates a sanatorium, rest home, nursing home, boarding home, or other health related institution without a license shall be fined not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00).

Title 16, Chapter 1, Section 107

Whoever refuses, fails or neglects to perform the duties required under this chapter, or violates, neglects or fails to comply with the duly adopted regulations or orders of the Board shall be fined not less than One Hundred Dollars (\$100.00) or more than One Thousand Dollars (\$1000.00) together with costs, unless otherwise provided by law.

NEIGHBORHOOD HOME REGULATIONS

The following Regulations were adopted by the State Board of Health pursuant to 16 Del. C. §1109 on January 10, 1992 and revised and approved by the State Board of Health on April 2, 1993.

SECTION 55.0 - DEFINITION

The following standards are designed specifically for Neighborhood Homes, for five or less persons with mental retardation, which are licensed by the State Board of Health. These homes are distinct from Rest (Family Care) Homes where three or fewer persons live in a home with care and supervision provided by persons who also reside on the premises.

These standards address the minimum acceptable level of living and care conditions for persons with mental retardation in such facilities. The purpose of these standards is to provide a sequence of expectations for services rendered by the Neighborhood Home provider and a system for Neighborhood Home providers to be accountable to the State Board of Health, in cooperation with the Division of Mental Retardation. In addition to these regulations and where applicable, the provider will be trained in and required to comply with established Division of Mental Retardation certification standards.

SECTION 55.1 - GLOSSARY OF TERMS

55.101 Active Treatment — Activities carried out according to an individualized, written plan to meet that developmental needs of each client.

55.102 Activities of Daily Living — Activities which relate to independent functioning and include but are not limited to getting out of bed, bathing, dressing, eating, ambulation.

55.103 Client — An individual with mental retardation, over eighteen years of age, who, with supervision, is capable of activities of daily living and self-preservation.

55.104 Division of Mental Retardation — hereafter referred to as DMR or the Division.

55.105 Licensed Practical Nurse (LPN) — A nurse who is licensed to practice as a practical nurse pursuant to 24 Del. C. Chapter 19.

55.106 Neighborhood Home — A home providing housing and habilitation services to five or fewer persons with mental retardation and licensed pursuant to section 1101. This definition does not include ICF/MR programs.

55.107 Neighborhood Home Provider — The individual or organization responsible for the operation of the Neighborhood Home.

55.108 Physician — A physician licensed to practice medicine pursuant to 24 Del. C. Chapter 17.

55.109 Registered Professional Nurse (RN) — A nurse who is a graduate of an approved school of professional nursing and who is licensed to practice as a professional registered nurse pursuant to 24 Del. C. Chapter 19.

SECTION 55.2 — LICENSING REQUIREMENTS AND PROCEDURES

55.201 When a Neighborhood Home pursuant to these Regulations plans any physical alteration, two copies of properly prepared plans and specifications for the entire home are to be submitted to the State Board of Health. An approval, in writing, is to be obtained before such work is begun.

55.202 Separate licenses are required for homes maintained in separate locations, even though operated by the same Neighborhood Home Provider. A separate license is not required for separate buildings maintained by the same Neighborhood Home Provider on the same grounds. A license is not transferable from one Neighborhood Home Provider to another or from one location to another.

55.203 The license shall be conspicuously posted in the Neighborhood Home.

55.204 All applications for renewal of licenses and requests for waivers shall be filed with the State Board of Health at least thirty days prior to expiration. Licenses will be issued for a period not to exceed one year (12 months) from the date they are issued.

SECTION 55.3 — GENERAL REQUIREMENTS

55.301 All required records maintained by the institution shall be open to inspection by the authorized representatives of the State Board of Health and/or authorized representatives of the Division of Mental Retardation.

55.302 The term "Neighborhood Home" shall not be used as part of the name of any program in this State unless the home is licensed under these regulations.

55.303 No Neighborhood Home Provider may adopt rules that conflict with these regulations.

55.304 The State Board of Health shall be notified, in writing, of any changes in the Neighborhood Home Provider, ownership or management.

55.305 The Neighborhood Home Provider shall establish written policies regarding the rights and responsibilities of clients that are consistent with DMR standards, and shall make such policies and procedures available to clients, guardians, next of kin, sponsoring agency (agencies), and authorized representatives of the State Board of Health and the Division of Mental Retardation.

55.306 Each Neighborhood Home shall provide, with the admission agreement, to all clients or their sponsors a complete statement enumerating all charges for services, materials and equipment which shall, or may be, furnished to the client during the period of residency.

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

SECTION 55.4 — CERTIFICATION BY THE DIVISION OF MENTAL RETARDATION

55.401 A Neighborhood Home Provider shall be certified by the Division annually pursuant to Division standards and procedures.

55.402 Application for certification shall be made on forms provided by the Division. The application shall be accompanied by:

- a. Policies and Procedures Manual for operation of the Neighborhood Home;
- b. a Table of Organization;
- c. a staffing schedule;
- d. an operating budget.

55.403 The Division shall measure compliance with its standards and procedures using a certification instrument. The certification instrument shall be completed based upon information from the Neighborhood Home Provider, clients, their representatives, documents provided to the Division by the provider, and on-site observations and record reviews by employees of the Division. The service Neighborhood Home Provider shall make all documentation and records deemed necessary by the Division available for the Division's review and site visits shall be permitted at any time. The Division shall have the right of access to any information directly or indirectly related to the service Neighborhood Home Provider's operation of the Neighborhood Home. Documents used by the Division for certification review shall bear the notice that false statements therein are punishable.

55.404 A Neighborhood Home Provider shall operate the Neighborhood Home in accordance with the attachments to the application for certification and the certification instrument. A Neighborhood Home Provider shall immediately report any deviations from such operation to the Division.

55.405 The financial responsibility, financial

condition, business experience, and character and general fitness of the Neighborhood Home shall reasonably warrant the belief that the Neighborhood Home Provider will operate a Neighborhood Home honestly, carefully and efficiently. The Division may investigate and consider the qualifications of a service Neighborhood Home Provider to determine whether the service Neighborhood Home Provider meets this qualification.

55.406 Revocation of a Neighborhood Home license shall automatically terminate the service Neighborhood Home Provider's certification relating to such group home and shall also terminate the contract, if any, with the Division for the operation of such home.

55.407 All applications for annual recertification shall be received by the Division at least 30 days prior to expiration and shall be accompanied by the attachments set forth in Section 55.402.

SECTION 55.5 - PROVIDER QUALIFICATIONS

55.501 No person having a communicable disease shall be permitted to give care or service. All reportable communicable diseases shall be reported to the County Health Officer of tuberculin tests (1) performed annually for all volunteers and employees and (2) performed on all newly admitted clients. The tuberculin test to be used is the Mantoux test containing five tu-PPD stabilized with Tween, injected intradermally, using a needle and syringe, usually on the volar surface of the forearm. Persons found to have a significant reaction (defined as 10 mm of induration or greater) to tests shall be reported to the Division of Public Health and managed according to recommended medical practice. A tuberculin test as specified, done within the twelve months prior to admission or employment, satisfies this requirement for asymptomatic individuals. A report of this skin test shall be kept on file.

(b) Employees, volunteers and clients who do not have a significant reaction to the initial tuberculin test (those individuals who have less than 100 mm induration) should be retested within 7-21 days to identify those who demonstrate delayed reactions. Tests done within one year of a previous test need not be repeated in 7-21 days.

55.503 The Neighborhood Home Provider shall have written personnel policies and procedures that adequately support sound client care and are available on site.

55.504 Neighborhood Home Providers shall ensure that each employee is thoroughly familiar with assigned duties and responsibilities.

a) Job descriptions with employee's individual responsibilities and duties shall be made available on site.

SECTION 55.6 - ENVIRONMENT

55.601 To, the extent compatible with the need for accessibility, the interior of non-residential buildings shall resemble the interior of buildings in the community used for

similar purposes in attributes such as functional arrangement of rooms, furniture and furnishings and décor.

55.602 Heating apparatus shall not constitute a burn or smoke hazard to clients served.

55.603 There shall be sufficient heating, ventilation, and light in all living and sleeping quarters to provide a comfortable atmosphere.

55.604 Neighborhood Homes serving physically handicapped clients shall be accessible to those physically handicapped clients according to the appropriate American National Standards Institute (ANSI) Standards and all other federal and state standards.

55.605 Neighborhood Home shall be sanitary and free of offensive odors and free of insects, rodents, and vermin.

55.606 Waste and garbage shall be stored, transferred, and disposed of in a manner that does not create a nuisance, or permit the transmission of disease.

55.607 Stairways, ramps, and open-sided porches shall have adequate lighting and handrails for safety.

a) Non-skid surfaces shall be used when slippery surfaces present a hazard.

55.608 All stairways and hallways shall be kept free and clear of obstructions at all times.

SECTION 55.7 - RESIDENTIAL SERVICES

55.701 The Neighborhood Home Provider(s) and staff shall be responsible for complying with the regulations herein contained.

55.702 Furniture and furnishings shall be safe, comfortable, and in good repair and shall resemble those in homes in the local community, to the extent compatible with the physical need of clients.

55.703 Neighborhood Homes shall be furnished with mirrors, including mirrors that are usable by any client who uses wheelchairs.

55.704 Storage space for out-of-season clothing shall be provided in each home.

55.705 There shall be provided one or more areas that are adequate in size and furnished for dining, recreational and social activities. At least 30 square feet per client will be assigned to these areas.

a) When a multi-purpose room is used, it shall have sufficient space to prevent interference of one activity with another.

b) Basement space may be used for client activities if there is a minimum of two (2) fire exits.

55.706 There shall be refrigeration for perishable foods in the Neighborhood Home.

55.707 Exterminator services shall be required when there is evidence of any infestation.

55.708 Waste material, cans, rubbish and other litter shall not be permitted to accumulate on the premises of the Neighborhood Home.

SECTION 55.8 - SECURITY AND OBSERVATION

55.801 Protective or security features such as fences and security windows may be used only when justified on the basis of the needs of clients served and shall preserve as normal an appearance as possible.

55.802 Doors, walls, and partitions shall not contain vision panels or other devices to afford observation unless indicated by the specific needs of all clients who use the room or area.

SECTION 55.9 - BEDROOMS

55.901 Rooms or other areas of the Neighborhood Home that are not ordinarily sleeping rooms may not be used for sleeping purposes.

55.902 Sleeping rooms must be outside rooms and must provide for quiet and privacy.

a) Adequate electrical outlets shall be conveniently located in each room with at least one (1) light fixture switched at the entrance to the bedroom.

55.903 Bedrooms shall have walls that extend from floor to ceiling, at least one exterior window, and accommodate no more than two clients.

55.904 Multiple-bed bedrooms shall provide at least 75 square feet per client.

55.905 Single-bed bedrooms shall contain at least 80 square feet.

55.906 Bedrooms shall contain additional space as needed for bedside assistance and to accommodate the use and storage of mobility devices and prosthetic equipment.

55.907 If a bedroom is below grade level, it must have a window that:

a) Is usable as a second means of escape by the client(s) occupying the room; and

b) Is no more than 44 inches (measured to the window sill) above the floor unless the facility is surveyed under the Health Care Occupancy Chapter of the Life Safety Code, in which case the window must be no more than 36 inches (measured to the window sill) above the floor.

55.908 The Neighborhood Home shall contain sufficient storage spaces to accommodate all in-season clothing of each client;

55.909 and storage space for personal items; to include minimally closet space and two drawers in a chest of drawers.

55.910 and sufficient seating and flat surfaces to allow each client to perform tasks or pursue leisure interests.

55.911 Each client shall have a bed suitable for his or her physical stature and condition.

55.912 Mattresses, bedding and pillows shall be clean and provide comfort and sufficient warmth.

55.913 Hospital-type beds, the absence of pillows, flat pillow, the use of plastic or other materials to keep beds and pillows dry, or other departures from the normalization principle shall be justified in each case in the client's record.

55.914 There shall be a sturdy bedside stand, chair, and reading light for the client.

55.915 Each bedroom window shall have a window treatment that closes for privacy.

SECTION 55.10 - BATHROOMS

55.1001 There shall be private toilet facilities with a shower or tub in each Neighborhood Home. These facilities shall be accessible to the client according to his/her client needs as documented in the Client Program Plan (IPP).

a) Traffic to and from any room shall not be through a bedroom or bathroom except where a bathroom opens directly off the room it serves.

b) There shall be at least one (1) window or mechanical ventilation to the outside of the bathroom.

c) Toilets, bathing and toileting appliances shall be equipped for use by physically handicapped clients, as dictated by the clients' needs.

d) There shall be at least one (1) toilet of appropriate size for each four (4) clients:

1. Each toilet shall be equipped with a toilet seat.

2. Toilet tissue shall be readily accessible at each toilet.

e) There shall be at least one (1) wash basin for each four (4) clients.

f) There shall be at least one (1) tub or shower for each four (4) clients.

g) Wash basins shall be available in or immediately adjacent to bathrooms and/or toilet rooms.

h) Shower and tub areas shall be equipped with substantial hand-grip bars and slip-resistant surfaces.

i) Bathroom areas shall be equipped with mirrors for personal grooming. Mirrors shall be installed in such a way as to minimize the danger of breakage.

SECTION 55.11 - SAFETY AND SANITATION

55.1101 The Neighborhood Home shall comply with governmental safety and sanitation regulations.

55.1102 The Neighborhood Home's program must be in compliance with all applicable provisions of Federal, State and local laws, regulations and codes pertaining to health, safety, sanitation, and plumbing.

55.1103 Requirements of the current edition of the National Fire Protection Association's Life Safety Code shall be met in all buildings used by the clients.

55.1104 The Neighborhood Home shall maintain records and reports of periodic fire safety, health, sanitation, and environmental inspections required by local and state laws and regulations.

55.1105 The Neighborhood Home shall document actions taken to correct deficiencies noted in these reports.

55.1106 The Neighborhood Home shall provide adequate clean linen and dirty linen storage areas.

55.1107 ~~Hot water at shower, bathing and handwashing facilities shall not exceed 110 degrees F. (43 degrees C).~~

55.1108 ~~The Neighborhood Home Provider shall prepare written policies that outline maintenance (including electrical maintenance) and cleaning procedures, storage of cleaning materials and/or pesticides and other potentially toxic materials.~~

55.1109 ~~There shall be separate areas of storage of:~~

- a) ~~Food items.~~
- b) ~~Cleaning agents, disinfectants and polishes.~~
- c) ~~Poisons, chemicals and pesticides.~~
- d) ~~Eating, serving and cooking utensils.~~

SECTION 55.1200 — EMERGENCIES AND DISASTERS

55.1201 ~~The Neighborhood Home shall have a minimum of two means of egress.~~

55.1202 ~~The Neighborhood Home shall have an adequate number of UL approved smoke detectors in working order.~~

a) ~~In a single level Neighborhood Home, a minimum of one smoke detector shall be placed between the bedroom area and the remainder of the Neighborhood Home.~~

b) ~~In a multi-story Neighborhood Home, a minimum of one smoke detector shall be on each level. On levels which have bedrooms, the detector shall be placed between the bedroom area and the remainder of the Neighborhood Home.~~

55.1203 ~~There shall be a two and one half to five pound ABC Fire Extinguisher in the Neighborhood Home that is readily accessible and visible. Extinguisher is to be checked annually.~~

55.1204 ~~The Neighborhood Home Provider shall have written procedures for meeting all emergencies and disasters such as fire, severe weather, and missing persons and such procedures shall be communicated to all staff.~~

55.1205 ~~The procedures shall assign specific personnel to specific tasks and responsibilities.~~

55.1206 ~~The procedures shall contain instructions related to notification procedures and to the use of alarm and signal systems to provide for alert to clients according to their disability, visual signals with alarms where there are clients who cannot hear.~~

55.1207 ~~Evacuation routes and the location of fire fighting equipment shall be posted in areas used by the public as required by the Life Safety Code and state and federal regulations. The number and placement of postings are otherwise dictated by building use and configuration and by the needs of clients and staff.~~

55.1208 ~~The Neighborhood Home shall maintain an adequate communication system to ensure that on and off-duty personnel and local fire and safety authorities are notified promptly in the event of an emergency or disaster.~~

55.1209 ~~The telephone numbers of the nearest poison control center and the nearest source of emergency medical services shall be posted.~~

55.1210 ~~Provisions shall be made for emergency auxiliary heat and lighting by means of alternate sources of electric power, alternate fuels, and stand-by equipment, or arrangements with neighbors or other agencies.~~

SECTION 55.1300 — EVACUATION DRILLS

55.1301 ~~Evacuation drills shall be held quarterly for each shift of Neighborhood Home personnel. Drills shall be held on different days of the week. Drills shall be held at different times of the day, including times when clients are asleep.~~

55.1302 ~~During drills, clients shall be evacuated to safe areas, unless their ability to evacuate independently has been documented, or unless actual evacuation would endanger the health or safety of those clients.~~

55.1303 ~~As evidenced by evacuation drill reports that are maintained by the Neighborhood Home, drills shall assure that all clients and staff are familiar with the evacuation requirements and procedures. Any problems clients have evacuating a building during a drill shall result in a written plan of specific corrective action(s) to be taken.~~

55.1304 ~~Clients who are unable to achieve the exit schedule prescribed by accepted standards with available assistance shall be either relocated or provided with additional assistance.~~

SECTION 55.1400 — TRANSPORTATION

55.1401 ~~The transportation system operated by, or under contract to, the Neighborhood Home shall meet local and state licensing, inspection, insurance, and capacity requirements.~~

55.1402 ~~Vehicles used to transport clients with physical disabilities shall be adapted to their needs.~~

55.1403 ~~Drivers of vehicles shall have valid and appropriate drivers' license.~~

55.1404 ~~Emergency transportation shall be available on a 24-hour basis.~~

SECTION 55.1500 — MEALTIMES

~~If meals are served:~~

55.1501 ~~Dry or staple food items shall be stored at least four inches above the floor in a ventilated room that is not subject to waste water backflow or to contamination by condensation or leakage.~~

55.1502 ~~The Neighborhood Home's meal and menu planning shall be supervised by a registered dietitian or nutritionist or by an experienced person who consults a registered dietitian or nutritionist at least quarterly.~~

55.1503 ~~Clients shall be offered opportunities for choices in food selection.~~

55.1504 ~~Menus and records of foods actually~~

served shall be retained for a period of three months.

55.1505 Foods served shall provide for sufficient amounts of food for meals and snacks and a sufficient variety on a daily, weekly, monthly, and seasonal basis.

55.1506 Meals shall be served so that they are flavorful, attractive in appearance, at appropriate serving temperature, and have preserved their nutritional value.

55.1507 The daily diet for each client shall include a minimum of three balanced meals a day with food from the four basic food groups.

55.1508 Nutritional intake of clients receiving a medically prescribed modified diet shall be followed, reviewed and monitored by a nurse, dietitian or other medical personnel as appropriate.

55.1509 Clients shall eat in an upright position or in a position that is medically indicated.

55.1510 There shall be refrigeration for perishable foods in the Neighborhood Home.

a) There shall be at least one refrigerator and one unit, in proper working order and capable of maintaining frozen foods in the frozen state and refrigerated foods at 45°F or below.

55.1511 There shall be at least one four-burner range and one oven (or combination thereof), which is in proper working order.

55.1512 There shall be a dishwasher, or facilities for performing a wash, rinse, and a final sanitizing rinse.

55.1513 There shall be at least one operable window or exhaust system for removal of smoke, odors, and fumes.

SECTION 55.1600 – MEDICAL AND HEALTH CARE

55.1601 Genetic medical services, including a physician and dentist, shall be identified.

55.1602 There shall be written policies on physical examinations for clients.

55.1603 Physical examinations and dental evaluations shall be made least annually.

55.1604 Upon confirmation of reportable disease, the appropriate Health Officer of the Division of Public Health shall be notified by the Neighborhood Home Provider.

55.1605 The Neighborhood Home Provider shall insure transportation including for emergency medical treatment in the event of an emergency with a client.

55.1606 The Neighborhood Home Provider shall provide or arrange transportation for the client's routine medical and dental care.

SECTION 55.1700 – MEDICATIONS

55.1701 Clients receiving medication shall be trained to take their own medication, where possible.

55.1702 Providers who have successfully completed a Board of Nursing approved medication training

program may assist clients in the taking of medication, provided that the medication is in the original container and properly labeled. The medication must be taken exactly as indicated on the label. The Neighborhood Home Provider shall maintain a record of all medications taken.

55.1703 No Prescription medication shall be administered to a client without a written order by a physician or other legally authorized person.

55.1704 Injectable medication shall only be administered by registered nurses or licensed practical nurses.

55.1705 The client's response to prescribed medication shall be evaluated by the DMR nurse consultant or private nurse consultant or physician.

55.1706 The Neighborhood Home Provider shall assist the client in reporting side effects to the physician who prescribed the medication. Suspected drug reactions shall be noted in the medication record.

55.1707 Medication errors shall be immediately reported by the Neighborhood Home staff to the physician.

55.1708 A three-day supply of medication shall be available at all times. All medication must be stored in its original container either from the pharmacy or manufacturer with the proper label and specific directions for administration.

55.1709 The Neighborhood Home Provider shall be responsible for the storage of medication. Medication shall be stored under proper conditions of temperature, light, humidity and ventilation. Room temperature acceptable for medication storage is between 59° and 86°F.

55.1710 Medications requiring refrigeration shall be kept in a separate locked box within the refrigerator. A temperature monitoring device shall be used and the temperature shall be maintained between 36° and 46°F.

55.1711 Medications not in possession of clients shall be kept in a locked cabinet by the person in charge in a manner so that they are not accessible to unauthorized personnel.

55.1712 A medication record shall be maintained for each client. The record shall show the name and strength of each medication being consumed by the client. Each dose consumed shall be recorded by date, time, and initials of person assisting.

55.1713 Documentation of medication errors and corrective action taken is maintained by the Neighborhood Home.

55.1714 A supply of over-the-counter medication may be stocked by the Neighborhood Home. However, the use of those medications must be authorized by the client's physician in writing.

SECTION 55.1800 – CLIENT RECORDS

55.1801 A cumulative record containing all information and documents necessary for the provision of

needed service(s) shall be maintained chronologically by or for each client.

55.1802 The record shall be readily accessible to those who require such access in order to provide services as described in the client's plan.

55.1803 All information concerning a client served, including information contained in an automated data bank, is confidential and access shall be limited to staff who need to see the record, or to persons specifically authorized by the client or legally qualified representatives.

55.1804 Entries in a client's record referring to actions with another client shall be coded in such a way as to protect the confidentiality of the clients served.

55.1805 The Neighborhood Home shall be responsible for the safekeeping of each client's record and for securing it against loss, destruction, or use by unauthorized persons as evidenced by policies and practices.

55.1806 The record may be removed from the Neighborhood Home Provider's jurisdiction and safe-keeping only in accordance with a court order, subpoena, or statute.

55.1807 The record shall be retained for the period of time required by state law.

SECTION 55.19 - WAIVERS OF STANDARDS

55.1901 Specific standards may be waived by the State Board of Health so long as each of the following conditions are met:

a. Strict enforcement of the standard would result in unreasonable hardship on the Neighborhood Home Provider.

b. The waiver is in accordance with the particular needs of the client.

55.1902 A waiver must not adversely affect the health, safety, welfare, or rights of any client.

55.1903 The request for a waiver must be made to the State Board of Health in writing by the Neighborhood Home Provider with substantial detail justifying the request.

55.1904 A waiver granted by the State Board of Health is not transferable to another Neighborhood Home Provider in the event of a change in ownership.

55.1905 A waiver shall be granted for the term of the license.

55.1906 Client capacity for a Neighborhood Home may be waived from five to six clients where the physical plant, staffing, and client needs justify such an increase.

SECTION 55.20 - SEVERABILITY

55.2001 Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

SECTION 55.0 - PURPOSE

The following regulations are designed specifically for Neighborhood Homes, for five or fewer persons with developmental disabilities, which are licensed by the Division of Long Term Care Residents Protection. These homes are distinct from Rest (Family care) Homes where three or fewer persons live in a home with care and supervision provided by persons who also reside on the premises.

These regulations address the minimum acceptable level of living conditions and supports for persons in Neighborhood Homes. The purpose of these regulations is to provide a sequence of expectations for services rendered by the Neighborhood Home provider and a system for Neighborhood Home providers to be accountable to the Division of Long Term Care Residents Protection (DLTRCP) and the Division of Developmental Disabilities Services (DDDS).

SECTION 55.1 - DEFINITIONS

55.101 Action Plan - The portion of the Essential Lifestyle Plan (ELP) that lists, and is used to track, those desired outcomes which are important to a person.

55.102 Annual Conference - The yearly interdisciplinary team meeting held with the person served and his/her family to develop or update the ELP after a review of the various assessments done on the person and discussion with the individual as to his/her aspirations and desires. The annual conference must be held within 30 days of the initiation of DDDS funded residential services and be held no more than 365 days from the previous annual conference.

55.103 Assessment - The process of gathering information to describe what has been learned about a person, and what others need to know or to do to support the person in attaining a healthy, safe and meaningful life.

55.104 Behavior Support Plan or Mental Health Plan - A multi-dimensional, systematic, assessment-based plan that details how staff should implement the identified behavior and/or mental health supports.

55.105 Behavior Support Review Committee - A committee assigned to review behavior intervention strategies and behavior support plans containing support procedures.

55.106 Choice - The process by which people make selections from an array of options which are within the context of Division of Developmental Disabilities Services (DDDS) policies and all applicable state and federal laws and regulations intended to safeguard the person and the rights of others.

55.107 Emergency Behavior Interventions - A set of DDDS sanctioned procedures available to manage an unanticipated event such as severe aggression or severe property destruction that places the individual or

others in imminent danger of physical harm.

55.108 Essential Lifestyle Plan (ELP) - The type of individualized support plan used by the Division of Developmental Disabilities Services. A result of a system of person-centered planning, the ELP outlines how a person wants to live, service-related issues which need to be addressed as well as a plan of action for achieving expressed lifestyle choices and adequately addressing service-related issues.

55.109 Evaluation - An assessment process performed by professionals, according to standardized procedures, that incorporates the use, when possible, of standardized tests and measures in addition to informal and observational measures.

55.110 Goals - Desired outcomes that provide the framework upon which service and support actions are based.

55.111 Human Rights Committee (HRC) - A body of individuals composed of impartial members with no direct affiliation with the Division of Developmental Disabilities Services (DDDS), and whose role is to serve as a monitoring agent to safeguard the rights and personal dignity of persons served by DDDS.

55.112 Incident - An occurrence or event, a record of which must be maintained in provider's files, that results or might result in harm to a resident. Incident includes alleged abuse, neglect, mistreatment and financial exploitation; incidents of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls; and errors and omissions in medication/treatment. (Also see Reportable Incident, 55.123.)

55.113 Individual Records - Those records pertaining to a person served which are essential for effective individual planning, plan implementation, establishing and maintaining a personal history of the person, and for protecting legal rights of the person, the agency and the agency staff.

55.114 Interdisciplinary Team - Also known as "Treatment Team" or "Team," this is a group consisting of those who are knowledgeable about the person served, whose participation is required to identify the supports the person wants and/or needs so as to help him/her achieve a healthy, safe and meaningful life.

55.115 Intrusive - The unwanted or uninvited introduction of procedures or other people/staff into the lives or daily routines of persons served which is found bothersome by the person and which causes a perceived interference with the life and/or daily routines of the person.

55.116 Least Restrictive - Descriptive of services and treatments that are delivered with a minimum of limitation, intrusion, disruption or departure from commonly accepted patterns of living in the community.

55.117 Neighborhood Home - A single-unit house providing residential and support services to five or fewer

people and licensed pursuant to 16 Delaware Code, §1101. This definition does not include ICF/MR programs.

55.118 Neighborhood Home Provider - An individual or organization responsible for the operation of the Neighborhood Home.

55.119 Outcomes - The major expectations and desired achievements for people's lives. The accompanying supports that are developed should reflect what people expect from the services and assistance they receive in order to reach their desired outcomes.

55.120 Person/People/Individual/Resident - Terms used throughout these regulations that identify someone receiving services and supports in a Neighborhood Home.

55.121 Physical Environment - Those locations in which the individual lives, works, recreates or receives services.

55.122 Physical Restraint - Approved manual methods that restrict the movement of the individual or the normal functioning of an individual's body or portion of the body.

55.123 Reportable Incident - An occurrence or event which must be reported at once to the Division of Developmental Disabilities Services (DDDS) and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation. Reportable incident also includes an incident of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls with injuries; and significant errors or omissions in medication/treatment which cause the resident discomfort or jeopardize the resident's health and safety. DDDS will forward the report to the Division of Long Term Care Residents Protection (DLTCRP). (Also see Incident, 55.112.)

55.124 Rights Restriction - The limitation, disruption or constraint of a person's freedom to engage in activities generally allowed to others in society. Such is permissible only on a case-by-case basis and when there has been due process, official approval received and the need for such documented.

55.125 Safety - The absence of recognizable hazards in the design, construction and maintenance of any component of the physical environment including equipment and the establishment of procedures to evaluate and to reduce risks of physical harm.

55.126 Sanitation - The promotion of hygiene and prevention of disease by the maintenance of uncontaminated conditions.

55.127 Screening - The initial part of the assessment process which is of limited scope and intensity and is designed to determine whether further evaluation or other intervention is indicated.

55.128 Self-Limiting Behavior - Any behavior that significantly interferes with a person's ability to acquire meaningful life skills, form and maintain interpersonal relationships, and/or successfully live in his/

her community. A behavior in and of itself is not self-limiting; rather, it may be viewed contextually relative to the impact it has on the quality of life of both the person who is displaying the behavior and on others in the environment who are affected by the behavior.

55.129 Supplemental Plans - Detailed instructions or preparations needed to support an outcome or opportunity. Types of such plans include learning, motivating, achieving a personal goal and gaining a new opportunity. Supplemental plans are used to outline a course of action in an effort to accomplish an outcome or provide an opportunity which has been identified in the action plan.

55.130 Support - A broad term used to refer to those methods designed to help an individual achieve a meaningful life and to function to his/her fullest capacity.

55.131 Support Coordinator - The staff person responsible for monitoring and coordinating all activities in implementing the person's plan.

55.132 Transfer - Movement of a person from one program, service or residence to another within DDDS.

SECTION 55.2 - LICENSING AND GENERAL REQUIREMENTS

55.201 When a Neighborhood Home pursuant to these regulations plans any structural alteration, one copy of properly prepared plans and specifications for the entire home shall be submitted to the Division of Long Term Care Residents Protection (DLTCRP). The Neighborhood Home shall receive written approval of the plans before any work is begun.

55.202 Separate licenses are required for separate homes, regardless of their proximity, even though operated by the same Neighborhood Home provider.

A license shall not be transferred from one provider to another or from one location to another.

55.203 The license shall be conspicuously posted in the Neighborhood Home.

55.204 All applications for renewal of licenses shall be filed with DLTCRP at least thirty days prior to expiration. Licenses shall be issued by DLTCRP for a period not to exceed one year (12 months) from the date they are issued.

55.205 All required records maintained by the Neighborhood Home shall be open to inspection by the authorized representatives of DLTCRP and DDDS.

55.206 The term "Neighborhood Home" shall not be used as part of the name of any program in this State unless the home is licensed under these regulations.

55.207 No Neighborhood Home provider shall adopt rules that conflict with these regulations.

55.208 DLTCRP shall be notified in writing of any changes in the ownership or management of a Neighborhood Home.

55.209 Each Neighborhood Home provider shall provide with the admission agreement, to all persons or their

family member/guardian, a complete statement enumerating all charges for services, materials and equipment which shall, or may be, furnished to the person during the period of residency.

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

SECTION 55.3 - NEIGHBORHOOD HOME PROVIDER PERFORMANCE STANDARDS

55.301 The Neighborhood Home provider shall have a written statement of its mission, values and goals which defines the agency's proactive commitment to helping people live the lifestyle they choose and fosters the least restrictive alternatives of supports and services.

55.302 The Neighborhood Home provider shall have written policies and procedures that delineate how the civil rights of the people served are to be ensured.

55.303 The Neighborhood Home provider shall have a written procedure to handle appeals of decisions made by the provider from people receiving services, their advocates, legal guardians and families. The procedures shall include the use of the Appeal to DDDS Decisions policy.

55.304 The Neighborhood Home provider shall have a written policy that defines and prohibits abuse, neglect, mistreatment, misappropriation of property and significant injury of persons served and a procedure for initiating intervention in all such cases whether the alleged incident occurred within or outside of the Neighborhood Home. The provider shall comply with the provisions of Department of Health and Social Services (DHSS) Policy Memorandum #46 by reporting all instances of abuse, neglect, mistreatment, misappropriation of property or significant injury and the requirements for other reportable incidents. (See 55.123.)

55.305 The Neighborhood Home provider shall have a written policy and procedures for protecting the financial interests of people served.

55.306 The Neighborhood Home provider shall review its written policies and procedures at least annually to ensure that they are in compliance with the requirements of the applicable laws and regulations. Copies of all relevant policies and procedures shall be made available to persons served or their families at any time and be available to any party upon request.

55.307 The Neighborhood Home provider shall maintain a current table of organization identifying its operational elements and programs and administrative personnel and illustrating lines of authority, responsibility and communication. This document shall be shared with provider staff.

55.308 The Neighborhood Home provider's chief

executive officer shall designate an employee to assume management responsibility during his or her absence. All employees shall be informed of who has such responsibility at any given time and who is to be contacted in the event of an emergency.

55.309 The Neighborhood Home provider shall comply with the policies of the Department of Health and Social Services (DHSS) Human Subjects Review Board with regard to conducting research involving people served.

55.310 In all provider activities and references, including name, language of staff, internal documents and communication to the public, the language used shall reflect the Neighborhood Home provider's program, its purposes and promote respect and a positive image of the people served and the staff who support them.

55.311 Services shall be provided to people who are otherwise eligible without regard to disability, gender, age, sexual orientation, race, religion, marital status or ability to pay.

55.312 The Neighborhood Home provider shall not employ individuals under the age of 18.

55.313 The Neighborhood Home provider shall obtain the results of each employment applicant's drug screening for the following drugs:

- a. Marijuana/cannabis
- b. Cocaine
- c. Opiates including heroin
- d. Phencyclidine (PCP)
- e. Amphetamines
- f. Barbiturates
- g. Benzodiazepene
- h. Methadone
- i. Methaqualone
- j. Propoxyphene

55.314 The Neighborhood Home provider shall complete a state and federal criminal background check for each employment applicant through DLTCRP.

55.315 The Neighborhood Home provider shall ensure that each employee is thoroughly familiar with assigned duties and responsibilities. Job descriptions with employees' individual responsibilities and duties shall be made available on site.

55.316 Orientation and training shall be provided to all employees in accordance with the training policy of DDDS and shall be documented, continuously updated and made available for review upon request.

55.317 The Neighborhood Home provider shall ensure that staff training is relevant to the support needs of the people served and shall continuously evaluate training effectiveness by assessing employees' demonstrated competencies and by modifying training programs accordingly.

55.318 The Neighborhood Home provider shall

provide each person with an oral and written summary of his/her rights and an explanation of how to exercise those rights in easily understandable language. This review shall be documented in the person's record and shall occur at least annually. The rights of a person shall not be restricted without due process; any restrictions, including the need for guardianship, shall be reviewed at least annually. All investigation into alleged violations of individuals' rights and the actions taken to intervene in such situations shall be documented.

55.319 Each Neighborhood Home provider shall have its own human right committee or shall participate in a system-wide human rights committee. Each human rights committee shall be responsible for assuring that people's rights are supported and shall be approved by the Division of Developmental Disabilities Services. Human rights committees shall comply with DDDS minimum standards of operations of such committees, and their decisions concerning persons served by DDDS shall be subject to the review and approval of the DDDS human rights committee.

55.320 Each human rights committee member shall be provided with a written explanation and training in the committee's duties and responsibilities. Any member who has been involved in the development, review or approval of a matter before the committee shall be excluded from decision-making related to that matter.

55.321 The Neighborhood Home provider shall safeguard and maintain records regarding the funds of people receiving services and support their efforts towards independence/self-management of those funds. Requests to the contrary, other than from the person's legal guardian (of property), shall require a recommendation of the Interdisciplinary Team, accompanied by substitute safeguards, with approval from the Director of the DDDS Community Services or Special Populations program. Such actions shall be documented in the person's record. The financial records shall be available on request to the person, his/her legal guardian (of property) or other individuals or entities authorized by DDDS.

55.322 Funds for one person shall not be commingled with the funds of another person. People shall have community bank accounts in their own names unless otherwise indicated by them or their legal guardian of property.

SECTION 55.4 - PERSONS' SERVICES AND SUPPORTS

55.401 The Neighborhood Home provider shall comply with the Patient's Bill of Rights set forth in 16 Del. C., Section 1121. A copy of the Patient's Bill of Rights shall be conspicuously posted within the home.

55.402 To the greatest extent possible, the person chooses where and with whom he/she shall live.

55.403 With due regard to each individual's right to

privacy and safety and as agreed upon by the person served, the person's family, guardian, advocates, spouse and friends shall be encouraged to visit the person in his/her Neighborhood Home. Visits shall occur at reasonable times and may be without prior notice.

55.404 The Neighborhood Home provider shall facilitate frequent informal visits by persons to the homes of their families and friends in accordance with each party's desire.

55.405 People shall be provided with opportunities and supports to develop and maintain social relationships, to perform different social roles and to participate in the life of their community, including attending and participating in religious activities of their choice. Wherever possible, supports shall be adapted to the cultural background, language and ethnic origin of the person.

55.406 People shall receive support and instruction as appropriate to exercise the rights and responsibilities of citizens such as voting, employment, consumer affairs, law enforcement, paying taxes or consulting an attorney.

55.407 People shall be supported in receiving advocacy and/or legal services as needed.

55.408 People shall receive support and instruction in recognizing and respecting the rights of others as reciprocal to their own.

55.409 If a person is represented by a legal guardian or a substitute decision maker (as defined in the DDDS Consent Policy), such shall be documented in the individual plan; and efforts shall be made to ensure that the person receives continued education, instruction and support to exercise his/her rights and make informed decisions.

55.410 People shall decide when and with whom they wish to share personal information. Prior to the release of information, including the person's name or photo, a written consent shall be signed by the person (unless legally adjudicated to need a guardian), a parent (if the person is a minor), or by a substitute decision maker in accordance with DDDS policy on confidentiality and release of information. The consent shall minimally include:

- a. The designation of time limit with a maximum of 365 days;
- b. The person to whom the information is to be released;
- c. The exact information to be released;
- d. The stipulation that consent may be rescinded at any time.

55.411 People shall be supported to exercise choice, including but not limited to choice in the following:

- a. Clothing and personal possessions;
- b. Telephone use with privacy available;
- c. Time, space and opportunity for privacy;
- d. Opening mail addressed to them unless other arrangements are expressly made;

e. Deciding when and where to go unless otherwise indicated in their plan;

f. Deciding who will assist them with personal hygiene;

g. Participation in household responsibilities.

55.412 People shall be supported to bathe with the maximum independence and privacy.

55.413 People who are incontinent shall be bathed or cleansed immediately upon voiding or soiling. All soiled items shall be changed immediately.

55.414 Each person shall have an Essential Lifestyle Plan written in terms that are understandable to all, where the person's goals, dreams and aspirations are stated and defined. The person, with the support of the team, shall determine when and how to measure success and attainment of his/her desired outcomes; and such criteria shall be defined in the Essential Lifestyle Plan, as applicable.

55.415 The person's plan shall include financial planning which takes into account the person's resources, assets and benefits in conjunction with his/her personal goals.

55.416 For each person, an interdisciplinary team including the support coordinator and specific people responsible for obtaining services and implementing the support plan, shall be clearly defined. Staff of all Neighborhood Home providers providing any component of service or support shall take an active role in assuring effective communication and overall support coordination.

55.417 The support coordinator shall monitor, review, analyze, observe the implementation and document all components of a person's plan at least monthly.

55.418 If the monthly review determines the need for any action, such action shall be taken in a timely manner by the appropriate team member.

55.419 The support coordinator shall assist the person in locating and obtaining those services and supports identified by the team and shall assist the person in assuming management of those activities for which the person has demonstrated management capacity and/or expressed an interest.

55.420 The support coordinator shall elicit the person's preferences and respect those preferences when they are consistent with the rights and well-being of the person and of others.

55.421 The support coordinator shall facilitate the transfer of the person to another service, service location or service provider when the person desires such a transfer and such is consistent with the person's plan.

55.422 The initial plan and subsequent plans are developed, at the discretion of the person and/or the guardian, with the active participation of the following:

- a. The person;
- b. Support staff who know and care about the person;

c. Professionals and others with the expertise to design and review elements of the plan, including those who provide supports or treatment.

d. The person's family, guardian, advocate or friends.

55.423 The person's plan shall be reviewed by his/her team as often as the person decides, but at least yearly (365 days) in conjunction with the person's annual conference or when significant changes occur, to determine the need to continue, revise or terminate services and supports. Any applicable information, including previous plans, shall be reviewed for possible inclusion in the current plan.

55.424 Plans shall be implemented within 30 days of the development of an initial plan and within 30 days of each subsequent annual conference. The initial plan shall be revised within 60 days of initiation of Neighborhood Home services.

55.425 Supplemental plans shall be in place as required by the person's action plan, and shall be based on the person's learning styles.

55.426 Reassessments for those persons receiving services, including direct or indirect clinical services, shall be completed annually in preparation for the annual conference or when there is an indication of need. Reassessments shall be available in preparation for the person's annual conference.

55.427 Meetings concerning the person shall be scheduled at a date, time and location suitable for all team members, especially the person and his/her parents, guardian and/or advocate.

55.428 The Neighborhood Home provider's policies and practices relative to behavior supports, as evidenced in writing and in ongoing activities, shall be congruent with the policies and practices of DDDS and emphasize positive approaches and behavior interventions.

55.429 The Neighborhood Home provider shall have its own, or use the DDDS behavior support committee which shall include:

a. Persons qualified to evaluate published behavior support research studies and the technical adequacy of proposed behavior support interventions;

b. Medical and other professionals qualified to evaluate proposals for the use of interventions to manage behavior.

55.430 Prior to the use of behavior intervention strategies, and absent a crisis situation or psychiatric emergency requiring an immediate response, the following activities shall take place:

a. The physical and social environments shall be analyzed to determine their role in contributing to the self-limiting behavior;

b. The necessary modifications shall be made to the environment based on that analysis;

c. Medical treatment shall be obtained for any possible physiological cause of the behavior; and

d. The treatment team shall discuss and document the risk/benefits of the proposed procedure.

55.431 Prior to the use of behavior intervention strategies, persons who will implement behavior support procedures shall have been trained in the procedures specified in the person's plan.

a. Include a risk/benefit analysis, in non-technical terms, which identifies the risks associated with not providing the intervention, the risks associated with providing the intervention, and the benefits of the proposed intervention;

b. Include a detailed plan of action the team intends to follow to reduce or eliminate the need for the intrusive intervention/drugs;

c. Specify provisions for at least a quarterly reevaluation for the need for continuation of the intervention/drugs;

d. Include alternative supports; and

e. Be discussed with the person/guardian relative to the rationale for such treatment and the risks/benefits involved.

55.443 Each mental health plan utilizing psychotropic medications for the treatment of a diagnosed psychiatric illness shall:

a. Include a risk/benefit analysis, in non-technical terms, which identifies the risks associated with not providing the intervention, the risks associated with providing the intervention, and the benefits of the proposed intervention;

b. Specify provisions for ongoing reevaluation of the need for continuing the use of medication;

c. Include alternative supports, as appropriate; and

d. Be discussed with the person/guardian relative to the rationale for such treatment and the risks/benefits involved.

SECTION 55.5 - ENVIRONMENT

55.501 Neighborhood Home providers shall ensure a home-like environment for each licensed home. Functional arrangement of rooms, furnishings, and decor shall be compatible with the need for accessibility.

55.502 Furniture and furnishings shall be safe, comfortable, and in good repair and shall resemble those in homes in the local community, to the extent compatible with persons' choice and the physical needs of the people living in the home. To the extent possible, personal furniture shall be chosen by individuals.

55.503 Heating apparatus shall not constitute a burn, smoke or carbon monoxide hazard to persons served or their support staff.

55.504 Temperature, humidity, ventilation, and light in

all living and sleeping quarters shall be maintained to provide a comfortable atmosphere.

55.505 Homes serving persons with physical challenges shall be accessible to those persons with physical challenges according to the appropriate American National Standards Institute (ANSI) Standards and all other federal and state standards.

55.506 Protective or security features such as fences and security windows may be used only when justified on the basis of the needs of persons served and shall preserve as normal an appearance as possible.

55.507 Use of security or observational devices shall constitute a restrictive procedure and require consent and review by the human rights committee. The need for such devices shall be documented in the person's behavior support plan.

55.508 Homes shall be sanitary, free of offensive odors, insects and uncontrolled pests. Exterminator services shall be required upon evidence of any infestation.

55.509 Waste and garbage shall be stored, transferred, and disposed of in a manner that does not create a nuisance, or permit the transmission of disease. Litter shall not be permitted to accumulate on the premises.

55.510 Stairways, ramps, walkways and open-sided porches shall have adequate lighting and handrails for safety. Non-skid surfaces shall be used when slippery surfaces present a hazard.

55.511 All stairways, hallways, doorways and walkways shall be kept free and clear of obstructions at all times.

55.512 Mirrors shall be furnished in bedrooms and bathrooms, including mirrors that are accessible by persons who use wheelchairs.

55.513 Each home shall provide storage space for both in season and out of season clothing and storage space for personal items to include, minimally, closet space and four drawers in a chest of drawers.

55.514 Each home shall contain a clothes washer and dryer that are accessible to people unless people use commercial laundromats or are being supported to do so.

55.515 Basement space may be used for activities for people in the home if there is a minimum of two (2) fire exits.

55.516 If a bedroom is below grade level, it must have a window that

a. Is usable as a second means of escape by the person(s) occupying the room; and

b. Is no more than 36 inches (measured to the window sill) above the floor as required under the Health Care Occupancy Chapter of the Life Safety Code.

SECTION 55.6 - MEALTIMES

55.601 The home's meal and menu planning shall be supervised by a registered dietitian or nutritionist or by an unexperienced person who consults a registered dietitian or nutritionist as needed. Therapeutic diet orders, meal and menu planning shall be reviewed, monitored and updated as recommended by the nutritionist/dietitian with a minimum of an annual evaluation. Therapeutic diets shall require a physician's order.

55.602 Nutritional intake of persons receiving a medically prescribed modified diet shall be followed, reviewed and monitored by a nurse, dietitian or other medical personnel as appropriate, as determined by the dietitian or physician.

55.603 Persons shall be offered opportunities for choices in food selection and are actively involved in menu planning and food preparation as part of the daily meal routine.

55.604 Menus and records of foods actually served shall be retained for a period of three months.

55.605 Foods shall be provided in sufficient amounts for meals and snacks and in sufficient variety on a daily, weekly, monthly, and seasonal basis.

55.606 The daily diet for each person shall include a minimum of three balanced meals a day with food from the four basic food groups.

55.607 Meals shall be served so that they are flavorful, attractive in appearance, at appropriate serving temperature, and have preserved their nutritional value.

55.608 Meals should be provided in locations which provide the opportunity for socialization, choice, sanitation, and also support the person's preference.

55.609 Persons shall eat in an upright position or in a position that is medically indicated.

55.610 There shall be at least one refrigerator and one freezing unit, in proper working order and capable of maintaining frozen foods in the frozen state and refrigerated foods at 41 degrees F. or below.

55.611 Dry or staple food items shall be stored at least four inches above the floor in a ventilated room that is not subject to waste water back flow or to contamination by condensation or leakage.

55.612 There shall be at least one four-burner range and one oven (or combination thereof), which is in proper working order.

55.613 There shall be a dishwasher or facilities for performing dishwashing.

55.614 There shall be at least one operable window or exhaust system for removal of smoke, odors, and fumes in the cooking area.

55.615 There shall be three days supply of food in each home at all times as posted on the menus. Opened foods that are to be stored shall immediately be dated with the date that the foods were opened.

SECTION 55.7 - MEDICAL AND HEALTH CARE

55.701 Each person shall have a primary care physician and a dentist and shall receive an annual physical and dental examination unless otherwise recommended by the appropriate professional. Routine screening and laboratory examinations shall be obtained when such are determined warranted by the physician.

55.702 Within 30 days after services are initiated by the agency, the following screenings shall be scheduled if the need for such is identified by the physician, person, advocate, guardian or team:

- a. Nutritional;
- b. Visual;
- c. Auditory;
- d. Speech and language;
- e. Occupational therapy;
- f. Physical therapy;
- g. Assistive technology;
- h. Other screenings as identified.

55.703 When requested by the person, advocate, guardian or team or when indicated by the screening results, the person shall receive a comprehensive evaluation in the area(s) within 90 days.

55.704 Each person shall have his/her own toothbrush which is used regularly and stored antiseptically.

55.705 Persons shall be supported, to the extent possible, to attend to their own health care needs by making medical and dental appointments, cooperating in receiving medical and dental treatment and in self-administering their medications.

55.706 The Neighborhood Home provider shall have policies and procedures for infection control as it pertains to persons, staff, and visitors. Upon confirmation of reportable disease, the appropriate County Health Officer of the Division of Public Health shall be notified.

55.707 The Neighborhood Home provider shall have on file results of tuberculin tests:

- a. Performed annually for all employees and volunteers, and
- b. Performed on all newly admitted persons. The tuberculin test to be used is the Mantoux test containing 5 TU-PPD stabilized with Tween, injected intradermally, using a needle and syringe, usually on the volar surface of the forearm. Persons found to have a significant reaction (defined as 10 mm of induration or greater) to tests shall be reported to the Division of Public Health and managed according to recommended medical practice. A tuberculin test as specified, done within the twelve months prior to employment or admission, or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement.

55.708 Each person's health and immunization history shall be updated continuously.

55.709 Persons who require adaptations of the

environment or who use adaptive, corrective, mobility, orthotic, prosthetic, communication or other assistive devices or supports shall receive instruction in their proper use and shall receive professional assessments annually, or as otherwise prescribed, to ascertain the continued applicability and fitness of those devices or supports.

55.710 Adaptive, corrective, mobility, orthotic and prosthetic equipment shall be available, kept clean and in good repair and used as appropriate.

55.711 If any of the above supports are needed or used, the person's plan shall specify:

- a. the reason for each support;
 - b. the situations in which each is to be applied;
- and
- c. a schedule for the use of each support.

SECTION 55.8 - MEDICATIONS

55.801 Individuals receiving medication shall be instructed in self-administration to the limit of their understanding. The Neighborhood Home Provider shall also include instruction in the purpose, dosage and possible side effects of the prescribed medication to the limit of the person's understanding.

55.802 Individuals who administer their own medication shall:

- a. Understand the purpose of the medication, dosage times and possible side effects;
- b. Know what to do if a dosage is missed, extra medication is taken or an adverse reaction is experienced;
- c. Be educated in the maintenance of his/her own medication history and in the recording of information needed by the physician to determine medication and dosage effectiveness.

55.803 Medications shall be used only by the person for whom they were prescribed.

55.804 Injectable medication shall only be administered by licensed practical nurses, registered nurses or other licensed medical professionals.

55.805 Providers who have successfully completed a Board of Nursing approved Assistance with Self-Administration of Medication (AWSAM) training program may assist persons in the taking of medication, provided that the medication is in the original container and properly labeled. The medication shall be taken exactly as indicated on the label.

55.806 A medication record shall be maintained for each person. The record shall show the name and strength of each medication being taken by the person. Each dose administered shall be recorded by date, time and initials of person or persons assisting. Effectiveness shall be monitored by clinical support staff.

55.807 The Neighborhood Home Provider shall assist the person in reporting side effects to the physician who prescribed the medication. Suspected drug reactions shall be

noted in the medication record and documented in the active file of the person.

55.808 All medication errors and corrective actions shall be documented and reported in accordance with provider written policy.

55.809 Serious medication errors and reactions to medication shall be reported immediately to the physician and to the Neighborhood Home provider's chief executive officer or to a person designated by written policy.

55.810 A three-day supply of medication shall be available at all times. All medication shall be stored in its original container either from the pharmacy, physician or manufacturer with the proper label and specific directions for assistance.

55.811 Medications to be applied externally shall be distinguishable from medications to be taken internally by means of packaging, labeling and segregation within storage areas.

55.812 Medication shall be stored and locked under proper conditions of temperature, light, humidity and ventilation. Room temperature acceptable for medication storage is between 59 and 86 degrees Fahrenheit.

55.813 Medications requiring refrigeration shall be kept in a separate locked box within the refrigerator. A temperature monitoring device shall be used and the temperature shall be maintained between 36 and 42 degrees Fahrenheit.

55.814 A supply of over-the-counter medication shall be stocked at each home. However, the use of such medications must be authorized by the person's physician in writing, and their use documented in the medication record and in the person's active file.

55.815 Discontinued and outdated medications and containers with illegible or missing labels shall be promptly disposed of in a safe manner.

SECTION 55.9 - PERSONS' RECORDS

55.901 A cumulative record containing all information and documents related to supporting and providing services to the person shall be maintained chronologically for each person.

55.902 The record shall be readily accessible to those who require such access in order to provide services as described in the person's support plan.

55.903 All information concerning a person served, including information contained in an automated data bank, is confidential; and access shall be limited to staff who need to see the record, or to persons specifically authorized by the person or legally qualified representatives.

55.904 Entries in a person's record referring to actions with another person shall be coded in such a way as to protect the confidentiality of the persons served.

55.905 The provider shall be responsible for the safekeeping of each person's record and for securing it

against loss, destruction, or use by unauthorized persons as evidenced by policies and practices.

55.906 Incident reports, with adequate documentation, shall be completed for each incident. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's family or guardian, attending physician and DDDS or law enforcement authorities when appropriate. Incident reports shall be kept on file by the provider. Reportable incidents shall be communicated immediately to the Division of Developmental Disabilities Services.

SECTION 55.10 - TRANSPORTATION

55.1001 The transportation system operated by, or under contract to, the home shall meet local and state licensing, inspection, insurance, and capacity requirements.

55.1002 Vehicles used to transport persons shall be equipped with a seat belt for each person and a means of communication. Vehicles used to transport persons with physical impairments shall be adapted to their needs.

55.1003 Drivers of vehicles shall have valid and appropriate driver's licenses.

55.1004 Emergency transportation shall be available on a 24-hour basis.

55.1005 The provider shall provide or arrange transportation for a person's routine medical and dental care.

SECTION 55.11 - SAFETY AND SANITATION

55.1101 The Neighborhood Home's program shall comply with all applicable provisions of federal, state and local laws, regulations and codes pertaining to health, safety, sanitation and plumbing.

55.1102 The provider shall maintain records and reports of periodic fire safety, health, sanitation, and environmental inspections required by local and state laws and regulations. The provider shall document actions taken to correct deficiencies noted in these reports.

55.1103 The provider shall prepare written policies that outline maintenance (including electrical maintenance) and cleaning procedures, storage of cleaning materials and/or pesticides and other toxic materials.

55.1104 Hot water at shower, bathing and handwashing facilities shall not exceed 115 degrees F.

55.1105 There shall be adequate, safe and separate areas of storage of:

- a. Food items;
- b. Cleaning agents, disinfectants and polishes;
- c. Poisons, chemicals and pesticides;
- d. Eating, serving and cooking utensils;
- e. Clean and dirty linen.

55.1106 Firearms shall be prohibited on the premises of the Neighborhood Home.

55.1107 Active attention shall be directed to avoiding hazards to the people supported, such as dangerous substances, sharp objects, unprotected electrical outlets, slippery floors or stairs, exposed heating devices, scalding water or broken glass. However, people shall be prepared for and progressively exposed to routine risks that are likely to be encountered in normal environments.

SECTION 55.12 - BEDROOMS

55.1201 Rooms or other areas of the Neighborhood Home that are not ordinarily sleeping rooms may not be used for sleeping purposes.

55.1202 Sleeping rooms shall have an outside window and must provide for quiet and privacy. Adequate electrical outlets shall be conveniently located in each room with at least one (1) light fixture switch at the entrance to the bedroom.

55.1203 Bedrooms shall have walls that extend from floor to ceiling, and shall accommodate no more than two persons.

55.1204 Multi-bed bedrooms shall provide at least 75 square feet per person.

55.1205 Single-bed bedrooms shall contain at least 100 square feet.

55.1206 Bedrooms shall contain space, as needed, for bedside assistance and to accommodate the use and storage of mobility devices and prosthetic equipment.

55.1207 Each person shall have a bed suitable for his or her physical stature and condition.

55.1208 Mattresses, bedding and pillows shall be clean and provide comfort and sufficient support and warmth.

55.1209 The use of hospital-type beds, plastic or other materials to keep beds and pillows dry, flat pillows or the absence of pillows or other departures from normalcy shall be justified in each case in the person's record and reviewed at least annually.

55.1210 There shall be a sturdy bedside stand, chair, a desk or table, and reading light for the person.

55.1211 Each bedroom window shall have a window treatment that closes for privacy.

55.1212 People shall be encouraged, and assisted as needed, to decorate their bedrooms as they choose.

SECTION 55.13 - BATHROOMS

55.1301 There shall be private toilet facilities with a shower or tub in good repair in each home. These facilities shall be accessible to the person according to his/her needs and shall facilitate maximum independence.

55.1302 Traffic to and from any room shall not be through a bedroom or bathroom except where a bathroom opens directly off the room it serves.

55.1303 There shall be at least one (1) window or

mechanical ventilation to the outside of the bathroom.

55.1304 Toilets, bathing and toileting appliances shall be equipped for use by physically handicapped persons, as dictated by such persons' needs.

55.1305 There shall be at least one (1) toilet of appropriate size for each four (4) persons. Each toilet shall be equipped with a toilet seat and toilet tissue.

55.1306 There shall be at least one (1) wash basin for each four (4) persons.

55.1307 There shall be at least one (1) tub or shower for each four (4) persons.

55.1308 Wash basins shall be available in or immediately adjacent to bathrooms and/or toilet rooms.

55.1309 Shower and tub areas shall be equipped with substantial hand-grip bars and slip-resistant floor surfaces.

SECTION 55.14 - EMERGENCIES AND DISASTERS

55.1401 Fire safety in Neighborhood Homes shall comply with the rules and regulations of the State Fire Prevention Commission or the appropriate local jurisdiction. All applications for a license or renewal of a license shall include a letter certifying compliance by the Fire Marshal with jurisdiction. Notification of non-compliance with the applicable rules and regulations shall be grounds for revocation of a license.

55.1402 The home shall have a minimum of two means of egress.

55.1403 The home shall have an adequate number of UL approved smoke detectors in working order.

a. In a single level home, a minimum of one smoke detector shall be placed between the bedroom area and the remainder of the home.

b. In a multi-story home, a minimum of one smoke detector shall be on each level. On levels which have bedrooms, the detector shall be placed between the bedroom area and the remainder of the home.

55.1404 There shall be at least one functional two and one-half to five pound ABC fire extinguisher on each floor of living space in the home that is readily accessible, visible and mounted on the wall. Inspections shall be completed by the service company or as regulated by the Fire Marshal. Each extinguisher shall be checked annually.

55.1405 The provider shall have written procedures for meeting all emergencies and disasters such as fire, severe weather, and missing persons; and such procedures shall be communicated to all staff.

55.1406 The procedures shall assign specific personnel to specific tasks and responsibilities.

55.1407 The procedures shall contain instructions related to the use of alarm and signal systems. Provisions shall be made to alert persons living in the home according to their abilities, and these provisions shall be included in the procedures.

55.1408 Evacuation routes and the location of fire-

fighting equipment shall be posted in areas used by the public as required by the applicable fire safety regulations. The number and placement of postings are otherwise dictated by building use and configuration and by the needs of persons and staff.

55.1409 The provider shall maintain an adequate communication system to ensure that on and off-duty personnel and local fire and safety authorities are notified promptly in the event of an emergency or disaster.

55.1410 The telephone numbers of the nearest poison control center and the nearest source of emergency medical services shall be posted.

55.1411 Provisions shall be made for emergency auxiliary heat and lighting by means of alternate sources of electric power, alternate fuels, and stand-by equipment, or arrangements with neighbors, other agencies or community resources.

SECTION 55.15 - EVACUATION DRILLS

55.1501 Drills shall be held quarterly for each shift with one drill per calendar month. Evacuation drills shall be held on different days, at different times, including times when people are asleep.

55.1502 The location of egress during these evacuation drills shall be varied, with window evacuation procedures discussed as an alternative, if not practiced.

55.1503 During drills, persons shall be evacuated with staff assistance to the designated safe area outside of the home.

55.1504 As evidenced by evacuation drill reports that are maintained by the Neighborhood Home, drills shall assure that all persons and staff are familiar with the evacuation requirements and procedures. Any problems persons have evacuating a building during a drill shall result in a written plan of specific corrective action(s) to be taken.

55.1505 Persons who are unable to achieve the exit schedule prescribed by the Life/Safety Code with available assistance shall be either relocated or provided with additional assistance.

SECTION 55.16 - WAIVERS OF STANDARDS

55.1601 Specific standards may be waived by the Division of Long Term Care Residents Protection provided that each of the following conditions is met:

a. Strict enforcement of the standard would result in unreasonable hardship on the provider.

b. The waiver is in accordance with the particular needs of the person.

c. A waiver must not adversely affect the health, safety, welfare, or rights of any person.

d. Residents may be informed of the waiver request and asked for input, as appropriate.

55.1602 The request for a waiver must be made to the Division of Long Term Care Residents Protection in writing

by the provider with substantial detail justifying the request. The Division of Long Term Care Residents Protection will inform the provider of its decision within 30 days of receipt of the written request.

55.1603 A waiver granted by the Division of Long Term Care Residents Protection is not transferable to another Neighborhood Home provider in the event of a change in ownership.

55.1604 A waiver shall be granted for a period up to the term of the license.

SECTION 55.17 - SEVERABILITY

55.1701 Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

Adopted //03

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Food Stamp Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM). The proposed changes address exempt aliens and reporting changes and are effective October 1, 2003.

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 Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by August 31, 2003.

The action concerning the determination of whether to adopt the proposed regulation 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.

Summary Of Proposed Changes

1. DSSM 9081.3 - Exempt Aliens: new rules broaden the exemptions from sponsor deeming, especially children under 18 years of age, effective October 1, 2003.

2. DSSM 9085 - Reporting Changes: extends simplified reporting rules to all households except for the elderly or disabled household with no earned income.

Citation:

Title IV of the Farm Security and Rural Investment Act of 2002 ("Farm Bill").

DSS PROPOSED REGULATION #03-25**REVISIONS:****9081.3 Exempt Aliens**

The deeming of sponsor income in steps 1-5 above do not apply to:

1. Children under 18 years of age regardless of when they entered the United States;

2. Immigrants whose deeming period had ended;

3. Sponsored aliens who are ineligible for food stamps because of immigration status will not have the sponsor's income deemed to other eligible members of the alien's household;

~~4.~~ 4. An alien who is a member of his or her sponsor's food stamp household;

~~5.~~ 5. An alien who is sponsored by an organization or group as opposed to an individual;

~~6.~~ 6. An alien who is not required to have a sponsor under the Immigration and Nationality Act, such as a refugee, a parolee, an asylee, or a Cuban or Haitian entrant;

~~7.~~ 7. An alien whose sponsor has not signed a legally binding affidavit of support, the INS Form I-864 or I-864-A;

~~8.~~ 8. A battered alien spouse, alien parent of a battered child, or child of a battered alien, for 12 months after a determination is made that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer. After 12 months, do not deem the batterer's income and resources if the battery is recognized by a court or the INS had a substantial connection to the need for benefits, and the alien does not live with the batterer.

~~9.~~ 9. An indigent alien who has been determined unable to obtain food or shelter taking into account the alien's own income plus any cash, food or housing, or other assistance provided by other individuals, including the sponsor(s).

9085 Reporting Changes

[273.12]

Certified food stamp households are required to report

the following changes in circumstances:

Simplified Six Month Reporting Requirements

The following reporting requirements are for all households except those households where all members are elderly or disabled and without earned income, ~~homeless, or migrant or seasonal farmworkers:~~

- Households are required to only report income changes when the monthly income exceeds 130 percent of the poverty income guideline for the household size that existed at the time of certification or recertification.
- When a household's monthly income exceeds the 130 percent of the poverty income guideline, the household is required to report that change within ten days after the end of the month that the household determines the income is over the 130 percent amount.
- Households will not have to report any changes in the household composition, residence and resulting changes in shelter costs, acquisition of non-excluded licensed vehicles, when liquid resources exceed \$2000, and changes in the legal child support obligation.

Additional reporting requirement for ABAWD individuals:

- Adults living in a home without any minor children, who are getting food stamps because they are working over 20 hours a week, must report when they start working less than 20 hours per week.

Reporting requirements for households not eligible for the simplified six month reporting requirements above:

- Changes in the sources of or in the amount of gross unearned income of more than \$25, except changes in the public assistance grants. Since DSS has prior knowledge of all changes in the public assistance grants, action shall be taken on the DSS information. Changes reported in person or by telephone are to be acted upon in the same manner as those reported on the change report form;
- All changes in household composition, such as the addition or loss of a household member;
- Changes in residence and the resulting changes in shelter costs;
- The acquisition of a licensed vehicle not fully excludable under DSSM 9051 (for non-categorically eligible households);
- When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of \$2,000 (for non-categorically eligible

- households);
- Changes in the legal obligation to pay child support; and
- Changes in work hours that bring an ABAWD individual below 20 hours per week, averaged monthly.

Certified households must report changes within ten (10) days of the date the change becomes known to the household.

An applying household must report all changes related to its food stamp eligibility and benefits at the certification interview. Changes, as provided in this Section, which occur after the interview but before the date of the notice of eligibility, must be reported by the household within ten (10) days of the date of the notice.

Only the reporting requirements in this Section and no other reporting requirements can be imposed by the Division.

DEPARTMENT OF LABOR

Statutory Authority: 29 Delaware Code,
Section 6960 (29 Del.C. §6960)

Pursuant to the Authority granted to the Department of Labor under 29 Del.C. §8503(7), the Department is proposing an amendment to regulations under 29 Del.C. §6960, "**Prevailing Wage Requirements**". Interested parties are invited to present their views at the public hearing which is scheduled for

9:00 a.m., Thursday, August 21, 2003,
Division of Motor Vehicles,
2nd Floor Conference Room,
Public Safety Building,
303 Transportation Circle,
Dover, DE 19901.

Interested parties can obtain copies of the proposed amendments at no charge by contacting the Office of Labor Law Enforcement at:

4425 North Market Street
Wilmington, DE 19802
or by telephone at (302) 761-8318.

PREVAILING WAGE REGULATIONS

3.0 Concepts and Definitions

3.1 This section presents definitions and explanations to provide a basic understanding of elements inherent in

collecting wage data and issuing wage determinations, and enforcing prevailing rates.

3.1.1 Activity Covered. 29 Del.C. §6960 applies to every contract or aggregate of contracts relating to a public works project in excess of \$100,000 for new construction (including painting or decorating) or \$15,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of building or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers.

3.1.2 "Building" or "Work". The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment is not a "building" or "work" within the meaning of the regulations unless conducted at the site of such a building or work.

3.1.3 Laborers and Mechanics. The terms "laborer" and "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices and Supportive Service Program (SSP) trainees. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity are not deemed to be laborers or mechanics. Working foremen who devote more than twenty (20) percent of their time during a workweek to mechanic or laborer duties are deemed to be laborers and mechanics for the time so spent.

The terms "laborers" and "mechanics" do not apply to watchmen, guards, dispatchers, or weighmasters. The following classifications of workers are recognized by the Department:

Asbestos Workers	Bricklayers
Carpenters	Cement Finishers
<u>Electrical Line Worker</u>	Electricians
Elevator Constructors	Glaziers
Iron Workers	Laborers
Millwrights	Painters
<u>Pile Driver</u>	Plasterers

Plumbers/Pipefitters/Steamfitters
Power Equipment Operators
Roofer- Composition
Roofer - Shingle, Slate and Tile
Sheet Metal Workers Soft Floor Layers
Sprinkler Fitters
Terrazzo/Marble/Tile Setters
Terrazzo/Marble/Tile Finishers
Truck Drivers

Definitions for each classification are contained in a separate document entitled "Classifications of Workers Under Delaware's Prevailing Wage Law." Workers performing tasks not listed in the Department's definitions (but performed by mechanics and laborers on public projects) shall be classified by the Department. The Department will utilize the U.S. Department of Labor's Dictionary of Occupational Titles (Fourth Edition, Revised 1991) to determine the correct classifications of workers, as those definitions relate to the classifications recognized by the Department. In cases of conflicts or voids in the Dictionary of Occupational Titles, the Department may utilize additional sources including, but not limited to, the U.S. Department of Labor, employer organizations, employee organizations, or other government agencies involved in classifying workers. Classification determinations shall be recorded by the Department as they are made and shall be published annually.

Laborers and mechanics are to be paid the appropriate wage rates for the classification of work actually performed, without regard to skill.

3.1.4 Apprentices and Supportive Service Program Trainees.

3.1.4.1 Definitions. As used in this section:

3.1.4.1.1 The term "apprentice" means persons who are indentured and employed in a bona fide apprenticeship program and individually registered by the program sponsor with the Delaware Department of Labor.

3.1.4.1.2 The term "apprenticeship agreement" means a written agreement between an apprentice and either his/her employer or a joint apprenticeship committee which contains the terms and conditions of the employment and training of the apprentice.

3.1.4.1.3 The term "apprenticeship program" means a complete plan of terms and conditions for the employment and training of apprentices.

3.1.4.1.4 The term "Joint apprenticeship committee" means a local committee equally representative of employers and employees which has been established by a group of employers with a bona fide bargaining agent or agents to direct the training of apprentices with whom it has made agreements.

3.1.4.1.5 The term "SSP Trainee" or "trainee" means a participant in the "Supportive Service

Program" mandated by the Federal Highway Administration for federally aided state highway projects.

3.1.4.1.6 The term "registration" means the approval by the Department of Labor of an apprenticeship program or agreement as meeting the basic standards adopted by the Bureau of Apprenticeship and Training, United States Department of Labor. The term "registration" for SSP Trainees means the individual registration of a participant in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

3.1.4.2 Employment of Apprentices and SSP Trainees on State Projects.

3.1.4.2.1 Apprentices and SSP Trainees will be permitted to work as such on State contracts in excess of \$100,000 for new construction or \$15,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction only when they are registered with the Department of Labor or an approved SSP Training Program.

3.1.4.2.2 The mechanic's rate on all such State contracts is that rate determined by the Department of Labor. The percentage of the mechanic's rate that the registered apprentice or SSP Trainee receives will be the percentage that the apprentice or trainee qualifies for under the terms of the individual's formal Apprenticeship/Trainee agreement.

3.1.4.2.3 Any person employed at an apprentice or trainee wage rate who is not registered as above, shall be paid the wage rate determined by the Department of Labor for the classification of work (s)he actually performed.

3.1.4.2.4 The ratio of apprentices to mechanics on the site of any work covered by 29 **Del.C.** §6960 in any craft classification may not be greater than the ratio permitted to the contractor for the entire workforce under the registered apprenticeship program. Any apprentice performing work on the job site in excess of the ratio permitted under the registered program must be paid not less than the wage rate that the applicable wage determination specifies for the work (s)he actually performs. Entitlement to mechanic's wages shall be based upon seniority in the apprenticeship program or (in the case of equal seniority) seniority on the job site.

3.1.4.3 Records.

3.1.4.3.1 Every employer who employs an apprentice or SSP trainee under this part must keep the records required by 19 **Del.C.** Ch.9 and 11, including designation of apprentices or trainees on the payroll. In addition, every employer who employs apprentices or SSP trainees shall preserve the agreements under which the individuals were employed.

3.1.4.3.2 Every joint apprenticeship committee or SSP Program sponsor shall keep a record of

the cumulative amount of work experience gained by the apprentice or trainee.

3.1.4.3.3 Every joint apprenticeship committee shall keep a list of the employers to whom the apprentice was assigned and the period of time (s)he worked for each. Every SSP Program sponsor shall keep a list of the projects to which the trainee was assigned and the period of time (s)he worked on each.

3.1.4.3.4 The records required by paragraphs 3.1.4.3.1, 3.1.4.3.2, and 3.1.4.3.3 of this section shall be maintained and preserved for at least three (3) years from the termination of the apprenticeship or training period. Such records shall be kept safe and accessible at the place or places of employment or at a central location where such records are customarily maintained. All records shall be available at any time for inspection and copying by the Department of Labor.

3.1.5 Working Foremen. 29 Del.C. §6960 does not apply to (and therefore survey data are not collected for) workers whose duties are primarily administrative, executive or clerical, rather than manual. However, working foremen who devote more than twenty (20) percent of their time during a workweek to mechanic or laborer duties are laborers and mechanics for the time so spent and data will be collected for the hours spent as laborers or mechanics.

3.1.6 Helpers. Helper classifications are not recognized by the Department of Labor. All laborers and mechanics are to be paid the appropriate wage rate for the classification of work actually performed, without regard to skill.

3.1.7 Construction Projects. In the wage determination process, the term "project" refers to construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work away from the site of the work and consists of all construction necessary to complete a facility regardless of the number of contracts involved so long as all contracts awarded are closely related in the purpose, time and place. For example, demolition or site clearing work preparatory to construction is considered a part of the project.

3.1.7.1 Character Similar. 29 Del.C. §6960 requires the predetermination of wage rates which are prevailing on projects of a "character similar to the construction work." As a general rule, the Department identifies projects by end use type and classifies them into three major categories:

3.1.7.1.1 Building Construction. Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level as well as incidental grading, utilities and paving. Additionally, such structures need not be

"habitable" to be building construction. The installation of heavy machinery and/or equipment shall not change the project's character as a building. Examples: Alterations and additions to nonresidential buildings; Apartment buildings (5 stories and above); Arenas (enclosed); Auditoriums; Automobile parking garages; Banks and financial buildings; Barracks; Churches; Hospitals; Hotels; Industrial buildings; Institutional buildings; Libraries; Mausoleums; Motels; Museums; Nursing and convalescent facilities; Office buildings; outpatient clinics; Passenger and freight terminal buildings; Police stations; Post offices; City halls; civic centers; Commercial buildings; Court houses; Detention facilities; Dormitories; Farm buildings; Fire stations; Power plants; Prefabricated buildings; Remodeling buildings; Renovating buildings; Repairing buildings; Restaurants; Schools; Service stations; Shopping centers; Stores; Subway stations; Theaters; Warehouses; Water and sewage treatment plants (building only).

3.1.7.1.2 Heavy Construction. Heavy projects are those that are not properly classified as either "building" or "highway". Unlike these classifications, heavy construction is not a homogeneous classification. Examples of Heavy construction: Antenna towers; Bridges (major bridges designed for commercial navigation); Breakwaters; Caissons (other than building or highway); Canals; Channels; Channel cut-offs; Chemical complexes or facilities (other than buildings); Cofferdams; Coke ovens; Dams; Demolition (not incidental to construction); Dikes; Docks; Drainage projects; Dredging projects; Electrification projects (outdoor); Flood control projects; Industrial incinerators (other than building); Irrigation projects; Jetties; Kilns; Land drainage (not incidental to other construction); Land leveling (not incidental to other construction); Land reclamation; Levees; Locks, Waterways; oil refineries; Pipe lines; Ponds; Pumping stations (pre-fabricated drop-in units); Railroad construction; Reservoirs; Revetments; Sewage collection and disposal lines; Sewers (sanitary, storm, etc.); Shoreline maintenance; Ski tows; Storage tanks; swimming pools (outdoor); Subways (other than buildings); Tipples; Tunnels; Unsheltered piers and wharves; Viaducts (other than highway); Water mains; Waterway construction; Water supply lines (not incidental to building); Water and sewage treatment plants (other than buildings); Wells.

3.1.7.1.3 Highway Construction. Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, greenway projects and other similar projects not incidental to building or heavy construction. Examples: Alleys; Base courses; Bituminous treatments; Bridle paths; Concrete pavement; Curbs; Excavation and embankment (for road construction); Fencing (highway); Grade crossing elimination (overpasses or underpasses); Parking lots; Parkways; Resurfacing streets and highways; Roadbeds; Roadways; Shoulders; Stabilizing

courses; Storm sewers incidental to road construction; Street Paving; Guard rails on highway; Highway signs; Highway bridges (overpasses; underpasses; grade separation); Medians; Surface courses; Taxiways; Trails.

3.1.7.1.4 Multiple Categories. In some cases a project includes construction items that in themselves encompass different categories of construction. Generally, a project is considered mixed and a "multiple schedule" used if the construction items are substantial in relation to project cost, i.e. more than twenty (20) percent. Only one schedule is used if construction items are "incidental" in function to the overall character of a project (e.g., paving of parking lots or an access road on a building project), and if there is not a substantial amount of construction in the second category.

3.1.7.2 Site of Work. A basic characteristic of the construction industry is the continual shift in the site of employment. 29 Del.C. §6960 provides that prevailing wages are to be paid to "...all mechanics and laborers employed directly upon the site of the work..." (emphasis added). The site of the work is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed.

3.1.8 Prevailing Wage Rates. Every contract and the specifications for every contract to which section 6960 applies are required to contain a provision stating the minimum wages to be paid various classes of laborers and mechanics. These rates are to be based upon the wages that the Department of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the county in which the work is to be performed, as reported in the Department's annual prevailing wage survey.

The prevailing wage shall be the wage paid to a majority of employees performing similar work as reported in the Department's annual prevailing wage survey or, in the absence of a majority, the weighted average wage paid to all employees reported.

3.1.9 Wages. The term "wages" means the basic hourly rate of pay plus fringe benefits as defined below.

3.1.10 Fringe Benefits. Fringe benefits may be considered in determining whether an employer has met his/her prevailing wage obligations. As a general rule, any fringe benefit may be considered as long as the employer is not legally required to provide it. Therefore, benefits such as health, welfare or retirement benefits, vacation, holiday pay or sick leave pay could be considered fringe benefits. Employer payments for unemployment insurance, workers' compensation, FICA, etc. (which are required by law) would not be considered fringe benefits.

In order to be considered a valid fringe benefit, payments must be made either in cash, or contributed to an irrevocable escrow account at least once each month. "Irrevocable" means that the benefit may not be

forfeited. However, a benefit plan can be considered by the Department provided that payments to the plan are made irrevocably by the employer, even though certain employees may forfeit their individual rights to the benefits under certain prescribed conditions. Thus, if payments are made by the employer, and no return of those payments is possible, the plan would be acceptable, even though individual employees might not receive the benefits under certain situations. Benefits forfeited by such employees remain in an escrow account for the use of the other employees.

The actual cost of the benefit to the employer is the basis for evaluating the value of the fringe benefit. Administration costs are not considered fringe benefits.

The cost of the benefits must be apportioned between employment on both public and private projects. Thus, the total value of the benefit would be divided by the total amount of time worked. This will result in benefit per unit of time which would be equally applicable to public and private employment projects. Example: an employee works two weeks (80 hours) on a public project and two weeks (80 hours) on a private project. The employer pays \$160 for the employee's health insurance for the month. The value of the benefit is \$1.00 per hour. The employer is not permitted to apply the entire premium to the public project alone.

3.1.11 Peak Week. In determining prevailing wages, the Department utilizes a "peak week" survey concept to ensure that wage and fringe benefit data obtained from employers reflects for each classification, the payroll period during which the greatest number of workers in each classification are used on a project. The survey solicits the number of employees and wages paid at each given rate during the peak week. The contractor or reporting organization selects the week (between July 1 to December 31 of the previous year) during which the greatest number of each classification of laborers and mechanics was working. Peak weeks may be different for each classification of worker.

3.1.12 Wage Determinations. A "wage determination" is the listing of wages (including fringe benefits) for each classification of laborers and mechanics, which the Administrator has determined to be prevailing in a given county and type of construction. Wage determinations are issued annually.

3.1.13 Maintenance Work. To "maintain" means to preserve or keep in an existing state or condition to prevent a decline, lapse, or cessation from that state or condition. Wages paid to workers performing maintenance work shall not be used in determining prevailing wage rates.

3.1.14 Area. The term "area" in determining wage rates under 29 Del.C. §6960 shall mean the county of the State in which the work is to be performed. The term "area" in determining classifications of workers under 29

Del.C. §6960 shall mean the State of Delaware.

3.1.15 Secretary. "Secretary" means the Secretary of Labor for the State of Delaware.

3.1.16 Administrator. "Administrator" means the Administrator of the Office of Labor Law Enforcement for the Delaware Department of Labor, Division of Industrial Affairs.

3.1.17 Department. "Department" means the Delaware Department of Labor.

See 1 DE Reg. 519 (11/1/97)

See 4 DE Reg. 1186 (1/1/01)

See 4 DE Reg. 205 (7/1/01)

6.0 Issuing Wage Determinations.

6.1 Publication of Preliminary Determination.

On or before February 15th of each year, the Department shall publish a "Preliminary Determination of Prevailing Wage Rates." In the event that February 15th falls on a Saturday, Sunday, or legal holiday, the Department shall issue the preliminary results on the next Department business day following February 15th.

6.2 Appeals.

From February 15th to February 25th, the Administrator of the Office of Labor Law Enforcement will consider protests and inquiries relating to the preliminary results. An interested person seeking review or reconsideration of a wage determination must present a request in writing accompanied by a statement with any supporting data or other pertinent information.

Requests for reconsideration must be substantive and specific in order to be considered by the Department. For example: A request stating that, "the highway rates don't look right", would not be considered substantive or specific. However, a request stating that, "residential rates appear to have been erroneously included for carpenters in New Castle County Building Construction" would be considered substantive and specific.

From February 25th to March 1st, the Department will attempt to gather information necessary to resolve objections and requests for reconsideration. However, no appeals, objections, or requests will be considered if received by the Department after the February 25th deadline. The Department will respond in writing to all interested persons who submit a written request for review.

An appeal from the Administrator's decision must be made in writing and received by the Secretary of Labor within five calendar days from the date of the postmark on the Administrator's decision. The Secretary or his/her designee shall render a final decision in writing.

6.3 Issuance of Determination

On or before March 15th of each year, the Department shall publish its annual "Prevailing Wage Determination." The Determination shall be valid for a period of one year or until subsequent rates or amendments

are issued by the Department.

Public agencies (covered by the provisions of 29 **Del.C.** §6960) are required to use the rates which are in effect on the date of the publication of specifications for a given project. "Date of publication" means the date on which the specifications are made available to interested persons (as specified in the published bid notice). In the event that a contract is not executed within one hundred and twenty (120) days from the earliest date the specifications were published, the rates in effect at the time of the execution of the contract shall be the applicable rates for the project.

6.4 Post Determination Actions. Wage determinations will be modified only for the purpose of correcting errors. Determinations will not be modified to include survey data received after the close of the survey period.

6.4.1 Amendment to Correct Errors of Inadvertence. Amendments may be issued to correct inadvertent errors in the written text of a wage determination. The sole purpose is to correct wage schedules so that the wage determination will accurately and fully reflect the actual rates prevailing in the locality at the time the wage determination was issued. Such amendments (which may be issued at any time) are used to correct errors due to transposition of rates and other clerical mistakes made in processing the schedule; they are not used to correct errors in judgment. Contracts which have already been awarded will not be affected by such amendments. Amendments issued more than ten (10) days prior to a bid opening must be used. Amendments issued less than ten (10) days prior to a bid opening may be disregarded.

6.4.2 Amendment to Correct Errors in Survey Data. Amendments which affect the validity of a wage determination may be issued to correct errors in rates resulting from erroneous information submitted by survey participants.

When the Department of Labor is notified in writing that a survey participant has submitted erroneous data (with regard to wages, fringe benefits, characterization of project, classification of workers, or county in which the work was performed), the Department shall determine the validity of the data. Corrections, if warranted, shall be made in the form of amended determinations at the end of each calendar quarter (beginning with the date the wage determination was issued). Contracts which have already been awarded will not be affected by such amendments. Amendments issued more than ten (10) days prior to a bid opening must be used. Amendments issued less than ten days prior to a bid opening may be disregarded.

6.4.3 Incorrect Wage Determinations: Before Contract Award.

If notification is received from the Department of Labor any time prior to the contract award that the bid documents contain the wrong wage schedule,

such schedule or wage determination shall no longer be valid and may not be used - without regard to whether the bid opening has occurred.

If the bid documents contain no wage schedule, it is the contractor's (or subcontractor's) responsibility to contact the Department of Labor for the correct wage schedule. Such requests must be in writing. Responses to such requests will be in writing. Any contractor or subcontractor found using an incorrect wage schedule will be required to pay the correct wages based upon the proper classification of work as determined by the Department of Labor.

6.4.4 Lack of Valid Wage Determination: After Contract Award. If a contract is awarded without a wage determination or awarded with an incorrect wage determination, the contractor is responsible for the payment of the appropriate prevailing wage rates as determined by the Department of Labor.

6.4.5 Additional Classifications. Any class of laborers or mechanics which is not listed in the applicable wage determination but which is to be employed under the contract is to be classified by the Department of Labor in accordance with the procedures set forth in Part III, Section C, of these regulations.

6.4.6 Determination of Wages for Classifications for Which No Rates Are Published. Whenever a public project requires the services of a laborer or mechanic for which no rate has been published, the Department shall be notified in writing and shall determine the worker classification (from among the 246 classifications recognized by the Department of Labor) and the rate to be paid. The rate shall be determined as follows:

6.4.6.1 Using "Building Construction" rates as the baseline rate in each county, the Department of Labor will determine the relationship between the "Building Construction" rates and the rates of the type of construction for which the rate is sought. To determine the relationship, (which is to be expressed as a percentage), the Department will use only those rates which were determined by data received in the relevant survey.

6.4.6.2 The Department will compare only those classifications for which corresponding rates were determined.

6.4.6.3 The total of the corresponding rates will be determined for each type of construction. The Heavy or Highway total will be divided into the Building rate to find the percentage of the Heavy or Highway rate to the Building rate.

6.4.6.4 The Department of Labor will multiply the Building rate for the requested classification of worker by the percentage determined in "c" to establish the applicable prevailing wage rate.

Hypothetical example:

A plumber's rate is needed for a New

Castle County project. The Department of Labor has not published a rate for this classification.

The Department of Labor will determine the relationship between New Castle County Highway rates and Building rates, comparing only corresponding rates which were actually determined by the relevant survey (rates carried forward from previous years due to lack of sufficient data are not to be used).

N.C.C. Building	N.C.C. Highway	
Bricklayers	\$19.65	\$12.29
Carpenters	23.37	21.69
Cement Finishers	23.55	15.52
Laborers	13.62	10.60
Power Equipment Operator	22.94	15.77
Truck Drivers	15.15	13.75
	\$118.28	\$89.62
	\$89.62 ÷ 118.28=75.77%	

The plumber's rate for New Castle County Building is \$26.54. $\$26.54 \times 75.77\% = \20.11

The plumber's rate for New Castle County Highway = \$20.11

The same method can be used between corresponding types of construction when the Building construction rates do not contain a rate for the requested classification of worker; i.e., Heavy construction rates in Sussex County can be compared with Heavy construction rates in New Castle.

See 1 DE Reg. 519 (11/1/97)

See 5 DE Reg. 205 (7/1/01)

*** PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED.**

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 NURSING**

24 DE Admin. Code 1900
Statutory Authority: 24 Delaware Code,
Section 1906(1) (24 **Del. C.** §1906(1))

Pursuant to due notice of the time and place of hearing published in the News Journal and in the Delaware State News and in compliance with the requirements of 29 *Del.C.* § 10115, the Delaware Board of Nursing ("Board") under its authority to enact rules and regulations specified in 24 *Del.C.* § 1906(1), conducted a public hearing concerning proposed modifications to the Rules and Regulations of the Board. The proposed modifications and additions were published in the Delaware Register of Regulations Volume 6, Issue 12, Sunday, June 1, 2003 beginning at Page 1541.

The public hearing was held on July 9, 2003 as scheduled in Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Kent County, Delaware. A quorum of the Board was present for the hearing.

Summary Of The Evidence

The following is a summary of the evidence and information provided at the hearing pursuant to 29 *Del.C.* § 10118.

Iva J. Boardman, R.N., M.S.N., Executive Director of the Board of Nursing, was sworn and testified concerning the development of the proposed modification to the Rules and Regulations of the Board. Ms. Boardman noted that the proposed modifications were developed to refine the method of selection of committee members and to establish clearly a two year term of service for the committee members. The proposal was also to provide a method to review committee attendance for members of the Board's Advisory Committees and provide for the possible replacement of members who missed three or more consecutive committee meetings.

There were no written comments received by the Board of Nursing concerning the proposed change to the Rules and Regulations; no members of the public appeared at the public hearing; and, other than as note above, there were no oral comments made at the public hearing.

Findings Of Fact And Conclusions

The Board finds that the procedures required for the modification of Rules and Regulations have been accomplished as required and that the proposed change furthers the public purposes of the Board of Nursing and clarified the Regulations regarding the selection and terms for members of the Board's Advisory Committees.

Decision And Order

Based upon the findings and conclusions set forth above, the undersigned, constituting a quorum of the Delaware Board of Nursing, adopt the proposed modification to the Rules and Regulations published in the Register of Regulations in Volume 6, Issue 12, Sunday, June 1, 2003, beginning at page 1541 as a modification to the Rules and Regulations of the Board, effective August 11, 2003 or ten (10) days after publication of this Order and the final Regulation in the Register of Regulations whichever is later. Since there is no change to the modification as proposed, the final regulation will be the same as set forth in the hereto attached Exhibit.

**SO ORDERED THIS 9TH DAY OF JULY, 2003.
BY ORDER OF THE BOARD OF NURSING**

Jan Monihan, RN, M.Ed.
James Van Der Wall
Til Purnell
Robert Lawson
Deborah Maichle, MSN, NP
Ruth Fournier, MSN, RN
Diana Padula, L.P.N.
Doris L. Dayton
Gwen Hines, L.P.N.
Lucille Gambardella, Ph.D., RN, CS, APN-BC, Board
Vice President
Janet M. West, Board President

12.0 Advisory Committees**12.1 Appointment of Committees**

12.1.1 The Board may appoint advisory committees to assist in the performance of its duties.

12.1.2 Advisory committees will be chaired by a Board member.

12.1.3 Each advisory committee shall consist of no less than five members who have expertise in the subject assigned.

12.1.4 Any such advisory committee shall function in the public interest, and no member shall be designated as representative of any agency or organization.

12.2 Membership of Committees

12.2.1 ~~Potential members shall submit resumes and receive Board approval prior to appointment. The Executive Director of the Board of Nursing shall make a call for applications for potential members to fill vacancies on the Board's advisory committees. The potential members shall submit their resumes to the Executive Director. The resumes shall be reviewed by the Executive Director and each committee chair of the Board of Nursing. They shall then make recommendations with rationales to the Board of Nursing for approval and appointment of the members to~~

advisory committees.

12.2.2 Members may include Registered Nurses, Licensed Practical Nurses, Advanced Practice Nurses and lay persons.

12.2.3 Members shall serve two-year terms.

12.2.4 The Executive Director shall verify members' continued interest in serving on the Board's advisory committees prior to expiration of their two-year term. The Executive Director shall submit the names of the committee members who are interested in serving another term to the Board of Nursing for reappointment.

12.2.5 Members who miss three consecutive meetings shall be reported to the Board, which may appoint a replacement member.

12.3 Joint Practice Committee**12.3.1 Nursing Membership**

12.3.1.1 Members are selected 24 Del.C., § 1906(19)

12.3.1.2 The Board of Nursing shall appoint the Advanced Practice Nurses (APN) under the following guidelines:

12.3.1.2.1 At least one of the APN members shall be a Clinical Specialist, one APN member a Certified Nurse Midwife, one APN member a Certified Registered Nurse Anesthetist, and two APN members Nurse Practitioners. If there is no qualified APN available in the needed specialty, then appointments shall be made from APNs in other specialties.

12.3.1.2.2 The APNs must have independent prescriptive authority to be a member of the JPC.

12.3.1.2.3 The Board of Nursing shall appoint one public member.

12.3.1.3 One of the Board of Nursing appointees shall be a current Board of Nursing Member.

12.3.1.4 The Executive Director of the Board of Nursing shall make a call for applications for potential members to fill vacancies on the JPC. The potential members shall submit their resumes to the Executive Director. The resumes shall be reviewed by the Executive Director and the APN member of the Board of Nursing. They shall then make recommendations to the Board of Nursing for approval and appointment of the members to the JPC.

12.3.1.5 Members shall serve two-year terms.

12.3.1.6 The Executive Director shall verify members' continued interest in serving on the JPC prior to expiration of their two-year term. The Executive Director shall submit the names of the JPC members who are interested in serving another term on the JPC to the Board of Nursing for reappointment to the JPC.

12.3.1.7 Members who miss three consecutive meetings shall be reported to the appointing Board, which may appoint a replacement member.

12.3.1.8 JPC shall be staffed by the Executive Director of the Board of Nursing or designee who shall assist the JPC in carrying out its duties.

12.3.2 Officers

12.3.2.1 JPC members shall elect a Chair and Vice-Chair each September.

12.3.2.2 The Chair shall preside at meetings and hearings.

12.3.2.3 The Vice-Chair shall preside at the meetings and hearings in the absence of the Chair.

12.3.2.4 In the absence of the Chair and Vice-Chair, the next senior member shall preside.

12.3.3 Meetings

12.3.3.1 Meetings will be scheduled in accordance with all Laws and Rules and Regulations that apply to Committees under the Division of Professional Regulation.

12.3.3.2 Five members of the JPC constitute a quorum.

12.3.3.3 A meeting calendar shall be approved by the JPC each September.

12.3.3.4 The JPC shall meet as necessary to carry out its responsibilities as defined in 24 Del. C., 1906(20).

12.3.3.5 The Board of Nursing Members on the JPC shall give the committee report at each Board of Nursing meeting. The Executive Director shall give the report if the Board Member is absent.

See 5 DE Reg. 1606 (2/1/02)

*** PLEASE NOTE: AS THE REST OF THE REGULATIONS WERE NOT CHANGED, THEY ARE NOT BEING REPRINTED HERE.**

DEPARTMENT OF AGRICULTURE NUTRIENT MANAGEMENT PROGRAM

3 DE Admin Code 703

Statutory Authority: 3 Delaware Code,
Sections 2220, 2221 (3 Del.C. §§ 2220, 2221)

Memorandum For Record

SUBJECT: Secretary's order adopting regulations establishing requirements for implementation of mandatory nutrient management plan reporting.

DATE: July 8, 2003

Pursuant to 29 Del.C. §10118, I hereby enter this Order which adopts regulations establishing requirements for implementation of mandatory nutrient management plan

reporting pursuant to Delaware's nutrient management law (3 Del.C. Chapter 22) and Section 5, 72 Del. Laws, c. 60, and for persons selected for mandatory nutrient management plan reporting to register with the Delaware Nutrient Management Commission. Authority for the regulations appears at Title 3 Del.C. Chapter 22.

1. Brief summary of evidence and information submitted.

The Department of Agriculture ("Department"), in conjunction with the Delaware Nutrient Management Commission ("Commission") posted public notice of the proposed regulations in the June 1, 2003 Register of Regulations. The proposal stated that the Department, in conjunction with the Commission, would receive and consider written comments on the proposed regulations from any person, and included directions for the submission of such comments. No written public comments were received during the comment period.

2. Brief summary of findings of fact with respect to the evidence and information.

The public was given notice and an opportunity to provide the Department and the Commission with comments in writing on the proposed regulations. No comments were received from the public.

The proposed regulations require persons notified that they have been selected by the Commission to be phased into the nutrient management planning program and mandatory nutrient management plan reporting to register with the Commission within a certain period of time after receiving such notice. I find that the proposed regulations will enable the Nutrient Management Program to more smoothly implement the phase-in of the Delaware Nutrient Management law (3 Del.C. Chapter 22) and mandatory nutrient management plan reporting, as required by Section 5, 72 Del. Laws, c. 60, and to more efficiently target resources to those persons affected. I find that adoption of the proposed regulations in their proposed form is in the best interests of the public and consistent with the Commission's duties under 3 Del.C. Chapter 22 and Section 5, 72 Del. Laws, c. 60.

3. Decision to adopt the regulations.

I hereby adopt the regulations as proposed and set forth below.

4. Text and citation of such regulations adopted.

The exact text and citation of the regulations adopted herein appear below.

5. The effective date of the Order.

The Order shall take effect ten (10) days from the date the Order has been published in its final form in the **Register**

of Regulations.

Michael T. Scuse
Delaware Department of Agriculture, Secretary

**703 Mandatory Nutrient Management Plan Reporting
Implementation Regulations**

Developed with the Guidance, Advice and Consent of
The Delaware Nutrient Management Commission

PREAMBLE

These regulations have been developed pursuant to Title 3, Chapter 22, of the Delaware Code [72 Del. Laws, c. 60]. That statute established the Delaware Nutrient Management Commission and authorized the Commission to develop, review, approve, and enforce nutrient management regulations, including regulations governing a nutrient management planning program and the development of nutrient management plans. These regulations were developed by the Commission and the Delaware Department of Agriculture. They are adopted with the guidance, advice, and consent of the Commission.

1.0 Authority

1.1 These regulations are promulgated pursuant to the authority provided by Sections 2220 and 2221, Chapter 22, Title 3, of the Delaware Code.

2.0 Purpose

2.1 The purpose of these regulations is to establish requirements for implementation of mandatory nutrient management plan reporting pursuant to Section 5, 72 Del. Laws, c. 60.

3.0 Registration Requirement For Persons Selected For Mandatory Nutrient Management Plan Reporting Pursuant To Section 5, 72 Del. Laws, c. 60.

3.1 Persons notified that they have been selected by the Commission to be phased into the nutrient management planning program and mandatory nutrient management plan reporting (pursuant to Section 5, 72 Del. Laws, c. 60) shall register with the Commission within thirty (30) days of receiving such notice. Registration shall be made in writing, by completing and submitting, to the Nutrient Management Program Administrator, a registration form approved by the Commission.

3.2 Failure to register within the required period shall subject the person(s) failing to respond to the penalty provisions of Title 3, Chapter 22, of the Delaware Code.

3.3 If the Commission sends such notification by registered mail, the return receipt or other official proof of delivery shall constitute presumptive evidence that the notice

mailed was received by the person(s) or the latter's agent; and the notation of refusal shall constitute presumptive evidence that the refusal was by the person(s) or the latter's agent.

DEPARTMENT OF EDUCATION

14 DE Admin. Code 301
Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))

Regulatory Implementing Order**Regulation 301 General Regulations For Certification Of
Professional Public School Personnel****I. Summary Of The Evidence And Information
Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend regulation 301 General Regulations for Certification of Professional Public School Personnel by deleting it in its entirety and replacing it with regulations 1505 Professional Growth Programs, 1510 Initial License, 1513 Denial of License, 1514 Revocation of License, 1515 Emergency Certificate, 1516 Standard Certificate, 1519 Alternative Routes to Certification, and 1520 Substitute Teacher. Regulations 1511 Issuance and Renewal of Continuing License and 1584 Permits also contain matters that were addressed in 301, thereby rendering those sections of 301 General Regulations for Certification of Professional Public School Personnel redundant. It is necessary to amend this regulation in order to comply with changes in statute regarding the licensure and certification of educators. Additional changes in statute, enacted after the initial publication of this regulation, necessitated further amendments to the regulation. Those amendments made since the original publication of this regulation in the February, 2003 Register of Regulations were made to address additional changes in statute. Changes in the proposed amended regulations have also been made in response to comments received from the Department of Education. 1520 Substitute Teacher has been amended by deleting it in its entirety and reserving the number for future development. The regulation has been reconstituted as separate regulations which address the matters previously regulated in 301, but which comply with recent changes in statute. The reconstituted regulations, listed below, have also been renumbered to reflect their movement to the Professional Standards Board section of the Department

regulations. The effective date of regulation 1505 has been changed to reflect changes enacted in the FY '04 State budget. The definition of "student teaching program" in regulation 1510 has been clarified. This clarification does not constitute a substantive change.

- 1505 Professional Growth Programs
- 1510 Initial License
- 1513 Denial of License
- 1514 Revocation of License
- 1515 Emergency Certificate
- 1516 Standard Certificate
- 1519 Alternate Routes to Certification
- 1520 Reserved

The existing 301 General Regulations for Certification of Professional Public School Personnel are affected by the amended regulations in the ways indicated in the column on the right, below:

1.0 Definitions	Incorporated in reconstituted regulations
2.0 Current Licenses, Certificates and Permits	1511 Issuance and Renewal of Continuing License, 1584 Permits
2.7.2 Substitute Teacher	1520 Substitute Teacher
3.0 Testing Requirements	1510 Initial License
4.0 Application for Initial License	1510 Initial License
4.7 Denial of License	1513 Denial of License
5.0 Renewal of Licenses	1511 Issuance and Renewal of Continuing License
6.0 Licensure Agreements/Reciprocity	1510 Initial License, 1511 Issuance and Renewal of Continuing License
7.0 Revocation of Licenses/Certification	1514 Revocation of License
8.0 Denial of License/Certifications	1513 Denial of License
9.0 Professional Growth Programs	1505 Professional Growth Programs stricken by change in statute
10.0 Certification/National Board of Professional Teaching Standards	
11.0 Alternative Routes to Certification Program for Secondary Teachers	1519 Alternative Routes to Certification

Notice of the proposed adoption of the regulation was published in the News Journal and the Delaware State News on May 21, 2003, in the form hereto attached as Exhibit "A". The notice invited written comments. Comments were received from the Department of Education and others and suggested changes have been incorporated into the proposed

amendment

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute regarding the licensure and certification of educators.

The Professional Standards Board and the State Board of Education also note that more changes to Regulation 301 are anticipated as other parts of Title 14 of the *Delaware Code* become effective. Specifically, for example, §1305(q) of Title 14 now becomes effective in fiscal year 2004. This law imposes new requirements for increases in salary due to movement across the salary schedule for teachers and others. The Boards recognize that the subsection of Regulation 301 addressing "Professional Growth Programs" must be further amended to meet the requirements of §1305(q). It is being readopted at this time to accommodate the delayed effective date of that law.

III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del. C.* § 1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 *Del. C.* § 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the regulations adopted shall be in the form attached hereto as Exhibit "B", and said regulations shall be cited as 14 DE Admin. Code § 301, §1510, §1513, and §1514 in the *Regulations of the Department of Education*.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

Approved By The Professional Standards Board The 10th Day Of July, 2003.

Harold Roberts, Chair	Sharon Brittingham
Heath Chasanov	Patricia Clements
Edward Czerwinski	Karen Gordon
Barbara Grogg	Bruce Harter
Leslie Holden	Carla Lawson
Mary Mirabeau	John Pallace
Karen Schilling Ross	Carol Vukelich

Geraldine A. Williams

**FOR IMPLEMENTATION BY THE
DEPARTMENT OF EDUCATION:**

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED this 19th day of July, 2003.

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President

Richard M. Farmer, Jr.

Mary B. Graham, Esquire

Valarie Pepper

Dennis J. Savage

Dr. Claibourne D. Smith

**301 General Regulations for Certification of Professional
Public School Personnel**

1.0 Definitions of terms

Credential Evaluation for Licensure through Transcript Analysis: A process through which persons who have not graduated from a state approved teacher education program in a specific field may obtain a Standard license in Delaware. Official college/university transcripts shall be submitted to the Department of Education where they are audited for compliance with licensure requirements for the specific field.

Evaluation/Prescription Letter: A letter issued by Department of Education after the evaluation of an individual's college transcripts and other official documents. This letter lists any deficiencies that need to be met related to specific requirements for licensure in Delaware, as stated in this Manual. The letter may include deficiencies, such as coursework, test scores, experience verification and/or may state other specifics which need to be met for Standard licensure.

Initial Standard Certificate: A license that was issued in Delaware from 1982 through 1991. Issuance of this license indicates the individual met all requirements current during that time period for a specific area of licensure. In addition, the qualifying scores for the Pre-Professional Skills Tests were met before the Initial Standard Certificate was issued. This license had a validity period of five years, after which the license was converted to a Standard license, upon documentation of appropriate employment or coursework. (See Refresher Coursework and Recency Requirement) Expired Initial Standard licenses may be renewed as Standard licenses in the same content area provided refresher requirements are met.

Internship: One year of supervised, full time, successful experience in a setting appropriate to the area of licensure. An Internship may be sponsored by a college or university in

conjunction with a particular set of program requirements; or it may be sponsored locally through employment by a district and in conjunction with the Department of Education.

Interstate Certification Agreement (ICA): A formal contract signed by individual member states of NASDTEC, in pairs, specifying the parameters of reciprocity. The Interstate Agreement is a binding, legal agreement/contract between two states. The states agree to accept teachers from programs approved under NASDTEC Standards as well as fully licensed, experienced personnel. The NASDTEC organization facilitates the signing of the agreement through an arm called the Interstate Contract Association. Reciprocity established in this manner operates under specific conditions that are clearly defined by the Interstate Agreement.

Licensure Via Approved Program: A process for acquiring a teaching license in Delaware and other NASDTEC states that requires graduating from a state approved teacher education program and meeting specific testing requirements set by the Delaware State Board of Education. Individuals who receive a Standard license in Delaware based on an approved program are eligible for reciprocity with other states. Each state has its own individual set of testing requirements which the candidate must meet.

Limited Standard License: A license that is issued to an individual who is employed in a Delaware public school setting, but does not meet all of the requirements for Standard licensure in the area(s) of employment. It may be issued for a period of between one and six years. No salary reduction is required. This license is nonrenewable.

NASDTEC: National Association of State Directors of Teacher Education and Certification, a national organization of State Department certification personnel and Standards Boards members who have the responsibility for state certification and program approval. This organization has developed and adopted a set of Standards which is used by each member state, in as much as possible. These Standards form the basis for the Reciprocity Agreement.

NCATE: National Council for the Accreditation of Teacher Education: One of two national accrediting bodies approved by the United States Department of Education. NCATE accreditation is voluntary in Delaware. Colleges/Universities apply to NCATE seeking to have both the education unit of the college/university and specific education programs given national recognition. Each program must still be approved by that state's Department of Education in order to have students graduating from such programs receive licensure in that state.

Occupational/Vocational Testing: The testing in the vocational field is a performance test in a particular trade given under strict guidelines. The National Occupational and Career Testing Institute (NOCTI) is the only vocational test

available that allows an individual to demonstrate skill competency in a trade such as welding or plumbing. The NOCTI organization designs the competency tests and trains staff at institutional settings to administer the NOCTI examinations under specific standardized conditions. As the NTE is used to validate certain aspects of teaching, the NOCTI is used to validate certain skills in vocational trade areas.

Partial Assignment: A teaching assignment that is for no more than two periods per day for a one-year period only. The individual who is given a partial assignment shall have previously taken at least fifteen semester hours of coursework in the content area of the partial assignment. The intent of the partial assignment is to meet specific emergency needs a district might encounter on a short term basis, for example, an enrollment bulge. If the district's situation warrants that the teacher remain in this assignment after the initial one year period, the teacher will be granted a Limited Standard license, allowing three additional years to meet all of the requirements for Standard licensure.

Permits: Permits are given for specific positions within the local school districts that do not require a Bachelor's degree, the PRAXIS I tests or a Standard license. Permits are currently given to aides of all types and substitute teachers.

Processing Fee: A nonrefundable, one-time fee that shall accompany all applications for initial Delaware certification for each evaluation requested.

Professional and Occupational Licenses: Certain noneducational fields require State of Delaware licenses to practice. These fields include Electricians, Plumbers, Cosmetologists, etc. as well as Nurses, Speech Pathologists, Physicians and others. If an individual works in a school setting and a State license is required for practice in Delaware, it is also required for the education position and for the licensure/certification of that individual. For example, all School Nurses must meet specific coursework and degree requirements for their educational position. In addition, they are required to maintain their State of Delaware license and continue its renewal according to Nursing Board requirements for continuing education.

Professional Status Certificate: A certificate that is issued after an individual has met all requirements for Standard licensure in a specific area and has been employed in a Delaware public school in that same area for three consecutive years. It is issued for a five-year period. The renewal of this certificate is a function of continued employment in a public school for three years out of each five-year renewal period.

Provisional License: A substandard license that required a 10% reduction in salary. It has not been issued since 7/1/91 and is no longer a valid Delaware license.

Recency Requirement: A requirement for either 6 semester hours of appropriate coursework or appropriate full time employment within the five year period immediately

preceding application or evaluation for licensure. Recency requirements are as indicated: (1) the applicant's Bachelor's degree shall be conferred within the most recent five year period; or (2) the applicant shall have completed appropriate college-level coursework within the most recent five year period; or (3) the applicant shall have been employed in a full time position, in the area of licensure request, for three years during the most recent five year period.

Reciprocity: A process whereby an individual with a license or certificate issued by one state can receive an equivalent license in another state without meeting additional coursework requirements. Other nonacademic requirements such as professional work experience or testing may still be required for the license. The process operates under a very specific set of previously agreed upon rules between the two states.

Refresher Coursework: Six semester hours of college-level coursework, taken either at the Bachelor's or Master's level from a regionally accredited institution, is required to meet the Recency Requirement for licensure. Coursework shall include one professional education elective and one elective in the specific content area of licensure. This coursework is required only if the applicant is unable to meet Delaware's Recency Requirement.

Revocation of License/Certificate/Permit: Revocation is the process of rescinding a Delaware license/certificate/permit for reasons of immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty. Revocation may be considered at the request of a local school district or initiated by the Secretary of Education.

Specialized Assignment License: An assignment that is deemed necessary by a local public school district but for which no specific requirements for licensure exist is termed a Specialized Assignment. The license is issued on the basis of a job description for the position. A Standard License will be issued to an employed individual who meets all the qualifications of the job description, including passing PRAXIS I scores. A Limited Standard license will be issued if any requirements or qualifications are not met and can be attained. A Temporary License shall be issued when the person hired does not meet the job description for the position. Any certificate issued for a Specialized Assignment is valid only for the specific position for which it was issued. The certificate is not valid for use in another position, another district, or another state.

Standard License: A license issued when an individual has met all requirements for a specific area of licensure, including the testing requirement. It is issued for an indefinite period of time except within the Delaware public school setting, where it is current for a five year period. This license can only be renewed when the individual is currently working in a public school setting or other setting for which it is required by the State of Delaware, such as the correctional system.

Temporary License: A one-year nonrenewable license issued to a district employee who meets neither the Standard nor Limited Standard requirements for a specific Delaware license and who is hired after August 15th of that school year. A 10% salary reduction is required. This license is a one-year, nonrenewable license and can be issued only one time to the same individual in the same area of licensure. Unless the individual holds a Standard license in another area, they are not eligible for a salary increment.

2.0 Current Licenses, Certificates and Permits

2.1 Professional Status Certificate: The Professional Status certificate shall be issued to personnel employed in areas which require at least a baccalaureate degree for full certification, as well as to individuals who hold Standard Trade and Industry licenses. Thus, this license will be available to superintendents, assistant superintendents, directors, administrative assistants, supervisors, principals, assistant principals, teachers, librarians, guidance counselors, school nurses and other personnel who must have a minimum of a bachelor's degree for full certification.

2.1.1 This license shall be issued to persons who meet the requirements for a Standard license and who have been employed by a Delaware public school system for three (3) consecutive years of the previous five (5) years in the type of position for which the certificate is appropriate. The certificate shall be issued for a period of five (5) fiscal years.

2.2 Standard License: The Standard License shall be issued to personnel employed in areas which require at least a baccalaureate degree for full certification, as well as to individuals who meet all requirements for Trade and Industry licenses. Thus, this license will be available to superintendents, assistant superintendents, directors, administrative assistants, supervisors, principals, assistant principals, teachers, librarians, guidance counselors, school nurses and other personnel who must have a minimum of a bachelor's degree for full certification.

2.2.1 The Standard license shall be issued upon completion of all requirements in a single area of licensure, along with successful completion of the State of Delaware's requirement for testing 3.0, for a period of five (5) years.

2.2.2 The Standard license shall be issued to the following categories of employees which do not require a baccalaureate degree for full licensure, and/or which do not require successful completion of the State of Delaware's testing requirements (3.3): Manager of School Food Service Programs, Transportation Manager, Administrative Support Personnel, formerly Educational Secretaries. The issuance of this license shall not affect either the salary paid or the negotiating rights of individuals as currently specified in the Del. C.

2.2.3 The Standard license shall be issued to an employee of a Delaware public school district who has been employed in a Specialized Assignment, for which no

specific requirements are defined, and who possesses the competencies and skills required for the special assignment (example: museum curator, laboratory technician, coordinator, etc.). The employee's credentials, including evidence of the skills and competencies stated in the job description and posting, will be collected by the employing district and sent to the State Certification Office along with a copy of the job description and the qualifications posted for the position. A determination regarding licensure will be made by the State Office of Certification. The state testing requirement for teacher licensure shall be met for this position.

2.2.3.1 A Standard Endorsement requires a Standard license as well as specific requirements defined under the individual licensure requirements.

2.3 Limited Standard License-Non-Renewable (Substandard): The Limited Standard license may be issued for a period of one (1) to six (6) years depending on circumstances defined below. The Limited Standard license carries no salary penalty and is nonrenewable. This license shall not be issued at the request of an individual. It is issued to employees of a public school district or other state agency requiring certified educational personnel, upon the request of the personnel designee of the organization, if the employee has not fully satisfied the requirements for a Standard license and one or more of the following conditions shall apply:

2.3.1 Limited Standard-Test (LS-T) Issued for a period not to exceed two (2) fiscal years to persons who have not, as yet, satisfied the State Board of Education testing requirement.

2.3.1.1 The local school district superintendent shall request that this license be issued to a new employee who has not been previously employed in a Delaware public school district, and who has not shown evidence of satisfactory performance on the PRAXIS I/PPST. The effective date for this nonrenewable license shall be July 1 of the year in which the employment began and the expiration date shall be June 30 of the next, consecutive fiscal year.

2.3.2 Limited Standard Coursework (LS-C) Issued for a period of up to three (3) fiscal years to a public school employee who is lacking no more than twelve (12) graduate or undergraduate college level semester hours and who has successfully met all testing requirements. A Limited Standard Coursework license may be issued to:

2.3.2.1 An employee who meets all course requirements for a Standard license, but who has been out of college five (5) years or more. Six (6) semester hours of college level coursework will be required to be taken during the life of the Limited Standard license, or prior to the issuance of the Standard license (see 5.7), or

2.3.2.2 An employee who holds an expired Initial Standard, Standard or Professional Status license/certificate, but who has not taught on that license for at least three (3) years during the most recent five-year period (see

5.7). Six (6) semester hours of college level coursework will be required of such an applicant for renewal of the Standard license or an employee who meets the requirements for the Limited Standard;

2.3.2.3 An employee who is reassigned to continue for more than one (1) year in a partial assignment (see 2.6). At that point, the employee shall have three (3) years to complete all the specific requirements for licensure in the area of the partial assignment, regardless of the number of credits needed. Said employee shall hold a current, valid, Standard license in another, similar-related content area

2.3.3 Limited Standard Vocational (LS-V) May be issued for a period of up to six (6) years for employees who need more than sixty (60) semester hours of college level course work and who are required to satisfy the state's testing requirement within that six (6) year period.

2.3.4 Limited Standard — Shortage/Critical Need (LS-S) May be issued for up to three (3) years in areas of shortage designated annually by the State Department of Education. Requirements are established in accordance with areas of need by the State Office of Certification, as approved by the Secretary and the State Board of Education. In this instance, the license may be issued to an employee who has at least a Bachelor's degree with a major in the subject area identified as being an area of critical shortage.

2.3.5 Limited Standard — Internship (LS-I) May be issued for a period of one (1) year for employees who meet all requirements for a Standard license other than student teaching or an internship requirement; and/or who have been accepted to participate in an approved Internship program; and/or are teaching through a special program. A Limited Standard Internship license may be issued to an employee who is:

2.3.5.1 An exchange teacher from a foreign country or a teacher in an exchange program between states or schools or institutions of higher education and/or state education agencies within the United States or

2.3.5.2 A teacher from a foreign country who holds a valid certificate/license from that country and a degree equivalent to a Bachelor's degree as defined in the United States; or

2.3.5.3 A person employed by a Delaware public school district who will have the first year of employment used in lieu of student teaching or who is in the process of serving one year of supervised experience in order to meet an experience requirement stated for a specific license. Either case requires the prior approval of the State Office of Certification (see 4.5).

2.3.6 A teacher holding a Standard or Professional Status Certificate in either Elementary (grades 1-8) or Middle Level (grades 5-8) who is assigned to teach grade 7 and/or 8 math and/or science, regardless of the number of credits needed for full certification. During the term of the

Limited Standard Certificate, the teacher shall complete the requirements for the Standard Certificate in the area(s) of the assignment. This regulation will be effective for three years from 7/1/98 through 6/30/2000.

2.4 Temporary License— Non-Renewable: Issued at the request of a local district superintendent under emergency conditions to a person who is unable to meet the licensure requirements at the Standard or Limited Standard level. This license classification carries a reduction in salary and shall not be requested prior to August 15 of any year. The Temporary license is a one-year, non-renewable license. Salary for an employee issued a Temporary license in an academic area shall be 10% less than the salary for an employee issued a Standard license with the same experience and salary level. Salary for a Temporary licensed person in an area of Trade & Industry shall be reduced by \$400.00 from that of the Standard licensed person having the same experience and salary level. A Temporary license may be issued to an employee who meets one of the three situations listed below:

2.4.1 Academic (10% salary reduction)

2.4.1.1 A Non-degree employee for a regular teaching position who is currently engaged in pursuing a Bachelor's degree and who has completed all professional education requirements including student teaching, but who lacks no more than six (6) semester hours of credits for completion of the Bachelor's degree requirements or;

2.4.1.2 A non-degree employee for a regular teaching position who has completed no less than two (2) years of college training and who has no less than three (3) years of successful teaching experience; or

2.4.1.3 An employee who is a graduate of a nonaccredited college. No higher level license may be issued until the degree is validated (see 4.6.3).

2.4.2 A person whose credentials for any assignment do not meet Limited Standard licensure requirements. The 10% salary reduction will or will not be in effect as indicated below:

2.4.2.1 If the assignment in the area of Temporary licensure is a full daily schedule, then a 10% salary reduction is required.

2.4.2.2 If the assignment in the area of Temporary licensure is one-half or more of the full daily schedule, then a 10% salary reduction is required.

2.4.2.3 If the assignment in the area of Temporary licensure is less than half of the full daily schedule, and the individual has a Standard license in the primary area of assignment, then no reduction in salary is required

2.4.3 Trade and Industry (\$400.00 salary reduction): A non-degree employee for a Trade and Industry teaching position who has less than six (6) years of work experience or two (2) years beyond the learning period in the trade or industrial occupation to be taught.

2.4.4 Special Situations

2.4.4.1 May be issued to any employed person who fails to meet the requirements for renewal of a Professional Status certificate, a Standard license, or the requirements specified under the Limited Standard license, provided the local district superintendent or designee chooses to make a written request for the Temporary license. Salary reduction will be based on whether the employee holds an Academic or Trade and Industry position; or

2.4.4.2 at the written request of the local district superintendent or designee to an employee who fails to meet the coursework requirements specified for a Standard or Limited Standard license within the period specified by that license. Such request shall not be made when an employee fails to meet the testing requirement within the time specified by the Limited Standard Test; or

2.4.4.3 to an individual at the specific written request of the employing local district superintendent to the Secretary of Education of the Department of Education, upon providing appropriate documentation as specified in 3.5.1.2.1 and 3.5.1.2.2.

2.5 Failure to Meet Requirements

2.5.1 An employee who accepts employment in a public school district and is licensed below the level of a Standard license (Limited Standard or Temporary), by accepting the position agrees that any deficiencies will be completed within the specified period of that license. Such licenses are non-renewable. Consequently, if the specific requirements stated for Standard licensure are not met when the license expires, the individual is without licensure in Delaware and may be terminated by the local school district (see 2.4).

2.6 Teaching Assignment Out of Licensed Area

2.6.1 When a written request is received from the local Superintendent prior to reassignment, a partial teaching assignment of no more than two (2) classes or class periods may be authorized for one (1) school year, if the person assigned the partial meets the following requirements:

2.6.1.1 Holds a current, valid Delaware Standard teaching license in a field other than that in which the partial assignment is to be made; and has at least fifteen (15) semester hours in the content area of the partial assignment.

2.6.2 If it is necessary to continue the partial assignment past the initial year, regardless of the coursework deficiency, the individual shall be placed on a Limited Standard license in that area. During the three (3) year period of the Limited Standard, all requirements for the Standard license shall be met.

2.7 Permits: Permits are issued for specific positions within the local school districts that do not require either a Bachelor's degree or the Test approved for licensure by the Delaware State Board of Education. Individuals who hold permits are not considered "certified professional employees

of the public school system" as that phrase is used in 19 Delaware Code, Chapter 1301.

2.7.1 Aide: A permit shall be required for all persons employed either full time or part time as school or classroom aides with local, state, federal or other funds.

2.7.2 Substitute Teacher (Delaware Code, Title 14, §1230):

2.7.2.1 Class A: May be issued to an applicant who holds, or is eligible to hold a valid Standard Delaware teacher's license or such a certificate/license that has expired. The PPST is not required to hold this classification.

2.7.2.2 Class B: May be issued to an applicant with or without a bachelor's degree who meets at least the requirements for a Temporary license (see 2.0).

2.7.2.3 Class C: May be issued to an applicant who is not eligible for either Class A or Class B Permit, but who is recommended to the Secretary of Education by the superintendent of a Delaware public school district.

2.7.2.4 Class D: May be issued to an applicant who is eligible for or holds a Class A, B, or C permit, but who prefers on a given date to perform substitute teaching assignments as a volunteer worker, or at a wage rate to be determined by the Board of Education of the employing school district.

2.8 Provisions for Exceptions and Changes

2.8.1 An exception to the existing licensure/certification regulations may be made by the Secretary of Education at the request of the local chief school officer; or in the case of an exception for the chief school officer, by the president of the local board.

2.8.2 An annual report stating the number and type of exception requests, as well as the disposition of each exception, shall be sent to the State Board of Education at the end of each fiscal year beginning with Fiscal Year 1997.

2.8.3 In the event of the consolidation of school districts where reassignment of a certified personnel is necessary, the following rules shall apply:

2.8.3.1 Personnel shall be considered certified for the position to which assigned and a certificate issued.

2.8.3.2 Such certificate or certificates shall be valid in the consolidated district for the duration of the reassignment or subsequent assignments resulting from consolidation.

2.9 Effect of Changes in Rules and Regulations Adopted 7/1/93

2.9.1 State of Delaware Approved Programs: An individual attending a college/university in the State of Delaware and currently enrolled in a program approved by the State of Delaware prior to July 1993 shall not be affected by any of the changes adopted July 1, 1993, as specified in the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations of the same provided that he/she received the "Institutional Recommendation" of the college/university.

2.9.2 Evaluation for Licensure via Transcript Analysis: Individuals who have received a credential evaluation by transcript analysis that has resulted in evaluation/prescription letter(s) in their credential file at the Department of Education will have a period of time to complete the requirements stated in those respective letters, according to the following schedule:

2.9.2.1 All evaluation/prescription letters based on certification regulations adopted prior to the 1974 regulations shall become invalid on June 30, 1993. These individuals shall be required to meet the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations of the same as adopted for certification effective July 1, 1993.

2.9.2.2 All evaluation/prescription letters dated June 30, 1990 through June 30, 1993 shall become invalid on June 30, 1996. Effective July 1, 1996 these individuals shall be required to meet the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations of the same as adopted for licensure effective July 1, 1993.

2.9.3 Individuals Employed and Certified on Substandard Certificates: An employee who has been issued a Delaware substandard certificate (Limited Standard, Provisional, Temporary) prior to July 1, 1993, shall continue on that certificate until the requirements specified are met or the certificate expires or the employee no longer occupies the position for which the certificate was issued. In that latter two cases, the employee shall be required to meet the July 1, 1993 regulations, if reassigned or reemployed at some later date, for a position requiring that same licensure.

3.0 Testing Requirements

3.1 Any applicant seeking initial licensure in Delaware shall provide the state Office of Certification with official test scores for one or more of the following tests of essential skills in Reading, Writing and Mathematics: The Pre-Professional Skills Tests (PPST) and/or The PRAXIS I Paper and Pencil Tests; and/or The PRAXIS I Computer Based Tests.

3.2 Test Scores. (Revised May 1994)

3.2.1 The following minimum passing scores are required in the areas of Reading, Writing and Mathematics for each of the Tests of essential skills:

3.2.1.1 Pre-professional Skills Test Taken between 7/1/83 and 10/22/93 Reading - 175, Mathematics - 175, Writing - 172 and/or

3.2.1.2 PRAXIS I - Paper and Pencil Tests (Passed 7/94) (Tests taken on 10/23/93 and thereafter): Reading - 175, Mathematics - 174, Writing 173 and/or

3.2.1.3 PRAXIS I - Computer Based Tests (Passed 7/94) (Tests taken on 10/23/93 and thereafter): Reading - 322, Mathematics - 319, Writing 319

3.3 Testing Exemptions include individuals holding

Delaware certificates issued prior to July 1, 1983 or having a completed file on record with the Office of Certification as of July 1, 1983 which resulted in an evaluation letter for a certificate/license that is currently in effect, are not required to take the PPST/ PRAXIS I. The exemption based on an evaluation letter prior to July 1, 1983 shall expire on 6/30/94, since letters of that date will become invalid after 6/30/94 (see 2.6.2).

3.3.1 In addition, the following licenses and/or permits do not require the PPST/PRAXIS I:
 Manager of School Food Service Program
 Supervisor of School Food Service Program
 Transportation Manager
 Supervisor of School Bus Transportation
 Administrative Support (formerly Secretarial Personnel)
 Interpreter Tutor for Hearing Impaired
 Permit Substitute Teacher
 Permit Aides

3.4 Acceptable alternatives to the PRAXIS I test scores include:

3.4.1 Scores from the California Test of Basic Skills (CTBS) shall be in lieu of PPST/PRAXIS I scores under the following conditions:

3.4.1.1 The scores were required to receive a certificate/license in another state and the test was taken as a condition of meeting certification/licensure requirements in that state; and

3.4.1.2 The scores total 123, with at least 37 in each category; and.

3.4.1.3 Effective 7/1/96, the following test scores can be used to exempt an applicant for initial Delaware licensure from the corresponding portion of the PPST/ PRAXIS I: Effective 7/1/97 - SAT Tests taken after 4/1/95 and presented for exemption must meet the score indicated due to a re-centering of the SAT.

3.4.1.4 Alternate Test And Score Praxis I Exemption-

GRE Verbal 490 PRAXIS I Reading

SAT Verbal 480 PRAXIS I Reading

*SAT Verbal 560 PRAXIS I Reading

(After 4/1/95)

GRE Quantitative 540 PRAXIS I Mathematics

SAT Mathematics 520 PRAXIS I Mathematics

Mathematics

*SAT Mathematics 540 PRAXIS I Mathematics

(After 4/1/95)

NTE Core Battery:

Communications Skills 670 PRAXIS I Writing

3.5 Testing Timeline

3.5.1 Individuals may be hired in a Delaware public school district prior to having taken or passed the PPST/ PRAXIS I. The employee has the period of time, from the date of hire to the end of the next, consecutive fiscal year to present passing PPST/PRAXIS I scores to the employing

school district and the State Office of Certification, should employment remain continuous.

3.5.1.1 Any Standard Aptitude Test (SAT) scores and/or Graduate Records Exam (GRE) scores and/or NTE Communication Skills scores intended to be used as an exemption for the PPST/PRACTICE I, shall be submitted within the same time line and scores should pre-date the employment date.

3.5.1.2 Once this period has expired, the individual will be without any valid Delaware license and employment may not be continued unless one of the following conditions is met:

3.5.1.2.1 Official documentation is provided to the Department of Education, Office of Certification, showing successful completion of all parts of the PPST/PRACTICE I OR

3.5.1.2.2 Based on documented effectiveness, the superintendent of a public school district may submit a written request to the Secretary of Education to grant a third/fourth year for an individual to successfully complete all parts of the PPST/PRACTICE I tests. The request shall include:

3.5.1.2.2.1 A letter from the individual's immediate supervisor attesting to the employee's effectiveness in the position; and copies of the employee's evaluations (Delaware Performance Appraisal System — 3 Formative and 1 Summative) from the current school year, which demonstrate effective performance.

3.5.1.2.2.3 If the extension is granted, the individual shall:

3.5.1.2.2.3.1 Be placed on a one-year Temporary License at a ten (10) percent reduction in state salary; and

3.5.1.2.2.3.2 By October 31 complete training in all parts of the PPST/PRACTICE I for which qualifying scores have not been attained, by using the Learning Plus computer tutorial package or other available training programs.

3.5.1.2.2.3.3 By December 31 take the PPST/PRACTICE I at least once; and twice during the third/fourth year of employment.

3.5.1.2.2.3.4 By January 31 the district shall verify the above to the Department of Education.

3.5.1.3 In the event that employment is terminated from a Delaware public school district prior to passing the PPST/PRACTICE I and prior to the end of the next consecutive fiscal year, an individual may be rehired and be granted the amount of time remaining on the original license, to meet the testing requirement. The total time the employee shall be employed, without demonstrating passing PPST/PRACTICE I scores, shall not exceed the amount of time from original date of hire to the end of the next, consecutive fiscal year, whether the employment remains continuous or not.

3.5.1.4 When employment is not involved,

there is no time restriction for meeting the testing requirement; however, the test shall be taken prior to submitting an application for certification and the testing requirements may change.

3.5.2 PPST/PRACTICE I scores need not be passing to initiate the application process. Official scores that are passing shall be received prior to the issuance of any Standard license requiring the test (see 3.3 and 3.3.1).

3.5.3 There is no limit on the number of times an individual may take the PPST/PRACTICE I. Once passed, a section need not be taken again.

3.5.3.1 Passing scores in each area (Reading, Writing, Mathematics) may be attained in any testing format.

3.5.4 Presentation of Test Scores to the State Certification Office.

3.5.4.1 Test scores shall be official and Official scores are generally computer coded to the Department of Education at the test site, and are sent directly from Educational Testing Service to the Office of Certification.

3.5.4.2 Unopened, unaltered envelopes containing PPST/PRACTICE I scores that were sent to the individual may be accepted as official. The State Office of Certification, shall determine whether the scores are acceptable as presented.

3.5.4.3 If an individual cannot provide official scores as described above, the applicant may have an official set of scores sent to the State Office of Certification, directly, by contacting the Educational Testing Service. After five years, test scores are considered invalid by ETS and retesting is required as a means of providing official scores.

3.5.4.4 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Delaware Office of Certification. This method shall be used only when those avenues described in 3.5.4.1, 3.5.4.2, and 3.5.4.3 have been exhausted.

3.5.4.5 Acceptable means for providing Scholastic Aptitude Tests (SAT) and Graduate Record Exam (GRE) scores are:

3.5.4.5.1 Have scores sent directly from the Education Testing Service to the State Office of Certification.

3.5.4.5.2 Have an official college transcript forwarded directly to the State Office of Certification, if a particular institution lists SAT and/or GRE scores on its transcript.

3.5.4.5.3 Have high school transcript signed and sealed by the registrar and sent directly to the State Office of Certification, for SAT verification.

3.6 It shall be the responsibility of the individual employee/applicant to bear any/all costs related to testing/retesting, and the presentation of official scores to the State Office of Certification.

3.7 Department of Education Employees: All employees of the Department of Education hired after 7/94 shall pass PRAXIS I or provide equivalent scores from other acceptable assessments. These scores shall be presented to the State Office of Certification as official scores (see 3.5.4).

3.8 Certification Testing Data from Delaware Institutions of Higher Education with State Approved Teacher Education Programs.

3.8.1 The State Office of Certification shall receive the same certification testing information, data or reports that are provided to each institution of higher education having a State of Delaware approved program in education.

3.8.2 The request for such information shall be made directly to the Educational Testing Service or other testing vendor by the State Office of Certification only. Data or reports related to alternative test scores, SAT, GRE, and NET Core Battery, which can be used in Delaware for an exemption from specific portions of the PRAXIS I tests, shall also be provided upon request.

4.0 Application for Initial License

4.1 An applicant for initial licensure shall file an application with the State Office of Certification. The application shall be supported by official transcripts and other documentation that may be necessary to perform the credential evaluation. It shall be the responsibility of the applicant to provide the necessary documentation in an appropriate official form. Any and all costs related to providing appropriate documentation shall be the responsibility of the applicant.

4.2 Credentials for Application

4.2.1 All documentation to support an application request for licensure shall be official. Transcripts shall be signed and sealed by the college/university registrar. If presented in a sealed, unaltered envelope to the Office of Certification, transcripts stamped with "Issued to the Student" are considered official. The Office of Certification shall determine, solely, whether a transcript or other document is official.

4.2.2 All other documentation shall be originals, unless otherwise specified in the Application Packet.

4.2.3 Test scores shall be received directly from the Educational Testing Service; or be otherwise official (see 3.5.4).

4.2.4 Credentials required for application, if employed or non-employed, are the same, they shall include:

4.2.4.1 Application for Certification Form.

4.2.4.2 Official transcripts of all institutions listed on Application for Certification Form at the time of application for initial licensure.

4.2.4.3 Institutional Recommendation/Verification of Approved Program.

4.2.4.4 Official PPST/PRAXIS I scores. If not employed in a public school district at the time of initial

application, official PPST/PRAXIS I scores are required to apply for an initial evaluation for licensure. Individuals who are employed in the Delaware public school system have a period of time to submit passing scores (see 3.5).

4.2.4.5 Nonresident processing fee (nonrefundable), if applicable.

4.2.4.6 Experience verification, when applicable.

4.2.4.7 Copy of out-of-state certificates/licenses.

4.3 Receipt of Credentials for Persons Employed in the Delaware Public School System.

4.3.1 All credentials for licensure other than PPST/PRAXIS I scores (where applicable) should be received in the State Office of Certification, prior to employment. If this is not possible, then the credentials shall be received no later than two (2) months from the date of employment. Under these circumstances, it is the responsibility of the district, before employment, to determine that the person is eligible to be certified for the position.

4.3.2 If a complete credential file has not been received by the State Office of Certification, within two (2) months of the employment date, the applicant shall be paid at the rate of a substitute teacher until required documentation for licensure has been received. Under extenuating circumstances, the district may make a written request for a waiver.

4.3.3 Upon receipt of the appropriate credentials and evaluation for license, the individual's salary level, based on verified degree, experience, military service, and type of license shall be determined, and shall be made retroactive to the date of employment.

4.4 Recency of Coursework

4.4.1 If an applicant's Bachelor's degree has not been conferred within the most recent five-year period; or if the applicant has not completed appropriate college-level coursework within the most recent five-year period from the date of evaluation for licensure or 3 years of full-time experience in the area of the license during the last 5 years, then six (6) semester hours of refresher coursework may be necessary, even if all other requirements are satisfied (see 5.7). Refresher coursework shall be taken in a regionally accredited college or university. All courses shall meet the approval of the Office of Certification. Inservice coursework is not appropriate to meet the recency requirement.

4.5 Student Teaching

4.5.1 Successful student teaching at the appropriate level under the supervision of an accredited teacher preparation institution shall be required for all standard licenses, with the exception of the process described below:

4.5.1.1 In lieu of student teaching, one (1) year of full-time, successful elementary, secondary school, or appropriate college/university sponsored internship training in Delaware, under supervision, and given prior approval by

the State Office of Certification may be substituted. This regulation shall not be used until the individual has met all other requirements, leaving student teaching as the sole remaining requirement to be met for Standard licensure.

4.5.1.2 In lieu of student teaching, the six (6) semester hour student teaching requirement shall be met via a year of experience, as approved by the State Office of Certification, and six (6) additional elective semester hours in professional education in the area of licensure or any area designated by the employing school district and approved by the State Office of Certification.

4.5.1.2.1 The State Office of Certification must give prior approval to this year of experience. The one (1) year of experience shall be served at the same level or in the same content area as required for that license (K-4, elementary 1-8, secondary 7-12, Special Education, Math, English, etc.). Experience served before approval is obtained from the State Office of Certification is not appropriate to meet this requirement.

4.5.1.2.2 Private school experience in lieu of student teaching shall be served in a regionally accredited/regularly organized private school. An appropriate evaluation system, that is equivalent to the Delaware Performance Appraisal System, shall be in force in order for the private setting to qualify as an approved site. A private school is not required to participate in this process. It is voluntary and is a service to the applicant for Delaware licensure. Private school experience served before approval is obtained from the State Office of Certification is not appropriate to meet this requirement.

4.5.1.2.3 An applicant who did not attain an undergraduate index sufficient for eligibility for student teaching at the appropriate level; or an applicant who, for some other reason, was denied permission by the college to engage in this experience; may not be certified to teach in Delaware until the restriction is removed by the college. This individual shall meet the Specific Requirements for the area of licensure sought, since the approved program recommendation is not available.

4.6 Other Considerations for Initial Licensure

4.6.1 Foreign Credentials

4.6.1.1 Applicants with study outside the United States who are not employed in the Delaware public school system should submit academic credentials either in the original or in legible certified reproductions. An analysis of the degree equivalency is required. The State Office of Certification has no staff trained in foreign credential analysis. For this reason, the individual shall submit credentials to an approved consulting firm specializing in foreign credential analysis/translation. An official translation/evaluation accompanying the original shall be required. The translation/evaluation will assist the Office of Certification in determining the applicant's licensure status. Semester hour equivalents and verification of certification/

licensure as a teacher in the foreign country may also be necessary to complete the evaluation for licensure in Delaware. A list of appropriate foreign credential consultants is available from the State Office of Certification. Since this service is not provided by the Department of Education, the cost is the full responsibility of the applicant.

4.6.1.1.1 In making application for licensure, the individual with foreign credentials shall follow the standard procedure for all applicants; however, it is more efficient to submit transcripts for foreign credential analysis first. Any teaching experience claimed must be properly verified. If an applicant with foreign credentials is unable to provide all the required information, a license to teach in Delaware cannot be issued (see 2.0); and

4.6.1.1.2 Applicants who are part of a foreign exchange program should refer to 2.3.5.

4.6.2 Professions and Occupations License

4.6.2.1 In areas of licensure where a State of Delaware professional license or registration is required by law, the applicant must present a current, valid license or registration upon application for a teaching license. The State license or registration shall be renewed as required by law. For initial licensure, a copy of a current, valid State of Delaware license shall be submitted with all requests for renewal of a Delaware license that requires the license.

4.6.2.1.1 At any time an individual allows the required license to lapse or become invalid for any reason, the Delaware teaching license which requires such professional licensure shall become invalid as well.

4.6.3 All graduate and undergraduate degrees and coursework accepted for licensure must be earned from a college or institution approved by the appropriate regional or national accrediting agency; however, applicants from nonaccredited colleges may validate the Bachelor's degree by the completion of six (6) graduate level credits from an accredited institution or through the National Teacher Examinations (NTE) (see 4.6.5.1).

4.6.4 Correspondence coursework or courses delivered by video tape shall have a regionally accredited institution as the grantor of credit in order to meet requirements for licensure, and shall be presented to the Office of Certification on an official transcript from said regionally accredited institution. Six (6) semester hours of coursework is the maximum amount of credit allowable via correspondence (see 4.6.6).

4.6.5 Proficiency Examinations

4.6.5.1 A satisfactory score (fiftieth percentile or better) on the National Teacher Examinations (NTE)/PRAXIS II Content Tests may be used:

4.6.5.1.1 to validate work from nonaccredited colleges (see 4.6.3 and 4.6.4);

4.6.5.1.2 to complete requirements for the major teaching field if the applicant holds a Bachelor's

degree but lacks six (6) semester hours or less for full licensure and has at least one (1) year of successful teaching experience in the area required for the license;

4.6.5.1.3 as a substitute for coursework for an additional teaching field. This applies to a person who is fully certified and who has satisfactory experience in his/her major teaching field of at least three (3) years on the Standard license (documentation of both experience and level of performance required), and who wishes to qualify for another teaching field;

4.6.5.1.4 by an applicant who needs only refresher credits as required under Recency Requirement (see 5.7);

4.6.5.1.5 to complete requirements for foreign language in the areas of French, German and Spanish or any other specific content areas for which the National Teacher Exam (NTE/PRAXIS II) has been developed and for which the State of Delaware offers licensure;

4.6.5.1.6 to validate proficiency as a native speaker; or proficiency of a language gained through cross-cultural experiences such as living abroad.

4.6.5.2 Occupational Vocational Testing (NOCTI)

4.6.5.2.1 This test may be taken to complete requirements in the occupational vocational education area of Trade and Industry, with approval of the State Department of Education and they determine the appropriate cut scores of the NOCTI competency examinations for each trade area.

4.6.5.2.1.1 The appropriate NOCTI can be used for nine (9) semester hours of credit in the vocational elective area of the Specific Requirements of the Trade and Industry license and nine (9) semester hours toward a salary increment.

4.6.5.2.1.2 The NOCTI can be used as part of an undergraduate bachelor's degree program in vocational education. The degree-granting college/university will determine the credit value of the exam in light of the completion on the Bachelor's degree.

4.6.5.2.1.3 The NOCTI cannot be used for both 4.6.3.2.1.1 and 4.6.3.2.1.2 above.

4.6.6 Correspondence Coursework

4.6.6.1 Not more than six (6) semester hours of required courses for licensure in any single area may be secured by correspondence work. This correspondence work shall be successfully completed through an accredited college or in a school listed by a recommended accrediting agency such as the National Home Study Council.

4.6.6.1.1 Any courses presented in a video or distance learning format shall be considered as a correspondence course, as long as attendance on campus in a formal classroom setting is not required. Consequently, video courses and distance learning shall be taken through a regionally accredited college and a maximum of six (6) semester hours are allowable.

4.6.7 Fees Required

4.6.7.1 A \$10.00 nonresident initial processing fee will be charged for each original evaluation for licensure at the time of initial application. A resident of Delaware is an applicant who has been a resident of Delaware for at least one (1) year. Checks are to be made payable to the Delaware Department of Education, shall accompany each Application for Certificate, and are not refundable. Applications submitted without this fee shall be returned unprocessed.

4.6.7.2 A \$5.00 fee will be charged for each duplicate certificate/license. Checks are to be made payable to the Department of Education. Cash or postage stamps are not acceptable.

4.6.8 The effective date of each license shall be the actual date of issuance or employment, whichever is earlier; or the first of the month following the completion of the semester in which coursework requirements were completed or the date of completion of testing requirements when no other requirements were needed. The expiration date shall be the end of the fiscal year, as appropriate for the license being issued.

4.6.9 An applicant for initial licensure who meets all minimum requirements may, in some cases, be issued the appropriate license for only one (1) year when offered employment in a Delaware public school district. The license may be continued/extended for its full term after one (1) year of successful, full-time teaching experience in a public school setting and upon the recommendation of the local district superintendent.

4.7 Denial of License

4.7.1 A license may be denied to an applicant for initial licensure for the following reasons: lack of good moral character, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

4.7.2 Notwithstanding any other provisions stated herein, no license shall be issued to an applicant for initial licensure, for licensure through reciprocity, or for renewal of licensure, if:

4.7.2.1 There is legal evidence that the applicant is not of good moral character; or

4.7.2.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

5.0 Renewal of Licenses

5.1 The Professional Status certificate is valid for five (5) fiscal years and shall be renewed upon expiration provided the employee shall have been employed, full-time, for at least three (3) school years during the aforesaid five-year term, in the type of position for which the certificate was issued.

5.1.1 In the event that the Professional Status certificate expires and the holder has not been employed full-

time, for three (3) of the most recent five-year period, in the type of position for which the Professional Status certificate was issued, the employee shall be required to take refresher coursework as required in 5.7. Credits earned during the period when the certificate was valid may be applied, if appropriate, toward meeting the refresher requirements as long as the coursework is not older than five (5) years. Upon completion of the refresher coursework, a regular Standard license will be issued/renewed.

5.1.2 The holder of an expired Professional Status certificate, who does not meet either the three-year employment requirement for renewal or the refresher requirements to qualify for a regular Standard license or renewal of such, may qualify for a Limited Standard license in the same area, if such certification is requested by a local district superintendent as a condition of employment or continued employment.

5.2 Standard license: The Standard license shall be renewed upon expiration, provided the employee shall have been employed in a Delaware public school district or other state agency requiring certified educational personnel, for at least three (3) school years during the most recent five-year period. Said employment shall have been in the type of position for which the license was issued and for which it is valid.

5.2.1 The Standard license shall be renewed only when the employment is not for three (3) consecutive years, thus rendering the employee ineligible for a Professional Status certificate. If employment in the appropriate position is for three (3) consecutive years, the individual shall be issued the Professional Status certificate and the Standard license in that area shall not be renewed.

5.2.2 Standard licenses are typically not renewed for individuals employed outside the Delaware public school system and appropriate agencies that require certified educational personnel. The Standard license shall not be renewed for individuals employed within the Delaware public school system, unless it is required in the area to which the employee is currently assigned. Regular Standard licenses that are not renewed are valid indefinitely. Renewal of these licenses shall be made only when an assignment/reassignment within the public school system requires the employee to hold that specific license.

5.2.3 In the event of a reassignment to an area in which the Standard license has expired, and when the holder of that expired license has not been employed for three (3) of the most recent five-year period in a position for which it was issued, the holder shall be required to take the refresher coursework described in 5.7. Six (6) semester hour credits from regionally accredited colleges/universities earned during the period when the license was valid but expired may be applied, if appropriate, toward meeting the refresher requirement.

5.2.4 The regular Standard license may be renewed

for personnel who previously held a Professional Status certificate, and who do not meet the three-year, full-time employment renewal requirement but who have completed the required refresher coursework. The Standard license shall be renewed at the time the Professional Status certificate expires, provided the holder is employed by a Delaware public school district or state agency requiring certified educational personnel, in a position requiring that license.

5.2.5 The holder of an expired license who meets neither the service requirements nor the refresher requirements for renewal, may qualify for a Limited Standard license, if employed by a Delaware public school district or state agency requiring certified educational personnel, provided such license is requested by a local district superintendent or appropriate personnel officer.

5.3 The Initial Standard certificate was valid for a period of five (5) years between October 1, 1982 and June 30, 1991 and is not renewable. The holder of an Initial Standard certificate who has been employed, full-time, by a Delaware public school district or state agency requiring certified educational personnel for at least three (3) years of the aforesaid five-year term, and in the type of position for which the certificate was issued, shall be eligible for a regular Standard certificate upon expiration of the Initial Standard certificate. The Initial Standard certificate has not been issued since July 1, 1991. Since that time, the regular Standard certificate replaced the Initial Standard certificate as the initial certificate in Delaware. In the situation described above, the Standard certificate would be issued for the next consecutive five-year period.

5.3.1 After three (3) consecutive years of service in the type of position for which the Initial Standard certificate was issued, the holder of the Initial Standard is eligible for a Professional Status certificate in the same area. If employed in a Delaware public school district or an agency that requires certified educational personnel, a regular Standard certificate will not also be issued at that time. It may be issued later, as appropriate.

5.3.2 The holder of an expired Initial Standard certificate who has not completed, within the most recent five-year period, three (3) years of employment in the type of position for which the certificate was issued, may be issued a regular Standard license upon completion of six (6) semester hours of approved refresher work, independent of employment. A written request must be submitted if the individual is outside the Delaware public school system.

5.3.3 The holder of an expired Initial Standard certificate may be issued a Limited Standard license at the request of a local district superintendent/state agency, provided he/she is employed in a Delaware public school district or state agency requiring certified educational personnel, and in the event they meet neither the experience or the refresher requirements.

5.4 A Limited Standard license is issued for up to three (3) years at the request of a local district superintendent, and is not renewable (see 2.3).

5.5 A Temporary license is valid for one (1) year and is not renewable. If an applicant for licensure who was employed on the basis of a Temporary license later qualifies for a regular Standard then the appropriate license may be issued.

5.6 Individuals who are not employed in a Delaware Public School District or other State Agency Requiring Certified Educational Personnel:

5.6.1 A Professional Status certificate, issued to an individual while employed in a Delaware public school district, shall not be renewed. It is considered to be a valid Delaware license for an indefinite period of time.

5.6.1.1 Upon returning to employment within the Delaware public school system, the Standard license that was initially issued/used during the previous employment, shall be renewed when either 5.6.1.1.1 or 5.6.1.1.2 below can be met:

5.6.1.1.1 verification of the completion of the appropriate refresher coursework as specified in 5.7.

5.6.1.1.2 provision of appropriate documentation of three (3) years full-time experience within the most recent five-year period, teaching in the same area as the Professional Status certificate.

5.6.1.2 Upon employment in a Delaware public school district, a Limited Standard license may be issued for a period of up to three (3) years at the request of a local district superintendent/designee while the refresher coursework requirement is being met.

5.6.2 The Standard license, although valid for an indefinite period of time, is typically not renewed for a five-year period until the individual holder is employed in a Delaware public school district or other state agency which employs certified educational personnel. At the time of employment within the public school system, and upon presentation of verification of appropriate refresher coursework (see 5.7):

5.6.2.1 If an individual with a valid regular Standard license that is more than five (5) years past its latest issuance date, seeks employment, he/she will be eligible for renewal with documentation of appropriate refresher coursework or experience. If coursework has not been taken, the regular Standard license cannot be renewed until such time as the refresher is taken. However, this individual shall be eligible at the request of the local district superintendent, to be issued a three-year Limited Standard license while the appropriate refresher coursework is completed.

5.7 Recency Requirement

5.7.1 Upon initial application for licensure, or when an additional area(s) of licensure is/are requested, or upon license renewal, at least six (6) semester hours of the coursework shall have been taken within the most recent

five-year period. The recency requirement may be satisfied through appropriately documented employment in the area of license request, for three (3) years out of the most recent five-year period. Should neither of these criteria be met, six (6) semester hours of refresher coursework as specified below, shall be required prior to Standard licensure or renewal of license.

5.7.2 Refresher coursework for licensure shall be taken in a regionally accredited college or university. Said refresher may be either graduate or undergraduate level coursework, as was appropriate to meet the original requirements for licensure in that particular area. Inservice coursework is not appropriate. A total of six (6) semester hours of refresher coursework is required for license renewal or to update any degree or coursework that is more than five (5) years old (see 4.4).

5.7.2.1 If required, the refresher coursework shall be related to the specific area of licensure requested, with three (3) semester hours to be taken in the subject/content area of the license and three (3) additional semester hours to be taken in professional education directly related to the certified area. Refresher coursework shall meet the approval of the State Office of Certification. Refresher coursework shall be required for:

5.7.2.1.1 Renewing (upon employment in or assignment to a position) any valid, expired, renewable certificate/license where the individual has not been employed in an assigned position requiring that license for three (3) of the most recent five-year period;

5.7.2.1.2 Updating the recency of any degree or coursework that is older than five (5) years as it applies to the use of such coursework or the completion of a degree used to obtain initial licensure for a new area;

5.7.2.1.3 Updating the recency of any degree or coursework that is older than five (5) years as it applies toward meeting the requirements for any additional area(s) of licensure, after initial licensure.

6.0 Licensure Agreements/Reciprocity

6.1 Individuals graduating from Teacher education programs that are approved and accredited by the National Council for Accreditation of Teacher Education (NCATE) or the National Association of State Directors of Teacher Education and Certification (NASDTEC) Certification Reciprocity System or The Interstate Certification Project (ICP) and have full recommendation from their degree granting institution shall be accepted for full licensure in Delaware upon passing the reading, mathematics and writing parts of the Pre-Professional Skills Tests (PPST/PRAXIS I).

6.2 Interstate Certification Project (ICP)

6.2.1 Classroom Teacher: An applicant with a bachelor's degree granted after January 1, 1964 in teacher education whose program is on the list of approved programs for the ICP will be automatically certified to teach in

Delaware in his/her major area if he/she is fully recommended for teaching by the degree-granting institution.

6.2.1.1 An applicant with a bachelor's degree who holds a valid initial regular certificate/license from one of the states in the ICP and who has at least 27 months of successful teaching experience within the immediate past seven (7) years with at least eighteen (18) months of that teaching under the license now offered, is eligible for a Delaware license in the same area. (A copy of the certificate/license and verification of experience is required.)

6.2.2 All other licensed education personnel (except Superintendents and Assistant Superintendents):

6.2.2.1 An applicant from one of the states in the ICP who holds a valid initial regular certificate/license from the state and who has a minimum of 27 months of successful performance of professional school services under the certificate/license is eligible for a Delaware license in the same area if he/she has attained the same degree level of education required by Delaware. A copy of the certificate/license and verification of experience is required.

6.2.3 Licensed Educational Personnel from Other States (except local District Superintendent)

6.2.3.1 An applicant with a bachelor's degree who is fully licensed/certified in another state and who has a minimum of three (3) years of satisfactory experience within the immediate past five (5) years in the specific teaching area covered by that certificate/license, will be licensed in that area if he/she meets the total number of credits required by Delaware in professional education and the specific field, but not necessarily the specific courses required in Delaware if he/she has attained the same degree level of education required by Delaware.

7.0 Revocation of Licenses/Certification

7.1 Any license other than that of Professional Status may be revoked by the Secretary of Education for the reasons of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials.

7.2 Revocation Requested by a School District

7.2.1 When any certified person is dismissed for immorality, the board making such a determination pursuant to 14 Del. C. shall, upon final decision, give written notice to the Secretary of Education of its desire to request the revocation of that individual's license(s).

7.2.2 When any certified person is dismissed for misconduct in office, incompetence, disloyalty, or willful and persistent insubordination, the board making such a determination pursuant to 14 Del. C. may, upon final decision, give written notice to the Secretary of Education of its desire to request the revocation of that individual's license(s).

7.2.3 The certified copy of the decision of the board

shall be substantial evidence for the Secretary of Education to revoke the license(s) without a hearing. The district shall forward its record with regard to the dismissal and any hearing thereon.

7.2.4 The notice of the revocation(s) by the Secretary of Education shall be sent to the person by certified mail and shall give notice that it may be appealed to the Delaware State Board of Education within thirty (30) days.

7.3 Revocation or Denial by the Secretary of Education

7.3.1 In a case where the Secretary of Education has good reason to believe that a certified person not employed by a public school district has been convicted of a crime which is evidence of immorality, the Secretary of Education may initiate proceedings to revoke the person's license(s).

7.3.2 Any revocation by the Secretary of Education, or any denial of licensure or denial of renewal of license shall be subject to the following:

7.3.2.1 The Secretary of Education shall ensure that there has been a fair investigation of the facts, that there is substantial evidence for the basis of the decision, and that the person is given notice of the decision and the reasons.

7.3.2.2 The notice of the decision shall be sent to the person by certified mail, and the person shall have thirty (30) days, from receipt, to request an informal hearing before the State.

7.3.2.3 If such a hearing is requested, the Secretary of Education shall give the person twenty (20) days prior notice of the date, time and place of the informal hearing. The notice shall inform the person of the right to present his position and to be represented by counsel.

7.3.2.4 The Secretary of Education shall render a decision in writing, setting out the reasons within twenty (20) days. The decision shall be sent to the person by certified mail, and shall give notice that it may be appealed to the State Board of Education within thirty (30) days of receipt.

7.3.3 All appeals to the State Board of Education regarding revocation or denial of licensure are pursuant to 29 Del. C., Chapter 101.

8.0 Denial of Licenses/Certificates

8.1 A license may be denied to an applicant for initial licensure for the following reasons: Lack of Good Moral Character, Misconduct in Office, Incompetence, Willful Neglect of Duty, Disloyalty or Falsification of Credentials.

8.2 Notwithstanding any other provisions stated herein, no license shall be issued to an applicant for initial licensure, for licensure through reciprocity, or for renewal of licensure, if:

8.2.1 There is legal evidence that the applicant is not of good moral character; or

8.2.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in

office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

9.0 Professional Growth Programs

9.1 Definitions of Terms

9.1.1 Graduate Level Course: Any course to be used herein which is offered at a regionally accredited college or university that is considered graduate level at that institution.

9.1.2 Undergraduate Course: Any course to be used herein which is offered by a regionally accredited college or university which carried college credit for an Associate or Bachelor's degree.

9.1.3 Inservice Credits: Any project course offered by a local Delaware school district or other agency that has the approval of the Delaware State Department of Education; or any course offered by the Delaware State Department of Education. (To be used in a Professional Growth Program, completion of these courses must have the prior approval of the local employing school district superintendent.)

9.1.4 Individual Professional Growth Credits: Individual activities, i.e. projects, travel, and work experience, which contribute to the professional growth of the school employee in his/her assignment. Individual Professional Growth credits must have the prior approval of the Delaware State Department of Education and the local employing school district superintendent. A written evaluation report by the individual earning the credit shall be required at the conclusion of the activity.

9.1.4.1 A minimum of one (1) and a maximum of three (3) inservice credits will be allowed for each activity, for a maximum of nine (9) Individual Professional Growth credits.

9.1.5 Credit Calculation: All credits must be expressed in terms of semester hours. College or university credits expressed in quarter hours and approved CEUs will be converted to semester hours by multiplying the number of quarter hours by two-thirds. In the case in-service credits, fifteen (15) clock hours of class time is considered the equivalent of one (1) credit. Credits earned for Professional Growth activities will be calculated in the same manner as in-service credits.

9.2 Acceptable Grades

9.2.1 All grades for college-level credit submitted for a Professional Growth Program must be a grade that earns a "C" or better from the granting institution. In the case of credits earned on a pass-fail basis, a grade of pass is acceptable.

9.3 Acceptable Credits

9.3.1 Credits for the Professional Growth Programs (B+15, B+30, M+15, M+30, M+45) shall be earned after the Bachelor's degree has been conferred. They may be graduate, undergraduate, or in-service. CEUs from regionally accredited colleges can also be used (1 CEU = 10

clock hours = 2/3 semester hour)

9.3.2 Up to nine (9) Individual Professional Growth credits may be counted from the B+15 through the M+45.

9.3.3 Undergraduate and graduate credits must be earned at regionally accredited institutions of higher learning. Any credits not counted toward a graduate degree shall be counted in the B+15, B+30, M+15, M+30, M+45 programs.

9.3.4 Undergraduate, in-service, and Individual Professional Growth credits shall have the prior approval of the employing local district superintendent/designee before submission to the State Office of Certification. These credits shall be relevant and usable to the applying employee.

9.3.5 For Trade and Industry teachers, a Bachelor's degree equivalent shall be two years of college and six years of work experience, 14 Del. C., § 1301.

9.4 Salary Increment: An applicant shall hold a Delaware Standard or Limited Standard license before a Professional Growth Program salary increment can be approved.

9.5 Admittance to Graduate School: Applicants for a Professional Growth Program need not be admitted to a graduate school in order to have graduate level courses accepted for these programs.

9.6 Acceptable Professional Degrees

9.6.1 Professional degrees earned in areas other than professional education will not be accepted for the Professional Growth Program unless the degree is directly related to an area of specialty in which the individual is employed.

9.6.2 To be counted for the Professional Growth Program, a degree for any individual involved in instruction, curriculum, or the supervision of instruction must be a degree in professional education.

9.6.3 Individual courses in any area may be considered for acceptance in the Professional Growth Program upon receipt of a written rationale from the applicant with an endorsement by his/her local employing school district superintendent.

9.7 Usable Credits: All credits and programs to be accepted for the Professional Growth Program/state supported salary increments shall be relevant and usable to the professional school employee and may be approved or disapproved by the local employing school district superintendent.

9.8 Excess Graduate Level Credits: Graduate level credits earned after a Bachelor's degree or before earning a Master's degree may be used in the B+15 and the B+30 Professional Growth Programs so long as the same credit is used only one time. Credits earned in excess of those required for the Master's degree by the granting institution can be used in a M+15, M+30 and M+45 Professional Growth Program.

9.9 Effective Date of Salary Adjustment

9.9.1 The salary adjustment shall be made after the evaluation and approval of the candidate's application by the State Office of Certification. The adjustment will be authorized to be made retroactive to the first of the month following the date certified by transcript, official grade slip, or approved in-service slip, as to when the program or credit was completed.

9.9.2 Retroactive salary adjustment may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or state fiscal officers.

9.10 Appeals Committee: A committee shall be called to review and make recommendations regarding an appeal that may result as these rules are administered. The committee shall include the following: One (1) representative from the professional organization which represents the applicant; One (1) staff member from the Department of Education; and one (1) representative from the Chief School Officers organization.

9.11 Application Procedures

9.11.1 The applicant shall secure the proper form from the local school district office, complete the form, and to return it to his/her school district office for transmittal to the State Office of Certification.

9.11.2 The applicant shall arrange for the appropriate authority or institution to provide verification, if needed, regarding graduate level of courses or any other information that might be needed to support his/her application for the Professional Growth Program.

9.11.3 Application for evaluation shall not be submitted prior to the completion of the Professional Growth Program.

9.11.4 A salary increment for the current fiscal year (July 1 – June 30) based upon approval of the application must be received in the State Office of Certification by June 1. This cut-off date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment. Applications received after this date will be approved effective the first day in the new fiscal year. No salary credit shall be retroactive into a prior fiscal year.

10.0 Certification/National Board of Professional Teaching Standards

10.1 To be eligible to apply for national board certification (and, therefore, for the award) an individual shall:

10.1.1 Hold a baccalaureate degree from a regionally-accredited institution of higher education.

10.1.2 Verify the completion of at least three years of successful, full-time experience teaching in one or more elementary, middle-level, and/or secondary schools. Substitute teaching does not count for this experience.

10.1.3 Be currently employed in a Delaware public school.

10.2 Application Procedures

10.2.1 By a date prescribed each year, teachers interested in applying for national certification shall request, complete, and return an Award Application to the State Office of Certification. If more than fifteen (15) applications are received in any given year, a total of fifteen applicants to receive the awards will be chosen by lottery.

10.2.2 The applicant shall complete the forms and return them to the State Office of Certification by the annual deadline for processing and submission to the National Board. The application for national board certification shall be completed in full and returned before the individual can obtain the award specified in this policy.

10.2.3 The application for national board certification and the \$500.00 initial application fee shall be sent from the State Office of Certification directly to the National Board for Professional Teaching Standards.

10.2.4 As bills are sent to the teacher by the NBPTS for additional application fees and related costs up to a total of \$2,000.00, the teacher will forward the bills to the Office of Professional Standards and Certification for payment to the National Board.

10.2.5 A teacher may receive an award only one time for working toward national certification in a particular field/level.

10.2.6 Should a teacher/applicant be involved in another national board certification program like the Princeton Project, which also pays part of the fees for the national certification, this program will pay the other part of the fees and related costs up to the total of \$2,000.00 for all support.

10.2.7 The Documents that shall be submitted to complete the application and reporting process include the Award Application and the NBPTS Application.

10.3 Salary Adjustment: School district personnel offices shall verify for the State Office of Certification completion of national board certification by any teacher paid under 14 Del.C. §1305.

11.0 Alternative Routes To Certification Program For Secondary Teachers

11.1 Eligibility for Participation in Program is defined in 14 Del.C. §1260.

11.2 Candidates employed for secondary teaching positions who do not meet the certification requirements for a limited standard or standard Delaware certificate and who do not meet the criteria will be issued a one-year temporary certificate and will be required to meet the Delaware certification requirements for the area in which they are teaching.

11.3 School districts or charter schools employing a secondary-level candidate for the alternative routes program must meet the criteria set forth in 14 Del.C. §1260.

11.4 The Alternative Routes to Certification Program

shall be offered in three interrelated but distinct components — a summer institute of intensive study, a practicum experience the first year of teaching, and seminars in teaching during and immediately following the first year of teaching.

11.4.1 A summer institute of approximately 120 instructional (clock) hours completed by the candidate prior to the beginning of his/her teaching assignment. This includes an orientation to the policies, organization and curriculum of the employing school district or Charter School, instructional strategies and classroom management and adolescent development.

11.4.1.1 Candidates employed too late to participate in the summer institute will complete the practicum experience and seminars on teaching during the first school year and will participate in the summer institute following their first year of teaching.

11.4.2 A one-year, full-time practicum experience which includes a period of intensive on-the-job mentoring and supervision beginning the first day in which the candidate assumes full responsibility for a classroom and continuing for a period of thirty (30) weeks.

11.4.3 Seminars on Teaching that provide alternative routes to certification teachers with approximately 120 instructional (clock) hours during the first year of their teaching assignment and during a one week intensive seminar the following summer.

11.4.4 Mentoring Support: Mentoring support shall be carried out in accordance with Section 1261 (b) (2) (3) of 14 Del. C.

11.4.5 Evaluation/Supervision: Evaluation/supervision shall be conducted as per Section 1261 (b) (2) (3) of 14 Del. C.

11.5 Program Evaluation: Those responsible for alternative routes to certification programs approved by the State Office of Certification shall develop a program evaluation process. The focus of the program evaluation must be to demonstrate the degree to which teachers who complete the program are effective in the classroom.

1505 Professional Growth Programs (Effective through 6/30/03[04] only)

1.0 Content: This regulation shall apply to professional growth programs for educators, pursuant to 14 Del. C. § 1305.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Department” means the Delaware Department of Education.

“Graduate level course” means any course to be used herein which is offered at a regionally accredited college or

university that is considered graduate level at that institution.

“Individual professional growth credits” means individual activities (i.e., projects, travel, and work experience) which contribute to the professional growth of the school employee in his/her assignment.

“In-service credit” means credit offered by school districts, charter schools, Delaware educationally related organizations, the Department, or individual professional growth programs and approved by the state in-service committee.

3.0 Credits.

3.1 Three (3) in-service credits will be allowed for each activity, for a maximum of nine (9) individual professional growth credits. Individual professional growth credits must have the prior approval of the Department and the local employing school district superintendent or charter school principal. A written evaluation report by the individual earning the credit shall be required at the conclusion of the activity.

3.2 Credit Calculation.

3.2.1 All credits must be expressed in terms of semester hours. College or university credits expressed in quarter hours and approved CEUs will be converted to semester hours by multiplying the number of quarter hours by two-thirds. In the case in-service credits, fifteen (15) clock hours of class time is considered the equivalent of one (1) credit. Credits earned for professional growth activities will be calculated in the same manner as in-service credits.

3.3 Acceptable Grades

3.3.1 All grades for college-level credit submitted for a professional growth program must be a grade that earns a "C" or better from the granting institution. In the case of credits earned on a pass-fail basis, a grade of pass is acceptable.

3.4 Acceptable Credits

3.4.1 Credits for the professional growth programs

(B+15, B+30, M+15, M+30, M+45) shall be earned after the Bachelor's degree has been conferred. They may be graduate, undergraduate, or in-service. CEUs from regionally accredited colleges can also be used (1 CEU = 10 clock hours = 2/3 semester hour)

3.4.2 Up to nine (9) individual professional growth credits may be counted from the B+15 through the M+45.

3.4.3 Undergraduate and graduate credits must be earned at regionally accredited institutions of higher learning. Any credits not counted toward a graduate degree shall be counted in the B+15, B+30, M+15, M+30, M+45 programs.

3.4.4 Undergraduate, in-service, and individual professional growth credits shall have the prior approval of the employing local district superintendent/designee before

submission to the State Office of Certification. These credits shall be relevant and usable to the applying employee.

3.4.5 For Trade and Industry teachers, a Bachelor's degree equivalent shall be two years of college and six years of work experience (14 Del. C., § 1301).

3.5 Salary Increment.

3.5.1 An applicant shall hold a Delaware Standard or Limited Standard license before a Professional Growth Program salary increment can be approved.

3.6 Admittance to Graduate School: Applicants for a professional growth program need not be admitted to a graduate school in order to have graduate level courses accepted for these programs.

3.7 Acceptable Professional Degrees

3.7.1 Professional degrees earned in areas other than professional education will not be accepted for the professional growth program unless the degree is directly related to an area of specialty in which the individual is employed.

3.7.2 To be counted for the professional growth program, a degree for any individual involved in instruction, curriculum, or the supervision of instruction must be a degree in professional education.

3.7.3 Individual courses in any area may be considered for acceptance in the professional growth program upon receipt of a written rationale from the applicant with an endorsement by his/her local employing school district superintendent.

3.8 Usable Credits.

3.8.1 All credits and programs to be accepted for the professional growth program/state supported salary increments shall be relevant and usable to the professional school employee and may be approved or disapproved by the local employing school district superintendent.

3.9 Excess Graduate Level Credits.

3.9.1 Graduate level credits earned after a Bachelor's degree or before earning a Master's degree may be used in the B+15 and the B+30 professional growth programs so long as the same credit is used only one time. Credits earned in excess of those required for the Master's degree by the granting institution can be used in a M+15, M+30 and M+45 professional growth program.

3.10 Effective Date of Salary Adjustment

3.10.1 The salary adjustment shall be made after the evaluation and approval of the candidate's application by the Office of Professional Accountability. The adjustment will be authorized to be made retroactive to the first of the month following the date certified by transcript, official grade slip, or approved in-service slip, as to when the program or credit was completed.

3.10.2 Retroactive salary adjustment may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or state fiscal officers.

3.11 Appeals Committee.

3.11.1 A committee shall be called to review and make recommendations regarding an appeal that may result as these rules are administered. The committee shall include the following: One (1) representative from the professional organization which represents the applicant, One (1) staff member from the Department; and one (1) representative from the Chief School Officers organization.

3.12 Application Procedures

3.12.1 The applicant shall secure the proper form from the local school district office, complete the form, and to return it to his/her school district office for transmittal to the Office of Professional Accountability.

3.12.2 The applicant shall arrange for the appropriate authority or institution to provide verification, if needed, regarding graduate level of courses or any other information that might be needed to support his/her application for the professional growth program.

3.12.3 Application for evaluation shall not be submitted prior to the completion of the professional growth program.

3.13 A salary increment for fiscal year 2004 (July 1 - June 30) based upon approval of the application must be received in the Office of Professional Accountability by June 1. This cut-off date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment. No salary credit shall be retroactive into a prior fiscal year.

1510 Issuance Of Initial License Issuance Of Initial License

1.0 Content: This regulation shall apply to the issuance of an initial license for educators, pursuant to 14 Del. C. § 1210.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Alternative Routes to Licensure and Certification” means programs approved by the Department of Education to certify or license candidates who hold bachelors degrees with appropriate to the instructional field they desire to teach, but who did not complete a regionally accredited educator preparation program.

“Composite score” means a total of an applicant's scores on all three (3) subtests of Praxis I which is equal to, or greater than, the sum of the passing scores on the three subtests.

“Date of hire” means the effective date of employment by a school district, charter school, or other employing authority.

“Department” means the Delaware Department of Education.

“Educator” means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 Del. C. § 1203, but does not include substitute teachers.

“Examination of general knowledge” means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing.

“Exigent circumstances” means unanticipated circumstances or circumstances beyond the educator’s control, including, but not limited to, expiration of a license during the school year, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator’s temporarily leaving active service.

“Jurisdiction” means a state, territory or country.

“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“Mentoring” means activities prescribed by the Department and/or other employing authority in which a holder of an initial license must engage during the three-year term of the initial license.

“Novice applicant” means an applicant who has not previously held an initial license in Delaware.

“Standard Certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

“Standards Board” means the Professional Standards Board established pursuant to 14 Del. C. § 1201.

“State Board” means the State Board of Education of the State pursuant to 14 Del. C. § 104.

“Student teaching program” means a ~~program accredited by the National Association of State Directors of Teacher Education and Certification or the National Council for the Accreditation of Teacher Education, which includes~~ traditional student teaching ~~[placement within a National Association of State Directors of Teacher Education and Certification or National Council for the Accreditation of Teacher Education approved program offered by a college or university,]~~ ~~programs,~~ or such alternatives as deemed appropriate to the program, such as supervised internships or other field based experience recognized as a required component of the regionally accredited educator preparation program. For the purposes of this regulation, student teaching program also means one year of teaching experience consisting of a minimum of 91 days of long term teaching experience at one assignment.

3.0 In accordance with 14 Del. C. § 1210, the Department shall issue an initial license to a novice applicant who

submits evidence of (1) receipt of a bachelors degree from a regionally accredited 4-year college or university; (2) completion of a student teaching program, or one year of teaching experience consisting of a minimum of 91 days of long term teaching experience at one assignment, or enrollment in an Alternative Routes to Licensure and Certification program, and (3) a passing score on an examination of general knowledge, such as PRAXIS I, or such other alternative as may be established by the Standards Board, with the approval of the State Board. For the purposes of this regulation, a bachelor’s degree for a trades and industry teacher shall be two (2) years of college or technical training, plus six (6) years of trade experience. An initial license shall also be issued to an applicant currently licensed as an educator in another jurisdiction with less than three years of teaching experience or to an applicant who previously held a valid Delaware standard or professional status certificate who has been out of the profession for more than three years. In addition to an initial license, applicants must also apply for a standard certificate in the particular area, subject, or category in which they wish to be employed, and must verify that they possess the prescribed knowledge, skill and/or education to practice in that area, subject, or category. (See 14 DE Admin. Code 1516).

3.1 An applicant for an initial license shall submit the application form, official transcripts, and official scores on an examination of general knowledge to the Department.

3.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.

3.2 Examination of General Knowledge Requirements

3.2.1 An applicant seeking initial licensure in Delaware shall provide the Department with official test scores for one or more of the following tests of essential skills in reading, writing and mathematics: the PRAXIS I Tests or such alternatives as set forth in 3.2.4 below.

3.2.2 Scores of Examinations of General Knowledge.

3.2.2.1 The following minimum passing scores are required in the areas of reading, writing and mathematics for each of the examinations of essential skills.

3.2.2.1.1 Pre-professional Skills Test Taken between 7/1/83 and 10/22/93: reading - 175, mathematics - 175, writing - 172.

3.2.2.1.2 PRAXIS I - Paper and Pencil Tests (Tests taken on 10/23/93 and thereafter) and computerized pre-professional skills tests taken 1/1/02 and thereafter: reading - 175, mathematics - 174, writing - 173.

3.2.2.1.3 PRAXIS I - Computer Based Tests (Tests taken on 10/23/93 and thereafter): reading - 322, mathematics - 319, writing - 319.

3.2.3 Individuals holding Delaware certificates issued prior to July 1, 1983 are exempt from the testing requirements.

3.2.4 Acceptable alternatives to the PRAXIS I test scores include:

3.2.4.1 Scores from the California Test of Basic Skills (CTBS) shall be accepted in lieu of PPST/PRAXIS I scores if the test was taken as a condition of meeting certification or licensure requirements in that state and the scores total 123, with a minimum of at least 37 in each category.

3.2.4.2 Scholastic Aptitude Tests (SAT) taken after 4/1/95 and presented for exemption must meet the scores set forth below due to a re-centering of the SAT.

3.2.4.2.1 A minimum score of 520 on the SAT Mathematics taken prior to 4/1/95, and a minimum score of 540 on the SAT Mathematics test taken thereafter will be accepted as fulfillment of the PRAXIS I Mathematics requirement.

3.2.4.2.2 A minimum score of 480 on the SAT Verbal test taken prior to 4/1/95, and a minimum score of 560 on the SAT verbal test taken thereafter will be accepted as fulfillment of the PRAXIS I reading requirement.

3.2.4.3 Graduate Record Examination (GRE) scores presented for exemption must meet the scores set forth below.

3.2.4.3.1 A minimum score of 490 on the Graduate Record Examination (GRE) Verbal test will be accepted as fulfillment of the PRAXIS I reading requirement.

3.2.4.3.2 A minimum score of 540 on the Graduate Record Examination (GRE) Quantitative test will be accepted as fulfillment of the PRAXIS I mathematics requirement.

3.2.4.4 National Teacher Examination (NTE) Core Battery Communications Skills with a minimum score of 670 will be accepted as fulfillment of the PRAXIS I writing requirement

3.2.5 Any Scholastic Aptitude Test (SAT) scores, Graduate Records Exam (GRE) scores or NTE Communication Skills scores intended to be used as an exemption for the PPST/PRAXIS I, shall be submitted within the same time line as that required for PRAXIS I and scores must pre-date the employment date.

3.2.6 Timeline for Examination of General Knowledge.

3.2.6.1 An applicant for an initial license must pass PRAXIS I or an approved alternative within the period of time from the date of hire to the end of the next, consecutive fiscal year. ~~¶An initial license issued without the passage of PRAXIS I shall be suspended at the end of the fiscal year during which the license was issued if proof of passage of PRAXIS I has not been provided. This suspension shall remain in effect until the license holder passes PRAXIS I or until the initial license expires, whichever first occurs.¶~~ Notwithstanding the foregoing, the

superintendent of the employing school district or charter school [or other employing authority] may submit to the Secretary of Education a written request for a one-year extension. The request must document the effectiveness of the applicant.

3.2.6.1.1 An applicant for an initial license who does not achieve a passing score on PRAXIS I, but whose score on PRAXIS I is within 2 points of the passing score on the reading, writing, or mathematics section of PRAXIS I may use a composite score to meet the requirements of passage. Notwithstanding the use of a composite score, an applicant who seeks to teach in the secondary content areas of mathematics or English/language arts must meet the passing score in that content area.

3.2.6.2 An applicant in a vocational trade and industry area must pass PRAXIS I or an approved alternative within six (6) years of the date of employment or before the expiration of the initial license, whichever is later.

3.2.7 There is no limit on the number of times an individual may take the PPST/PRAXIS I. Once passed, a section need not be taken again.

3.2.7.1 Passing scores in each area (reading, writing, mathematics) may be attained in any testing format.

3.2.8 Submission of Scores of Examination of General Knowledge.

3.2.8.1 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the Department.

3.2.8.2 Unopened, unaltered envelopes containing PPST/PRAXIS I scores, or scores of acceptable alternatives, sent to the individual may be accepted as official. The Department shall determine whether the scores as presented are acceptable.

3.2.8.3 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Department. This method will be accepted only when official test scores from Educational Testing Service are not available.

4.0 An initial license is valid for three (3) years, unless revoked, and may not be renewed. Notwithstanding the foregoing, an initial license issued to an applicant in a vocational trade and industry area is valid for up to six (6) years to provide time for completion of specified college level course work required for certification.

4.1 An initial license issued to an applicant who is not currently employed by a school district, charter school, or other employing authority shall be inactive until such time as an applicant is employed by a public school district or charter school. Once employed, the initial license shall be in effect for three (3) years from the date of hire until the last day of the month of issuance three (3) years later, except in the case of the vocational and trade industry areas which

shall expire on the last day of the month of issuance six (6) years later.

4.2 During the term of the initial license, license holders are required to participate in mentoring and other prescribed professional development activities offered by the Department and by the school district or charter school or other employing authority in which they are employed.

5.0 Applicants with Foreign Credentials.

5.1 Applicants graduating from foreign institutions shall provide an analysis of the degree equivalency, along with all other required application materials, which shall be reviewed by the Department.

6.0 The Department may extend an initial license for a period not to exceed one (1) year, exigent circumstances warranting the necessity of such extension.

6.1 A license holder whose license expires during the school year may have the initial license extended until the last day of the fiscal year upon a request from the district superintendent, charter school administrator, or other employing authority. This extension shall be considered an exigent circumstances and shall not exceed one (1) year in length.

7.0 An educator may take a leave of absence of up to three (3) years with no effect upon the validity or expiration of the initial license.

8.0 An applicant shall disclose his or her criminal conviction history upon application for an initial license. Failure to disclose a criminal conviction history is grounds for denial or revocation of an initial license as specified in 14 Del. Code, § 1219.

9.0 This regulation shall apply to all requests for issuance of an initial license, except as specifically addressed herein.

9.1 Educators whose applications for certification in Delaware were received prior to August 31, 2003, and whose applications and credentials have been reviewed by the Department and resulted in the issuance of an evaluation or prescription letter shall be required to meet the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations as adopted for certification effective July 1, 1993.

9.2 Educators employed on a Limited Standard Certificate or a Temporary Certificate issued prior to August 31, 2003 shall continue on that certificate until the requirements specified are met or the certificate expires, whichever comes first. In no case shall a Limited Standard or Temporary Certificate be valid after July 1, 2008.

10.0 The Secretary of Education may, at the request of the superintendent of a local school district or charter school

administrator or other employing authority, review licensure credentials on an individual basis and grant a license to an applicant who otherwise does not meet the requirements for initial license, but whose effectiveness [e]ff[ic]acy documented by the local school district, charter school, or other employing authority.

1513 Denial Of Licenses

1.0 Content: This regulation shall apply to the denial of an initial license, continuing license and/or advanced license for educators pursuant to 14 Del. C. § 1217.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise.

“Advanced license” means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1213 and § 1214.

“Department” means the Delaware Department of Education.

“Continuing license” means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1211 and § 1212.

“Educator” means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 Del. C., § 1203, but does not include substitute teachers.

“Good moral character” means conduct which is consistent with the rules and principles of morality expected of an educator.

“Immorality” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness or otherwise.

“Initial license” means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1210.

“Secretary” means the Secretary of the Delaware Department of Education.

“Standards Board” means the Professional Standards Board established pursuant to 14 Del. C. § 1205.

“State” means the State of Delaware.

“Unfit” means lack of good moral character, misconduct in office, incompetence, a pattern of ineffective teaching, wilful neglect of duty, disloyalty or falsification of credentials.

3.0 Upon a finding that an applicant is unfit to be licensed in the State, the Department may refuse to issue an initial license, continuing license or an advanced license to an applicant who otherwise meets the requirements set forth in

14 DE Admin. Code 1510, 1511, and 1512.

3.1 The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days.

3.2 An applicant who is denied an initial, continuing, or advanced license may appeal the decision, and is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

4.0 Notwithstanding any other provisions stated herein or in 14 DE Admin. Code 1510, 1511, and 1512, no license shall be issued to an applicant for an initial, continuing or advanced license if:

4.1 There is legal evidence that the applicant is not of good moral character; or

4.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

1514 Revocation Of Licenses

1.0 Content: This regulation shall apply to the revocation of an initial license, continuing license and/or advanced license for educators, pursuant to 14 Del. C. § 1218.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Advanced license" means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1213 and 1214.

"Continuing license" means a license issued as part of the three-tiered license system set forth in 14 Del. C. § 1211 and 1212.

"Department" means the Delaware Department of Education.

"Dismissal" means (1) dismissal by a school board or board of directors where the license holder is employed by a public school district or a charter school for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty; or (2) the license holder's voluntary resignation of employment in the face of disciplinary action for immorality; or (3) the license holder's conviction of a crime which is evidence of immorality.

"Educator" means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 Del. C., § 1203, but does not include substitute teachers.

"Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness or otherwise.

"Initial license" means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1210.

"License holder" or **"licensee"** means any individual who holds an initial license, continuing license and/or advanced license, and until a continuing license is issued, a limited standard, standard, or professional status certificate.

"Secretary" means the Secretary of the Delaware Department of Education.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del. C. § 1205.

"State" means the State of Delaware.

3.0 An initial, continuing or advanced license may be revoked upon the dismissal of the license holder for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty, and must be revoked upon a finding that the license holder made a materially false or misleading statement in his or her license application.

3.1 Revocation Requested by a School District or Charter School.

3.1.1 When any license holder is dismissed by a school board, or board of directors, or other employing authority for immorality, the board making such a determination pursuant to 14 Del. C. shall, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual's license.

3.1.2 When any license holder is dismissed by a school board or board of directors or other employing authority for misconduct in office, incompetence, willful neglect of duty or disloyalty, the board making such a determination pursuant to 14 Del. C. may, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual's license.

3.1.3 When a license holder employed by a school board or board of directors or other employing authority voluntarily resigns in the face of disciplinary action for immorality and an investigation has been initiated by the school board or board of directors, or other employing authority, the board shall, upon accepting the resignation, give written notice to the Secretary.

3.1.4 Upon receipt of written notification from the school board or board of directors or other employing authority, the Secretary shall give written notice to the license holder of the intended revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

3.1.5 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license.

3.2 Revocation by the Secretary of Education

3.2.1 The Secretary may initiate proceedings to revoke a license holder's license when she/he has good reason to believe that any of the following circumstances exist:

3.2.1.1 The license holder has been convicted of a crime which is evidence of immorality;

3.2.1.2 The license holder who is not employed by a public school district or charter school or other employing authority has voluntarily resigned his/her employment in the face of an open investigation for immorality; or

3.2.1.3 The license holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty or falsification of credentials.

3.2.2 The Secretary shall give written notice to the license holder of the intended revocation and the reasons therefor. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

3.2.3 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license.

4.0 Duty of License Holder to Report.

4.1 Notwithstanding any other provisions stated herein, a license holder shall send written notification to the Secretary within thirty (30) days of the happening of any of the following events:

4.1.1 The license holder is dismissed by a school board, board of directors, or other employing authority for immorality;

4.1.2 The license holder voluntarily resigns employment in the face of disciplinary action for immorality and/or an open investigation for immorality;

4.1.3 The license holder is convicted of a crime which is evidence of immorality; or

4.1.4 The license holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty, disloyalty or falsification of credentials.

4.2 The failure of the license holder to report any of the above events to the Secretary of Education shall be grounds for revoking a license.

5.0 When a license is revoked, all certificates held by the license holder shall be revoked. Educators are entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

1515 Emergency Certificate

1.0 Content: This regulation shall apply to the issuance of an emergency certificate, pursuant to 14 Del. C. § 1221.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Certified" means holding a certificate in a specific content area at designated grade levels.

"Department" means the Delaware Department of Education.

"Educator" means a public school employee who holds a license issued under the provisions of 14 Del. C., chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 Del. C. § 1203, but does not include substitute teachers.

"Emergency certificate" means a certificate issued to an educator who holds a valid Delaware initial, continuing, or advanced license, but lacks necessary skills and knowledge to meet certification requirements in a specific content area.

"Employing district" means a school district, charter school, or other employing authority that proposes to employ an educator under an emergency certificate.

"Exigent circumstances" means unanticipated circumstances or circumstances beyond the educator's control, including, but not limited to, expiration of a license during the school year, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator's temporarily leaving active service. **"Satisfactory evaluation"** means an overall rating of "basic" or higher on an annual DPAS summative evaluation.

"Standard certificate" means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 Upon request from the employing district, the Department may issue an emergency certificate, valid for up to three years, to an educator who holds a valid Delaware initial, continuing, or advanced license, or a valid standard or professional status certificate, but who is not eligible for certification in the area of need. An emergency certificate may not be renewed. Notwithstanding the foregoing, an

emergency certificate issued to an educator in a vocational trade and industry area is valid for up to six (6) years to provide time for completion of specified college level course work required for certification.

3.1 In its request for the issuance of an emergency certificate, the employing district must:

3.1.1 Document its efforts to hire a certified educator by supplying the Department with copies of job postings, recruitment efforts, and advertisements.

3.1.2 Establish that the proposed recipient of an emergency certificate is competent by submitting evidence of the educator's license and other considerations, which may include, but are not limited to, evidence of course work or work experience in the area for which the emergency certificate is requested, which the employing district applied in determining the proposed recipient's competence.

3.1.3 Set forth a written plan to support and assist the proposed recipient in achieving the skills and knowledge necessary to meet the applicable certification requirements.

3.2 Failure by the employing district to fulfill the conditions set forth in 3.1 above will result in denial of the emergency certificate.

3.3 The emergency certificate shall be in effect for three (3) years from the month in which the applicant is employed until the last day of the month of issuance three (3) years later, except in the case of an emergency certificate issued to a vocational trades and industry teacher, which shall expire on the last day of the month of issuance six (6) years later.

3.3.1 A certificate holder whose emergency certificate expires during the school year may have the emergency certificate extended until the last day of the fiscal year. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.

4.0 At the end of each school year during which an emergency certificate is in effect, the employing district shall file a status report with the Department, which shall:

4.1 Establish that the recipient of the emergency certificate has demonstrated competence through receiving a satisfactory evaluation on the Delaware Performance Appraisal System.

4.2 Document the progress made by the recipient of the emergency certificate toward fulfilling the plan established by the employing district to meet the applicable certification requirements.

4.3 Failure by the employing district to fulfill the conditions set forth in 4.1 and 4.2 above will result in suspension of the emergency certificate. A suspension may be lifted upon fulfillment by the employing district of the conditions set forth in 4.1 and 4.2 above.

5.0 Prior to the expiration of an emergency certificate, the

recipient must meet the requirements for issuance of a standard certificate (See 14 DE Admin. Code 1516).

6.0 The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for an emergency certificate on an individual basis and grant an emergency certificate to an applicant who otherwise does not meet the requirements for an emergency certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.

7.0 An emergency certificate shall be revoked in the event the educator's initial, continuing, or advanced license or limited standard, standard, or professional status certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearings Procedures and Rules.

1516 Standard Certificate

1.0 Content: This regulation shall apply to the issuance of a standard certificate, pursuant to 14 Del. C. § 1220.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Certified" means holding a certificate in a specific content area at designated grade levels.

"Certification" means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

"Department" means the Delaware Department of Education.

"Educator" means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 Del. C., § 1203, but does not include substitute teachers.

"Examination of content knowledge" means a standardized test which measures knowledge in an specific content area.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del. C. § 1201.

“State Board” means the State Board of Education of the State pursuant to 14 Del. C. § 104.

3.0 The Department shall issue a standard certificate to an educator who holds a valid Delaware initial, continuing, or advanced license or limited standard, standard, or professional status certificate who has acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students, or has graduated from a Delaware approved program, or holds a valid and current certificate in the area requested from another state. Educators may hold certificates in more than one area.

3.1 An educator may document the acquisition of the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3.1.1 Submitting evidence of having graduated from a Delaware approved educator preparation program; or

3.1.2 Holding a valid and current certificate from another state; or

3.1.3 Achieving a passing score on an examination of content knowledge, such as PRAXIS II. This section is subject to the establishment of passing scores for PRAXIS II examinations by the Department, and their approval by the Professional Standards Board, with concurrence from the State Board of Education.

3.1.3.1 National Board for Professional Teaching Standards in the area, subject, or category in which the standard certificate is to be issued will be accepted in lieu of a passing score on PRAXIS II.

3.1.3.2 In areas, subjects or categories where an examination of content knowledge is neither available nor applicable, the applicant must meet the requirements set forth in the relevant Department regulation governing the issuance of a standard certificate in the area for which a standard certificate is sought.

4.0 An applicant for a standard certificate shall submit evidence of (1) receipt of a bachelors degree from a regionally accredited 4-year college or university; (2) official transcripts and, if applicable, official scores on the PRAXIS II examination or a notarized copy of the National Board for Professional Teaching Standards Certificate. If applied for simultaneously with application for an initial license, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

5.0 If an applicant holds a valid initial, continuing, or advanced Delaware license or a limited standard, standard or professional status certificate and is requesting additional standard certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill

and/or education required for the additional standard certificate requested is required.

6.0 This regulation shall apply to all requests for issuance of a standard certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate. The Department shall also recognize a limited standard or temporary certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the limited standard or temporary certificate. Requirements must be completed by the expiration date of the limited standard certificate.

7.0 A standard certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator’s initial, continuing, or advanced license or limited standard, standard, or professional status certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board’s Hearing Procedures and Rules.

8.0 The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a standard certificate on an individual basis and grant a standard certificate to an applicant who otherwise does not meet the requirements for a standard certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.

1519 Alternative Routes to Teacher Licensure and Certification Program

1.0 Content: This regulation shall apply to the alternative routes to licensure and certification program, pursuant to 14 Del. C. §§ 1260 through 1264.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Department” means the Delaware Department of Education.

“Educator” means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 Del. C., § 1203, but does not include

substitute teachers.

“Emergency certificate” means a certificate issued to an educator who holds a valid Delaware initial, continuing, or advanced license, but lacks necessary skills and knowledge to meet certification requirements in a specific content area.

“**Examination of general knowledge**” means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing.

“**Initial license**” means the first license issued to an educator that allows an educator to work in a position requiring a license in a Delaware public school.

“**Secretary**” means the Secretary of the Delaware Department of Education.

“**Standard certificate**” means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

“**Standards Board**” means the Professional Standards Board established pursuant to 14 Del. C. § 1201.

“**State Board**” means the State Board of Education of the State pursuant to 14 Del. C. § 104.

3.0 Candidates seeking participation in the alternative routes for teacher licensure and certification program shall be issued an initial license and a standard or emergency certificate or certificates of no more than three years duration. Candidates must:

3.1 hold a bachelor’s degree from a regionally accredited college or university in a major appropriate to the instructional field they desire to teach;

3.2 pass an examination of general knowledge, such as PRAXIS I, or provide an acceptable alternative to the PRAXIS I test scores, as set forth in DE. Admin. Code 1510;

3.3 obtain an acceptable health clearance and an acceptable criminal background check clearance; and

3.4 obtain and accept an offer of employment in a position that requires licensure and certification.

4.0 The Alternative Routes to Teacher Licensure and Certification Program shall consist of three interrelated but distinct components - a summer institute of intensive study, a practicum experience the first year of teaching, and seminars in teaching during and, immediately following, the first year of teaching.

4.1 A summer institute of approximately 120 instructional (clock) hours completed by the candidate prior to the beginning of his/her teaching assignment. This includes an orientation to the policies, organization and curriculum of the employing school district or charter school, instructional strategies and classroom management and child or adolescent development.

4.1.1 Candidates employed too late to participate in the summer institute will complete the

practicum experience and seminars on teaching during the first school year and will participate in the summer institute following their first year of teaching.

4.2 A one-year, full-time practicum experience which includes a period of intensive on-the-job mentoring and supervision beginning the first day in which the candidate assumes full responsibility for a classroom and continuing for a period of thirty (30) weeks.

4.3 Seminars on teaching that provide alternative routes to licensure and certification teachers with approximately 120 instructional (clock) hours during the first year of their teaching assignment and during a one week intensive seminar the following summer.

5.0 Mentoring Support: Mentoring support shall be carried out in accordance with Section 1261 (b) (2) and (3) of 14 Del. C.

6.0 Evaluation/Supervision: Evaluation/supervision shall be conducted as per Section 1261 (b) (2) (3) of 14 Del. C.

7.0 Program Evaluation: Those responsible for alternative routes to certification programs approved by the Standards Board and the State Board shall develop a program evaluation process. The focus of the program evaluation must be to demonstrate the degree to which teachers who complete the program are effective in the classroom.

8.0 The Secretary may implement other alternative routes to teacher licensure and certification programs, provided the programs meet the minimum criteria set forth in this regulation.

1520 Substitute Teacher – RESERVED

Regulatory Implementing Order

605 Student Rights and Responsibilities

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend regulation 605 Student Rights and Responsibilities. The amended regulation now includes charter schools and corrections have been made to the title of the Department of Education Guidelines and to the titles of the regulations that should be used in developing the district and charter school policies. The regulation was re-advertised in the June 2003 *Register of Regulations* to add the phrase “and whenever a student enters or re-enters the school during the school year” to the requirement that schools shall distribute and explain these policies to every student at the beginning of every school

year. In the final approved version of the regulation the Secretary has substituted the words enrolls and re-enrolls for the words enters and re-enters to improve clarity.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 22, 2003, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend this regulation in order to add a reference to charter schools and to update the references to guidelines and to titles of other regulations. A phrase was also added to assure that students always receive copies of rights and responsibility documents as they enroll or re-enroll in a school.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 *Del. C.* §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 *DE Admin. Code* § 605 in the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* §122 on July 8, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 8th day of July 2003.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

~~605 Student Rights and Responsibilities~~

~~1.0 All local school districts shall have their own policies on student rights and responsibilities and shall distribute and explain these policies to every student in the school district at the beginning of every school year. The local district's policies shall be based on the Technical Assistance Manual~~

~~for the Development of District Policies on Student Rights and Responsibilities and on the Department of Education regulations, Policy for the School Districts on the Possession, Use or Distribution of Drugs and Alcohol, and School District Compliance with the Gun-Free Schools Act.~~

605 Student Rights and Responsibilities

1.0 All local school districts and charter schools shall have their own policies on student rights and responsibilities and shall distribute and explain these policies to every student at the beginning of every school year and whenever a student ~~[enters or re-enters enrolls or re-enrolls in]~~ the school during the school year. These policies shall be based on the Department of Education document *Guidelines for the Development of District Policies on Student Rights and Responsibilities*, as may be from time to time revised by the Department of Education, and on Department of Education regulations, Possession, Use or Distribution of Drugs and Alcohol, and Compliance with the Gun-Free Schools Act.

Regulatory Implementing Order

905 Federal Programs General Complaint Procedures*

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend regulation 905 Federal Programs General Complaint Procedures in order to correct the names of the federal statutes referenced in 1.0 and to clarify the language and intent of the regulation. In 2.2 sixty calendar days was changed to sixty working days and in 3.2 thirty calendar days was changed to sixty working days to make it the same as 2.2. Corrections have also been made to the mailing address in 5.0 and the reference to children with disabilities in the note on IDEA. In the final document the word "shall" has been removed and the words "is encouraged to" have been reinstated. The Secretary would prefer that individuals and organizations settle disputes at the local level but recognizes the right of an individual or organization to file a complaint directly with the state or federal government. The number of the regulation has also been changed to 258 placing it in section 200 of the *Regulations of the Department of Education, Administrations and Operations*.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 22, 2003, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend this regulation in order to update the names and the numbers of the federal statutes referred to in the regulation, change the response time to 60 working days, clarify the wording and change the number of the regulation.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 *Del. C.* §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 *DE Admin. Code* § 258 in the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* §122 on July 8, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 8th day of July 2003.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

[258 905] Federal Programs General Complaint Procedures*

~~1.0 Programs that are covered by this complaint process include: Part A of Title I, Improving Basic Programs Operated by the Local Education Agency; Part B of Title I, Even Start Family Literacy Program; Part C of Title I, Migrant Education; Part D of Title I, Children and Youth who are Neglected, Delinquent, or at Risk of Dropping Out; Title II Eisenhower Professional Development Program; Subpart 2 of Part A Title III, State and Local Programs for School Technology Resources; Part A of Title IV, Safe and Drug Free Schools and Communities; and Title VI, Innovative Education Program Strategies, as required under the Elementary Secondary Education Act (ESEA) of 1965, as amended by the Improving America's Schools Act (IASA) of 1994. In addition the Delaware Department of Education is extending the complaint procedures to include programs under the Goals 2000: Educate America Act of~~

~~1994-~~

1.0 This complaint process shall apply to the following programs: Title I Part A Improving Basic Programs Operated by Local Education Agencies; Title I Part B-1 Reading First; Title I Part B-2 Early Reading First; Title I Part B-3 William F. Goodling Even Start Family Literacy Program; Title I Part C Education of Migratory Children; Title I Part D Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or at Risk; Title I Part F Comprehensive School Reform; Title I Part G Advanced Placement; Title II Part A Teacher and Principal Training and Recruiting Fund, Grants to States; Title II Part A-5-2151(B) School Leadership; Title II Part D 1 and 2 Enhancing Education Through Technology; Title III Language Instruction for Limited English Proficient and Immigrant Students; Title IV Part A Safe and Drug Free Schools and Communities; Title IV Part B 21st Century Community Learning Centers; Title V Part A Innovative Programs and Title V Part B-1 Public Charter Schools.

2.0 An organization or an individual may file a written, signed complaint regarding an alleged violation of Federal Program Statutes or regulations by the Delaware Department of Education or the Local Education Agency. ~~The alleged A~~ written and signed complaint shall be filed with the Delaware Department of Education ~~and may involve either a Local Education Agency or the State Education Agency.~~

2.1 The complaint shall include a statement specifying the alleged violation by ~~that~~ the State Education Agency or a Local Education Agency, ~~has violated a requirement of a Federal statute or regulation that applies to these Local Education Agency programs and the facts on which the statement is based.~~ Such statement shall include facts and documentation of the alleged violation.

2.2 The Delaware Department of Education shall ~~resolve~~ investigate the complaint and issue a written report including findings of fact and a decision to the parties included in the complaint within sixty (60) ~~calendar~~ working days of the receipt of the complaint. An extension of the time limit may be made by the Delaware Department of Education only if exceptional circumstances exist with respect to a particular complaint.

2.3 The Delaware Department of Education may conduct an independent on-site investigation of the complaint, if it is determined that an on-site investigation is necessary.

3.0 An organization or an individual ~~is encouraged to~~ shall [is encouraged to] file a written, signed complaint with the Local Education Agency, prior to submission of the complaint to the Delaware Department of Education, concerning an alleged violation by the Local Education Agency of a Federal statute or regulation that applies to the Local Education Agency's program.

3.1 The complaint shall include a statement specifying the alleged violation by ~~that~~ the Local Education Agency ~~has violated a requirement of a Federal statute or regulation that applies to the Local Education Agency's programs and the facts on which the statement is based.~~ Such statement shall

include facts and documentation of the alleged violation.

3.2 The superintendent or the agency head of the Local Education Agency shall ~~resolve~~ investigate the complaint and issue a written report including findings of fact and a decision to the parties involved in the complaint within ~~thirty calendar~~ sixty (60) working days of the receipt of the complaint.

3.3 An appeal of the Local Education Agency decision may be made by the complainant to the Delaware Department of Education. The appeal shall be in writing and signed by the individual [or by an individual representative of the organization] making the appeal. The Delaware Department of Education shall ~~resolve~~ address the appeal in the same manner as a complaint, as indicated in 2.0.

4.0 Any party to the complaint has the right to request that the Secretary, U. S. Department of Education, review the final decision of the Delaware Department of Education. The request for an appeal of the decision to the Secretary, U. S. Department of Education, shall be made in writing to the Delaware Department of Education within sixty days of the receipt of the decision.

5.0 Complaints and appeals to the Delaware Department of Education shall be mailed to the following address:

Director of ~~Unified Planning and Quality Assurance~~ School Improvement
Delaware Department of Education
P. O. Box 1402
Dover, Delaware 19903

* IDEA Part B, as amended, has other specific remedies and procedural safeguards specified under Section 615 of the Act to protect ~~disabled~~ students with disabilities. See Regulation 925, Children with Disabilities.
See 2 DE Reg. 217 (8/1/98)

PROFESSIONAL STANDARDS BOARD

Regulatory Implementing Order

302 Certification Administrative– Superintendent

304 Certification Administrative – Assistant Superintendent for Curriculum

311 Certification Administrative – Elementary School Principal or Assistant Principal

312 Certification Administrative – Secondary School Principal or Assistant Principal

313 Certification Administrative – Principal of a School for Children with Disabilities

1530 Certification Administrative - School Principal

1531 Certification Administrative – School Leader I

1532 Certification Administrative – School Leader II

I. Summary Of The Evidence And Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend these regulations. It is necessary to amend these regulations in order to comply with changes in statute regarding the licensure and certification of educators. The regulations have been renumbered to denote their inclusion in the Professional Standards Board section of the regulations. Further, but amending these regulations, the number of regulations will be reduced from eight to three, thereby furthering the goal of reducing the number and complexity of regulations. These regulations were previously published in the October, 2002, Register of Regulations and in the March, 2003, Register of Regulations. Comments received during the public comment period of the previous publication of these regulations have been considered. Principal of an adult education program has been removed. These regulations address only pK-12 schools and do not address adult education programs. Concerns about special qualifications for principals of schools for exceptional children have also been addressed. Comments were received from the Department of Education, the Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities, and others. Comments were considered, and additional changes which are not substantive in nature have been incorporated into the proposed amendments as a result of the comments received. Comments received from the State Board of Education have been addressed.

Notice of the proposed adoption of these regulations was published in the News Journal and the Delaware State News on May 21, 2003, in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received. Comments received from the State Board of Education resulted in a clarification, which is not considered a substantive change.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend these regulations to comply with changes in statute regarding the licensure and certification of educators.

III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulations. Therefore, pursuant to 14 *Del. C.* § 1205(b), the regulations attached hereto as Exhibit "B" are hereby amended. Pursuant to the provision

of 14 *Del. C.* § 122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the regulations adopted shall be in the form attached hereto as Exhibit "B", and said regulations shall be cited as 14 DE Admin. Code §1530, §1531, and §1532 in the *Regulations of the Department of Education*.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

Approved By The Professional Standards Board The 10th Day Of July, 2003.

Harold Roberts, Chair	Sharon Brittingham
Heath Chasanov	Patricia Clements
Edward Czerwinski	Karen Gordon
Barbara Grogg	Bruce Harter
Leslie Holden	Carla Lawson
Mary Mirabeau	John Pallace
Karen Schilling Ross	Carol Vukelich
Geraldine A. Williams	

For Implementation By The Department Of Education:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 17th Day Of July, 2003

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

~~311 Certification Administrative - Elementary School Principal Or Assistant Principal~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License for the principal of a building containing any combination of grades K-8 designated as an elementary school, and is valid for a principal of a middle level school:

1.1 Degree required

1.1.1 ~~Master's degree from a regionally~~

~~accredited college and;~~

~~1.2 Experience~~

~~1.2.1 A minimum of three years of successful, full-time classroom teaching experience at the elementary level or two years of elementary classroom teaching experience, as specified, and a one-year internship in Administration at the elementary level and;~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 Master's degree from a regionally accredited college with an approved program in Elementary School Administration and;~~

~~1.3.2 A minimum of three semester hours in each of the following areas:~~

~~1.3.2.1 Child Development~~

~~1.3.2.2 Methods of Teaching Reading at the elementary level~~

~~1.3.2.3 Methods of Teaching Mathematics at the elementary level or;~~

~~1.3.3 Completion of any graduate program in Elementary School Administration and;~~

~~1.3.4 A minimum of three semester hours in each of the following areas:~~

~~1.3.4.1 Child Development~~

~~1.3.4.2 Methods of Teaching Reading at the elementary level~~

~~1.3.4.3 Methods of Teaching Mathematics at the elementary level or;~~

~~1.3.5 A Master's degree in any field and;~~

~~1.3.6 A three semester hour graduate level course in each of the following areas:~~

~~1.3.6.1 Elementary School Administration~~

~~1.3.6.2 Supervision/Evaluation of Staff~~

~~1.3.6.3 Curriculum Development~~

~~1.3.6.4 School Business Management~~

~~1.3.6.5 School Law/Legal Issues in Education~~

~~1.3.6.6 Human Relations and~~

~~1.3.7 A minimum of three semester hours in each of the following areas:~~

~~1.3.7.1 Child Development~~

~~1.3.7.2 Methods of Teaching Reading at elementary level~~

~~1.3.7.3 Methods of Teaching Mathematics at elementary level~~

~~(The requirements specified in 1.3.1 and 1.3.2 and 1.3.3. may be met by previously taken undergraduate coursework or through undergraduate or graduate level coursework taken specifically to meet these requirements.)~~

~~2.0 The following shall be required for the Limited Standard License:~~

~~2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the~~

Standard License in 1.0.

2.2 Master's degree from a regionally accredited college and;

2.3 Meets requirements listed in 1.2 and;

2.4 Within six semester hours of the coursework specified in 1.3.2 or 1.3.4 or 1.3.6 and 1.3.7.

3.0 Licenses that may be issues for this position include Standard and Limited Standard.

~~312 Certification Administrative Secondary School Principal Or Assistant Principal~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License for the principal of a building containing grades 7-12 designated as a junior high school, high school, vocational high school or a senior high school. Valid for a principal of a middle level school.

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and;

1.2 Experience

1.2.1 Minimum of three years successful, full-time classroom teaching experience at the secondary level or two years of successful, full-time secondary classroom teaching experience and a one year internship in School Administration at the secondary level and;

1.3 Specialized Professional Preparation

1.3.1 Master's degree from an accredited college in an approved program for Secondary School Administration; and

1.3.2 A minimum of three semester hours of Adolescent Development, if not taken at the undergraduate level or;

1.3.3 Completion of a graduate program in Secondary School Administration and;

1.3.4 A minimum of three semester hours of Adolescent Development, if not taken at the undergraduate level or;

1.3.5 A Master's degree in any field and;

1.3.6 A three semester hour graduate level course in each of the following areas

1.3.6.1 Secondary School Administration

1.3.6.2 Supervision/Evaluation of Staff

1.3.6.3 Curriculum Development

1.3.6.4 School Business Management

1.3.6.5 School Law/Legal Issues in Education

1.3.6.6 Human Relations

1.3.6.7 Three semester hours Adolescent Development, taken at the graduate or undergraduate level.

2.0 The following shall be required for the Limited

Standard License:

2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License as in 1.0.

2.1.1 Master's degree from a regionally accredited college and;

2.1.2 Meets the requirements in 1.2 and;

2.1.3 Within six semester hours of the completion of the coursework in 1.3.6.

3.0 Licenses that may be issues for this position include Standard and Limited Standard.

~~313 Certification Administrative Principal Of A School For Children With Disabilities~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License for a principal of a school for children with disabilities:

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and;

1.2 Experience

1.2.1 Three years of full-time, successful classroom experience as a teacher of children with disabilities, while holding a Standard License to teach children with disabilities. Standard certification is limited to these areas of special education: LD, SED, MD, VI, HI, PI, Autistic/Severely Disabled and combinations thereof and;

1.3 Specialized Professional Preparation

1.3.1 A Master's degree in any field from a regionally accredited college; and

1.3.2 The individual shall meet the State of Delaware's requirement for Standard certification as an Elementary or Secondary School Principal; and

1.3.3 The individual shall hold, or be eligible to hold a Standard License as a teacher of exceptional children LD, SED, MD, VI, HI, PI, Autistic or Severely Disabled and combinations thereof.

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Meets all requirements in 1.1, 1.2, 1.3.1 and;

2.1.2 Within six semester hours of meeting the requirement in 1.3.2.

3.0 Licenses that may be issued for this position include ~~Standard and Limited Standard.~~

**1530 Certification Administrative – School Principal/
Assistant Principal**

1.0 This regulation shall apply to the issuance of a standard certificate for school principal and assistant principal, pursuant to 14 Del. C. § 1220.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Standards Board” means the Professional Standards Board established pursuant to 14 Del. C. § 1201.

“Standard certificate” means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

“State Board” means the State Board of Education of the State of Delaware established pursuant to 14 Del. C. § 104.

“Teaching experience” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any pK-12 setting.

3.0 The following shall be required for the Standard Certificate for the principal or assistant principal of an elementary or intermediate school, a middle school, a high school, or a school for exceptional students.

3.1 Educational requirements

3.1.1 A masters degree in educational leadership from a regionally accredited college, or

3.1.2 A masters degree in education from a regionally accredited college and a current and valid principal or assistant principal certificate from another state, or

3.1.3 A masters degree in any field from a regionally accredited college and successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternative routes to certification program occurs, candidates completing the standard certificate in accordance with 3.1.3.1 of this regulation shall fulfill the following requirements.

3.1.3.1 A three semester hour graduate level course in each of the following areas: School Administration (at the level to be initially assigned), Supervision/ Evaluation of Staff, Curriculum Development, School Business Management, School Law/Legal Issues in Education, Human Relations, and, if not taken at the undergraduate level, Child/Adolescent/Human

Development.

3.2 Experience requirements

3.2.1 A minimum of three (3) years of teaching experience at the level to be initially assigned as a school principal or assistant principal, except at the middle level, where the teaching experience may be at any pK-12 level, or as a principal or assistant principal of a school for exceptional students, where the teaching experience must have been with one or more of the categories of exceptional children served by the school.

**~~1535 Certification Administrative – Administrative
Assistant~~**

~~Effective October 11, 2001~~

1.0 ~~The following shall be required for the Standard License~~

~~1.1 Degree required~~

~~1.1.1 Master's degree from a regionally accredited college and,~~

~~1.2 Experience~~

~~1.2.1 A minimum of three years of successful, full-time classroom teaching experience, or three years of administrative experience, and,~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 Specific training or satisfactory experience including an internship and/or fieldwork in the area in which employed.~~

2.0 ~~The following shall be required for the Limited Standard License~~

2.1 ~~The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.~~

2.1.1 ~~Master's degree from an accredited college and,~~

2.1.1.1 ~~Meets the requirements of 1.2 and,~~

2.1.1.2 ~~Within six semester hours of meeting the requirements as specified in 1.3.~~

3.0 ~~Licenses that may be issued for this position include Standard and Limited Standard.~~

~~See 5 DE Reg. 856 (10/1/01)~~

~~1536 Certification Administrative – Director~~

~~Effective October 11, 2001~~

1.0 ~~The following shall be required for the Standard License for persons employed to be responsible for the administration of specialized instructional areas.~~

~~1.1 Degree required~~

~~1.1.1 Master's degree plus thirty semester hours~~

of graduate level coursework from a regionally accredited college(s) and;

1.2 Experience

1.2.1 A minimum of three years of successful, full-time classroom teaching experience or;

1.2.2 A minimum of three years of successful, full-time administrative experience in the specific area to be directed, within a school system or;

1.3 Specialized Professional Preparation

1.3.1 Master's degree plus thirty semester hours of graduate level coursework from a regionally accredited college(s) with a major in Educational Supervision and Curriculum or Educational Administration or Educational Leadership, or Human Resource Management; and Twenty-one semester hours of graduate level coursework specific to the area to be directed or;

1.3.2 Master's degree in any field plus thirty semester hours of graduate level coursework from a regionally accredited college(s) to include the following graduate level coursework:

1.3.2.1 A minimum of twenty-one semester hours of graduate level coursework specific to the area to be directed and;

1.3.2.2 A minimum of twenty-one semester hours of graduate level coursework in the area of administration, to include at least one course in each of the following areas:

1.3.2.2.1 Curriculum Development and Instruction

1.3.2.2.2 Supervision/Evaluation of Staff

1.3.2.2.3 School Business Management

1.3.2.2.4 School Law/Legal Issues in

Education

1.3.2.2.5 Human Resource Management

1.3.2.2.6 Human Development (to include child/adolescent development)

1.3.2.2.7 Organizational Management

(NOTE: Any of the requirements listed in 1.3.1. or 1.3.2 may be met by coursework taken either within or in addition to the Master's degree plus thirty semester hours.)

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Master's degree plus thirty semester hours of graduate level coursework from a regionally accredited college; and

2.1.2 Meets all experience requirements in 1.2 and

2.1.3 Meets the Specialized Professional

Preparation requirement in the specialized area 1.3.2.1 and is within six semester hours of meeting the administrative coursework in 1.3.2.1.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

See 5 DE Reg. 856 (10/1/01)

~~1538 Certification Administrative – Supervisor~~

Effective October 11, 2001

1.0 The following shall be required for the Standard License for persons employed to be responsible for the administration of specialized areas.

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and;

1.2 Experience

1.2.1 A minimum of three years of successful, full-time classroom teaching experience in the instructional area to be supervised and;

1.3 Specialized Professional Preparation

1.3.1 Master's degree from a regionally accredited college with a major in Educational Supervision and Curriculum and;

1.3.2 Fifteen semester hours of graduate level coursework, specific to the area to be supervised or;

1.3.3 A Master's degree in any field from a regionally accredited college with the following graduate level coursework included within, or in addition to, the degree:

1.3.3.1 A minimum of fifteen semester hours of graduate level coursework in the area to be supervised and;

1.3.3.2 A minimum of fifteen semester hours of graduate level coursework in administration to include one course in each of the following areas:

1.3.3.2.1 Human Relations

1.3.3.2.2 School Law/Legal Issues

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.1.

2.1.1 Master's degree from a regionally accredited college; and

2.1.2 Meets all requirements in 1.2.

2.1.3 Within six semester hours of meeting the specific coursework requirements in 1.3.1 and 1.3.2, or within six semester hours of meeting the specific coursework

requirements in 1.3.3.1 and 1.3.3.2.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

See 5 DE Reg. 856 (10/1/01)

1531 Certification Administrative – School Leader I

1.0 The following shall apply to the issuance of a standard certificate for directors, supervisors, administrative assistants, coordinators, and managers in instructional areas, pursuant to 14 Del. C. § 1220.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Standards Board” means the Professional Standards Board established pursuant to 14 Del. C. § 1201.

“Standard certificate” means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

“State Board” means the State Board of Education of the State of Delaware established pursuant to 14 Del. C § 104.

“Teaching experience” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any pK-12 setting.

3.0 The following shall be required for the standard certificate for directors, supervisor, administrative assistants, coordinators, and managers in instructional areas.

3.1 Educational requirements

3.1.1 A masters degree in educational leadership from a regionally accredited college, or

3.1.2 A masters degree in education from a regionally accredited college and a current and valid equivalent central office administrative certificate from another state, or

3.1.3 A masters degree in any field from a regionally accredited college and successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternatives routes to certification program occurs, candidates completing the standard certificate in accordance with 3.1.3.1 of this regulation shall fulfill the following requirements:

3.1.3.1 A minimum of twenty-four semester hours of graduate level course work, completed either as part of the masters degree or in addition to it, in administration, to include at least one course in each of the following areas: Curriculum Development, Supervision/Evaluation of Staff, Human Relations, and School Law/

Legal Issues and in the area(s) to be supervised (may include courses in curriculum, instruction, and/or methods), and

3.3 Experience requirements

3.3.1 A minimum of three (3) years of teaching experience at the pK-12 level. Teaching experience for directors, supervisors, administrative assistants, coordinators, and managers of programs for exceptional children must have been with exceptional children.

~~302 Certification Administrative – Superintendent~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License for the Superintendent and the general Assistant Superintendent in all school districts.

1.1 Degree required

1.1.1 Master's degree plus thirty graduate semester hours or a Doctor's degree from a regionally accredited college or university and;

1.2 Experience

1.2.1 A minimum of three years of successful, full-time elementary or secondary experience, at the building level, as a teacher or administrator and;

1.3 Specialized Professional Preparation

1.3.1 Graduate level coursework must include the following areas:

1.3.1.1 Personnel Administration

1.3.1.2 Supervision/Evaluation of Staff

1.3.1.3 Curriculum Development and

Instruction

1.3.1.4 School Business Management

1.3.1.5 School Law/Legal Issues in Education

1.3.1.6 Human Resource Management

1.3.1.7 Organizational Management

1.3.1.8 Child or Adolescent Development, if not taken at the undergraduate level.

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License as listed in 1.0.

2.1.1 Requirements listed in 1.1. and 1.2.

2.1.2 Within six semester hours as required in

1.3

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

~~304 Certification Administrative – Assistant Superintendent For Curriculum~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License for an individual who is employed to be in charge of the specialized areas of curriculum/program development within a public school district.

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college plus 30 graduate semester hours and;

1.2 Experience

1.2.1 A minimum of three years of successful, full-time elementary or secondary experience, at the building level, as a teacher or administrator and;

1.3 Specialized Professional Preparation

1.3.1 A minimum of 18 semester hours of graduate level coursework in Curriculum to include: curriculum development, design, implementation and evaluation and;

1.3.2 A minimum of 18 semester hours of graduate level coursework in the area of administration, to include one course in each of the following areas:

1.3.2.1 Supervision/Evaluation of Staff

1.3.2.3 School Business Management

1.3.2.3 School Law/Legal Issues in Education

1.3.2.4 Human Resource Management

1.3.2.5 Organizational Management

1.3.2.6 Personnel Administration

1.3.2.7 Child Development if not taken at undergraduate level 1.2.1.8 Adolescent Development if not taken at undergraduate level.

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Meets requirements specified in 1.1 and 1.2 and;

2.1.2 Within nine semester hours of meeting the requirements in 1.3.1 and 1.3.2.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

1532 Certification Administrative – School Leader II

1.0 This regulation shall apply to the issuance of a standard certificate for school district superintendents and assistant superintendents, pursuant to 14 Del. C. § 1220.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless

the context clearly indicates otherwise:

“Full-time school leadership” means full-time experience as a principal or assistant principal or as a district level administrator.

“Standards Board” means the Professional Standards Board established pursuant to 14 Del. C. § 1201.

“Standard certificate” means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

“State Board” means the State Board of Education of the State of Delaware established pursuant to 14 Del. C. § 104.

“Teaching experience” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any pK-12 setting.

3.0 The following shall be required for the Standard Certificate for school district superintendents and assistant superintendents.

3.1 Educational requirements.

3.1.1 A doctoral degree in educational leadership from a regionally accredited college, or

3.1.2 A masters or doctoral degree in education from a regionally accredited college and a current superintendent or assistant superintendent certificate from another state, or

3.1.3 A masters or doctoral degree in any field from a regionally accredited college and successful completion of a Delaware approved alternative routes to certification program for school leaders/superintendents. Until approval and implementation of an alternative routes to certification program occurs, candidates completing the standard certificate in accordance with 3.1.3 of this regulation shall provide evidence of graduate course work in the following areas, either as part of the masters or doctoral degree program or in addition to it.

3.1.2.1 Personnel Administration

3.1.2.2 Supervision/Evaluation of Staff

3.1.2.3 Curriculum Development and

Instruction

3.1.2.4 School Business Management

3.1.2.5 School Law/Legal Issues in Education

3.1.2.6 Human Resource Management

3.1.2.7 Organizational Management

3.1.2.8 Child or Adolescent Development, if

not taken at the undergraduate level.

3.2 Experience requirements

3.2.1 A minimum of five (5) years of [teaching] experience [as a teacher or specialist or full-time school leadership] at the pK-12 level, or any combination of the three types of experiences, at the building or district level.]; or

3.2.2 A minimum of five (5) years of full-time pK-12 leadership experience;
or

3.2.3 Any combination of these types of experience which totals a minimum of five (5) years.

3.2.4 The required experience may be acquired at either the building or district level.]

Regulatory Implementing Order

1511 Issuance And Renewal Of Continuing License

I. Summary Of The Evidence And Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend this regulation. This regulation concerns requirements for the issuance and renewal of a continuing license. This regulation shall apply to the issuance and renewal of a continuing license as established by 14 *Del. C.* § 1211 and § 1213. It is necessary to amend this regulation in order to comply with changes in statute which were recently enacted. Included in the changes are the inclusion of expiration of a license during the school year as an exigent circumstance, including the Department's authority to issue a continuing license to an applicant licenses as an educator in another jurisdiction who provides evidence of having completed three or more years of successful teaching, and the Department's authority to issue a continuing license to an applicant who does not otherwise meet the requirements for a continuing license after individual review of the applicant's credentials. Clarifying language has been added to address questions about professional conferences and workshops.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on May 21, 2003, in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute regarding the licensure and certification of educators.

III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del. C.* § 1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 *Del. C.* § 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code § 1511 in the *Regulations of the Department of Education*.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

Approved By The Professional Standards Board The 10th Day Of July, 2003

Harold Roberts, Chair	Sharon Brittingham
Heath Chasanov	Patricia Clements
Edward Czerwinski	Karen Gordon
Barbara Grogg	Bruce Harter
Leslie Holden	Carla Lawson
Mary Mirabeau	John Pallace
Karen Schilling Ross	Carol Vukelich
Geraldine A. Williams	

For Implementation By The Department Of Education:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 19th Day Of July, 2003

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

1511 Issuance And Renewal Of Continuing License

1.0 Content: This regulation shall apply to the issuance and renewal of a continuing license for educators, pursuant to 14 Del.C. § 1211 and § 1213 2.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“College credit” means graduate or undergraduate level coursework and continuing education units (CEUs) completed at, or through, a regionally accredited college or university.

“Clock-hour” means actual time spent in professional development, not credit hours.

“Cooperating teacher or intern supervisor” means an individual working with student teachers or graduate or undergraduate interns as part of a state-approved educator preparation program.

“Clusters” means focused groups of approved professional development activities that lead to measurable and observable knowledge and skills. Clusters must be approved by the Standards Board and the State Board.

“Curriculum or assessment development” means work with a local, state, national, or international education agency or organization designing curriculum or assessments for improved educational practice in an area related to an individual’s professional responsibilities.

“Delaware Administrator Standards” means standards for education administrators approved by the Secretary of Education and the State Board of Education, as per 14 Del. Admin Code 394 1594, Delaware Administrator Standards.

“Delaware Professional Teaching Standards” means standards of teaching approved by the Secretary of Education and the State Board of Education, as per 14 Del. Admin Code 393 1593, Delaware Professional Teaching Standards.

“Department” means the Delaware Department of Education.

“Educational project” means an individual professional growth project of 15 or more clock hours, including a research project not related to a course for which credit is claimed, completed to enhance the individual’s professional practice, with the development of a final product or report.

“Educational travel” means a travel experience including 15 or more clock hours of work time directly related to the individual’s professional responsibilities, including a final project to be used to enhance the individual’s work.

“Educator” means ~~an employee paid under 14 Del.C. §1305.~~ means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 Del. C. § 1203, but does not include substitute teachers.

“Exigent circumstances” means unanticipated circumstances or circumstances beyond the educator’s

control, including, but not limited to, expiration of a license during the school year, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator’s temporarily leaving active service.

“Formal study group” means documented participation in a study group, related to an individual’s professional responsibilities, such as reviewing, discussing, and implementing strategies from a book or creating a group product as part of an action research project, as a form of professional development.

“Initial License” means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1210.

“Knowledge and skills” means understandings and abilities that, when acquired by educators, lead to more effective instruction.

“Mentoring” means training and service in providing mentoring support or assistance through a formally organized and approved state or district mentoring program to educators during the initial licensure period.

“NBPTS or similar national certification” means a certificate from the National Board for Professional Teaching Standards, or similar body as approved by the Standards Board, verifying completion of all requirements in an individual’s job-related area of the profession or, in the case of an individual seeking, but not earning, the national certificate, verification of the clock hours devoted to completing the requirements for the national certificate.

“Peer coaching” means training and service as a peer coach or peer assistant in a formally organized and approved state or school district peer-coaching or peer assistance program.

“Presentation” means preparation and presentation as a workshop or conference presenter or course instructor on a topic related to the individual’s professional responsibilities. “Professional conference, workshop, institute, or academy” means a program offered either within, or outside, the state that contributes to the participant’s professional knowledge or skills in effectively conducting his/her work in education.

“Professional development” means classes, seminars, workshops, collaborative work groups, learning communities, cohort school or district teams which result in the acquisition of knowledge and skills which lead to more effective instruction.

“Professional development activities” means activities designed to enhance knowledge and skill to promote continuous professional growth and to improve educator performance.

“Professional development cluster” or “cluster” means a focused group of professional development activities that leads to measurable and observable knowledge and skills.

“Professional portfolio” means a formal collection of artifacts and exhibits that include required examples of an

individual's professional work based upon specific performance tasks or standards.

"Professional programs or committees" means job related service, designed to enhance the profession.

"Publication" means the preparation of a formally published book, article, report, study, or grant that contributes to the education profession or adds to the body of knowledge in an individual's specific field, but does not include such items prepared as part of a course for which an individual is also claiming credit.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C., § 104.

"State" means State of Delaware.

"State Board" means the State Board of Education of the State of Delaware established in response to 14 Del.C. § 104.

3.0 Issuance of Initial Continuing License: In accordance with 14 Del.C. § 1211, the Department shall issue, upon application, a continuing license to an educator who has successfully completed the requirements under the initial licensure as set forth in 14 Del.C. § 1210 and § 1211. The Department shall issue a continuing license to an applicant licensed as an educator in another jurisdiction who provides evidence of having completed three (3) or more years of successful teaching experience. A continuing license is valid for 5 years unless extended pursuant to 14 Del.C. §1216 or revoked for cause, as defined in 14 Del.C. §1218.

3.1 An applicant for a continuing license shall submit the approved application form to the Department. Copies of DPAS II annual summative evaluations for the period of initial licensure shall be submitted with an initial application for a Continuing License. An applicant with more than one (1) unsatisfactory DPAS II annual summative evaluation during the period of initial licensure is ineligible to be issued a continuing license. Incomplete applications will not be processed.

4.0 The Department may issue a continuing license to an educator who previously held a valid Delaware certificate that has expired.

4.1 An educator returning to employment and holding a current standard or professional status certificate will be issued a continuing license upon employment.

4.2 An educator who previously held a valid Delaware standard or professional status certificate which has expired and who has been out of the profession for less than three (3) years may be issued a continuing license, valid for 5 years, upon employment and application on the approved form and evidence of previous Delaware certification.

4.3 An educator who has completed three (3) or more years of successful teaching and who holds a continuing license which has expired who has been out of the profession for more than three (3) years may be issued a continuing

license, but must, within the first year of employment, successfully complete a district-sponsored mentoring program which focuses on current best practices in curriculum, instruction and assessment aligned to state standards.

4.4 An educator holding a limited standard or temporary certificate and currently employed as an educator in a Delaware public school will be issued a continuing license upon completing all requirements for the current standard certificate. Requirements must be completed by the expiration date of the limited standard or temporary certificate.

4.5 An educator holding a current or expired professional status or standard certificate assigned to work outside the area covered by the professional status or standard certificate will be issued a continuing license, with an emergency certificate for the new area issued ~~one year at a time for a maximum~~ for a period of three years to enable the educator to fulfill the requirements for the standard certificate in the area of the new assignment. Professional status or standard certificates held by an educator at the time of reassignment will be added to the continuing license as standard certificates.

5.0 Renewal of a Continuing License: In accordance with 14 Del.C. §1212, the Department shall renew a continuing license, valid for an additional 5 years, to an educator who has fulfilled the 90-clock hour requirement for professional development. At least one-half of the required hours (45 hours every five years) for educators must be in activities to relate to the educator's work with students or staff. Satisfactory evidence of such completion, as set forth in Section 3.1, shall be submitted to the Department with the application for renewal. The 90-clock hours of professional development must have taken place during the term of the continuing license.

5.1 Options for Relicensure

**Re-licensure Options – Specifications – Teachers/
specialists/administrators**

OPTION	MAX. HOURS	HOUR VALUE	VERIFICATION	CRITERIA
College Credit	No limit	1 semester hour = 15 clock hours. 1 quarter hr./CEU = 10 clock hours.	Official Transcripts. Original Grade Slips. Original Certificate of Completion for CEUs.	Must be completed at a regionally accredited college. Must be taken for credit with grade of "C" or better or a "P" in pass/fail course.
"Clusters" of skills & knowledge. Planned school Prof. Dev. Day if activities Part of Approved Cluster	No limit	Verified clock hours in completion of cluster activities.	Approval Slip or Form Verifying Completion.	Cluster must be prior-approved by Professional Development & Associated Compensation Committee, the Professional Standards Board and the State Board of Education.
Professional Conference/ Workshop/ Institute or Academy	30 clock hours per year 45 clock hours per cycle	Verified clock hours actively involved in workshop or conference sessions	Original Certificate of Attendance or Completion OR Letter from Supervisor/Conference Staff. Copies/ Exhibits of products developed by Applicant. Course Attendance Slip	Must include only time spent in those portions of the workshop or conference program that contribute to the participant's knowledge, competence, performance, or effectiveness in education. [Includes workshops offered by districts or other employing authorities either as part of professional development day or after school hours.]
Mentoring	30 per year 45 per cycle	Verified clock hours involved in mentoring activities	Activity Documentation Form. (No prior approval required)	Must be mentoring of teacher, administrator, or specialist. Must be part of a formal state/ local program.
Cooperating Teacher/Intern Supervisor	30 per year 45 per cycle	Verified clock hours involved in support of student teacher or intern	Activity Documentation Form completed by higher education director of field- based clinical studies. (No prior approval required)	Must be supervision of graduate or undergraduate intern or student teacher in a state- approved educator preparation program.
Presentation	10 per 3 clock hour course; 30 per longer course; 45 per cycle	Verified clock hours preparing and presenting	Activity Documentation Form* (Prior approval required)	Must include only actual time preparing and presenting a course, workshop, or presentation. (Clock hours limited to first preparation and presentation of individual course, workshop, or presentation.)
Educational Project	30 per year 45 per cycle	Verified clock hours completing project. Minimum of 15 clock hours	Activity Documentation Form* (Prior approval required)	Project must have been prior approved by the Professional Development & Associated Compensation Committee. Must have obtained final approval after completion and verification by P[C]DAC
Curriculum/ Assessment Development	30 per year 45 per cycle	Verified clock hours of service; Minimum of 3 clock hours	Original documentation from committee chair verifying actual clock hours of participation	Must be service on formal committee organized by local, state, national, or international education agency or organization.

Educational Travel	3 per day 30 per cycle	Verified clock hours of experience. Minimum of 15 clock hours per travel activity. Final Project.	Activity Documentation Form* (Prior approval required)	Must be prior approved by Professional Development & Associated Compensation Committee. Must have obtained final approval after completion and verification by PCAC.
Professional Programs/ Committees	30 per year 45 per cycle	Verified clock hours of service or experience.	Original documentation from committee chair or activity leader verifying actual clock hours of participation.	Must be a formal activity provided through a recognized local, state, national, or international education agency or organization
Peer Coaching	30 per year 45 per cycle	Verified clock hours of service or experience.	Activity Documentation Form. (No prior approval required)	Must be part of a formal program.
Publication	30 per year 45 per cycle	30 clock hours for book. Up to 15 clock hours per other publication.	Copy of Publication or Document.	Must contribute to the education profession or add to the body of knowledge in the individual's specific field. Must be commercially published or a formally approved document or formally published in a medium sanctioned by a recognized state or national agency or organization. If a grant, must be approved for funding.
Professional Portfolio (to be developed by Standards Board).	30 per year 45 per cycle	45 clock hours for completed and approved portfolio.	The Completed/Approved Portfolio.	Must satisfy the standards established for teaching portfolios. Must be submitted to DOE by December 31 of the final year of the certificate for assessment and approval.
NBPTS Certification or similar National Certification	30 per year 45 per cycle	45 clock hours for attaining national certification Not complete –verified clock hours completing portfolio activities.	A Valid Copy of the National Certificate. For candidate not completing certificate - Activity Documentation Form. (No prior approval required)	Holds a certificate indicated by NBPTS as related to an individual's work or assignment. Certificate or participation as a candidate must be completed and verified by the expiration date of the Delaware certificate.
Formal Study Groups	30 per year 45 per cycle	Verified clock hours working as a member of a study group.	Activity Documentation Form and The Product of the Study.* (Prior approval required)	Must relate to the individual's work or assignment. Must include a product.

5.2 Documentation of Clock Hours for Relicensure

5.2.1 For renewal of the continuing license, educators may complete and document clock hours for the variety of activities described under relicensure options. When college or university courses are used to fulfill the requirements, the following equivalencies will be used: 1 semester hour = 15 clock hours, 1 quarter hour = 10 clock hours, 1 CEU = 10 clock hours. To be documented for clock hours, activities must meet the criteria set forth in the regulations and must be appropriately verified and applied for. Activities requiring prior approval must be approved by

the educator's immediate supervisor. Professional development activities that are part of a DPAS II assistance plan may be used to satisfy this requirement.

5.2.2 Criteria for determining if activities are acceptable for clock hour credit include the following:

5.2.2.1 The activity enhances the knowledge and skills in the educator's job or contributes to his/her school or profession.

5.2.2.2 The activity meets one of the relicensure options.

5.2.2.3 The activity addresses one of the standards for the educator's area of the profession.

5.2.2.4 The activity is completed during the term of the educator's current continuing license.

5.2.2.5 The activity addresses specific Professional Teaching or Administrator Standards.

5.2.2.6 Participation in, or completion of, the activity can be documented.

5.3 The Re-Licensure Application, Activity Documentation Form, and, where required, original or official documents will be used to verify activities for renewal of a continuing license. Official transcripts or original grade slips are required documentation for successful completion of college courses.

5.4 For applicants who change positions (grade levels, content areas, areas of supervisory responsibility, etc.) during the five-year term of a continuing license, clock hours documented must have been appropriate to the educator's position at the time the clock hours were completed.

6.0 To obtain renewal of a continuing license, educators are required to participate in professional development activities totaling 90 clock hours every five years. The 90 clock hours must be completed during the five-year term of the license. All activities must relate to the 14 Del. Admin. Code ~~393~~ 1593, Delaware Professional Teaching or 14 Del. Admin Code ~~394~~ 1594, Delaware Administrator Standards.

7.0 Candidates for renewal of a continuing license may select from a variety of professional development options, as set forth in the relicensure options approved by the Professional Standards Board, set forth in Section 5.1 and contained in the Guidelines for Issuance and Renewal of a Continuing License. The activities selected must be beyond the normal or specified requirements of the position. Professional development activities which fulfill the criteria for relicensure for which educators receive compensation may be submitted in fulfillment of the 90-clock hour requirement for relicensure. Graduate credits used to satisfy the 90 clock hour requirement for license renewal may, if part of a matriculated program, also be used for a salary increment on the state salary schedule, **if they meet the requirements set forth in 14 DE Admin. Code 1505.** The activities or options used to satisfy the 90 clock hour requirement for license renewal may be part of an approved professional development cluster eligible for a salary supplement.

8.0 The Department may extend a continuing license for a period not to exceed one year, exigent circumstances warranting the necessity of such extension.

9.0 An educator may take a leave of absence of up to three years with no effect upon the validity or expiration of the continuing license.

10.0 An applicant shall disclose his or her criminal conviction history upon application for a continuing license. Failure to disclose a criminal conviction history is grounds for denial or revocation of a continuing license as specified in 14 Del.C., § 1219.

11.0 This regulation shall apply to all requests for continuing license, issuance and renewal, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate expiring on June 30, 2001 shall have until June 30, 2007 to meet the new continuing license renewal standards. All administrators in instructional areas issued a continuing license as of July 1, 2001, shall have until June 30, 2007 to meet the new continuing license renewal standards. Educators holding a Professional Status Certificate or a Standard Certificate expiring July 1, 2001 or thereafter shall be required to satisfy the new continuing license renewal standards as set forth herein.

12.0A license holder whose license expires during the school year may have the continuing license extended until the last day of the school year. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.

13.0The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a continuing license on an individual basis and grant a continuing license to an applicant who otherwise does not meet the requirements for a continuing license, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.

DEPARTMENT OF FINANCE OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code,
Section 4805(a) (29 Del.C. §4805(a))

ORDER

Pursuant to 29 Del. C. §10113(b)(5) and 29 Del. C. §4805(a), the Delaware Lottery Office hereby issues this Order adopting amendments to Video Lottery Regulations 5.1 and 7.15 in order to make the Video Lottery Regulations consistent with recent statutory changes made by House Bill No. 269 passed by the 142nd General Assembly on June 18, 2003 and signed by Governor Ruth Ann Minner on June 19, 2003.

The Lottery makes the following findings and conclusions:

1. On June 18, 2003, the General Assembly passed House Bill No. 269, 74 Del. Laws 53 (2003). House Bill No. 269, Section 6, amended 29 *Del. C.* §4820(b) that increased the maximum number of video lottery machines for each video lottery agent from 2,000 to 2,500. House Bill No. 269, Section 4, also amended 29 *Del. C.* §4819(c) that extended the operating hours for video lottery agents.

2. The Lottery now issues this Order to amend Video Lottery Regulation 5.1 to provide for the maximum of 2,500 machines per video lottery agent as now provided for by §4820(b). The Lottery also amends Video Lottery Regulation 7.15 to provide for the same operating hours now stated in §4819(c) as amended.

3. Since these Video Lottery Regulations amendments are enacted to provide for consistency with controlling Lottery statutes, 29 *Del. C.* chapter 48, the amendment is not subject to the standard notice requirements under the Administrative Procedure Act, 29 *Del. C.* §10113(a).

4. The Video Lottery Regulations are amended as follows:

5. This Order will be published in the August 1, 2003 issue of the Register of Regulations.

IT IS SO ORDERED this 9th day of July, 2003

Wayne Lemons, Lottery Director

5.0 Technology Providers: Contracts; Requirements; Duties

5.1 The Director shall, pursuant to the procedures set forth in chapter 69 of the Delaware Code, enter into contracts with licensed technology providers as he or she shall determine to be appropriate, pursuant to which the technology providers shall furnish by sale or lease to the State video lottery machines in such numbers and for such video games as the Director shall approve from time to time as necessary for the efficient and economical operation of the Lottery, or convenience of the players, and in accordance with the agents' business plans as approved and amended by the Director. No more than 1,000 video lottery machines shall be located within the confines of an agent's premises unless the Director approves up to an additional ~~1,000~~ 1,500 machines or other number approved by the Director as permitted by law.

5.2 All contracts with technology providers who are video lottery machine manufacturers shall include without limitation, provisions to the following effect:

5.2.1 The technology provider shall furnish a person to work with the agency and its consultants to provide assistance as needed in establishing, planning and executing acceptance tests on the video lottery machines provided by

such technology provider. Technology provider assistance shall be provided as requested by the agency in troubleshooting communication and technical problems that are discovered when video lottery machines are initially placed at the agent's site;

5.2.2 The technology provider shall submit video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code and any other information requested by the Director for purposes of analyzing and testing the video lottery machines. A maximum of one-hundred (\$100) shall be permitted for wagering on a single play of any video game;

5.2.3 For testing, examination and analysis purposes, the technology provider shall furnish working models of video lottery machines, associated equipment, and documentation at locations designated by the Director. The technology provider shall pay all costs of any testing, examination, analysis and transportation of the video lottery machines, which may include the entire dismantling of the machines and some tests that may result in damage or destruction to one or more electronic components of the machines. The agency and its agents shall have no liability for any damage or destruction. The agency may require that the technology provider provide specialized equipment or the agency may employ the services of an independent technical laboratory expert to test the video lottery machine at the technology provider's expense;

5.2.4 Technology providers shall submit all hardware, software, and test equipment necessary for testing of their video lottery machines, and shall provide the director with keys and locks subject to the Director's specifications for each approved video lottery machine;

5.2.5 The EPROMs of each video lottery machine shall be certified to be in compliance with published specifications;

5.2.6 No video lottery machine shall be put into use prior to certification of its model by the Director;

5.3 All contracts with technology providers shall include without limitation, provisions to the following effect:

5.3.1 Technology providers shall agree to promptly report any violation or any facts or circumstances that may result in a violation of these rules; provide immediate access to all its records and its physical premises for inspection at the request of the Director; attend all trade shows or conferences as required by the Director;

5.3.2 Technology providers shall agree to modify their hardware and software as necessary to accommodate video game changes directed by the agency from time to time;

5.3.3 Technology providers shall provide such bonds and provide evidence of such insurance as the Director shall require from time to time and in such amounts

and issued by such companies as the Director shall approve; and

5.3.4 Technology providers shall have a valid license to conduct business in the State of Delaware, shall comply with all applicable tax provisions, and shall in all other respects be qualified to conduct business in Delaware.

5.4 Each video lottery machine certified by the Director shall bear a decal and shall conform to the exact specifications of the video lottery machine model tested and certified by the Director.

5.5 No video lottery machine may be transported out of the State until the decal has been removed and no decal shall be removed from a video lottery machine without prior agency approval.

5.6 Technology providers shall hold harmless the agency, the State of Delaware, and their respective employees for any claims, loss, cost, damage, liability or expense, including, without limitation, legal expense arising out of any hardware or software malfunction resulting in the wrongful award or denial of credits or cash.

5.7 A technology provider shall not distribute a video lottery machine for placement in the state unless the video lottery machine has been approved by the agency. Only licensed technology providers may apply for approval of a video lottery machine or associated equipment. The technology provider shall submit two copies of video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code, and any other information requested by the agency for purposes of analyzing and testing the video lottery machine or associated equipment.

5.8 The agency may require that two working models of a video lottery machine be transported to the location designated by the agency for testing, examination, and analysis. The technology provider shall pay all costs of testing, examination, analysis and transportation of such video lottery machine models, which may include the entire dismantling of the video lottery machine and tests which may result in damage or destruction to one or more electronic components of such video lottery machine model. The agency may require that the technology provider provide specialized equipment or the services of an independent technical expert in testing the terminal.

5.9 After each test has been completed, the agency shall provide the video lottery machine technology provider with a report that contains findings, conclusions, and pass/fail results. Prior to approving a particular video lottery machine model, the agency may require a trial period not in excess of sixty (60) days for a licensed agent to test the video lottery machine. During the trial period, the technology provider may not make any modifications to the video lottery machine model unless such modifications are approved by the agency.

5.10 The technology provider is responsible for the

assembly and initial operation, in the manner approved and licensed by the agency, of all its video lottery machines and associated equipment. The technology provider may not change the assembly or operational functions of any of its video lottery machines approved for placement in Delaware unless a "request for modification to an existing video lottery machine prototype" is made to the agency, that request to contain all appropriate information relating to the type of change, reason for change, and all documentation required. The agency must approve such request prior to any changes being made, and the agency shall reserve the right to require second testing of video lottery machines after modifications have been made.

5.11 Each video lottery machine approved for placement in a licensed agent's place of business shall conform to the exact specifications of the video lottery machine prototype tested and approved by the agency. Any video lottery machine which does not so conform shall be disconnected from the Delaware video lottery system until compliance has been achieved. Each video lottery machine shall at all times operate and be placed in accordance with the provisions of these regulations.

5.12 The following duties are required of all licensed technology providers, without limitation:

5.12.1 Manufacture terminals and associated equipment for placement in Delaware in accordance with the specifications of the agency.

5.12.2 Manufacture terminals and associated equipment to ensure timely delivery to licensed Delaware agents.

5.12.3 Maintain and provide an inventory of associated equipment to assure the timely repair and continued, approved operation and play of licensed video lottery machines acquired under the contract for placement in Delaware.

5.12.4 Provide an appropriate number of service technicians with the appropriate technical knowledge and training to provide for the service and repair of its licensed video lottery machines and associated equipment so as to assure the continued, approved operation and play of those licensed video lottery machines acquired under contract for placement in Delaware.

5.12.5 Obtain any certification of compliance required under the applicable provisions of rules adopted by the Federal Communications Commission.

5.12.6 Promptly report to the agency any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations adopted pursuant thereto.

5.12.7 Conduct video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the video lottery.

5.12.8 Hold the agency and the State of Delaware

and its employees harmless from any and all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the technology provider's participation in or the operation of a video lottery game.

5.12.9 Defend and pay for the defense of all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the technology provider's participation in video lottery operations.

5.12.10 Maintain all required records.

5.12.11 Lease or sell only those licensed video lottery machines, validation units and associated equipment approved under these regulations.

5.12.12 It shall be the continuing duty of the technology provider licensee to provide the Director with an updated list of the names and addresses of all its employees who are involved in the daily operation of the video lottery machines. These employees will include individuals or their supervisors involved with (1) the repair or maintenance of the video lottery machines, or (2) positions that provide direct access to the video lottery machines. It shall be the continuing duty of the technology provider licensee to provide for the bonding of each of these individuals to ensure against financial loss resulting from wrongful acts on their parts.

5.12.13 It shall be the ongoing duty of the technology provider licensee to notify the Director of any change in officers, partners, directors, key employees, video lottery operations employees, or owners. These individuals shall also be subject to a background investigation. The failure of any of the above-mentioned individuals to satisfy a background investigation may constitute "cause" for the suspension or revocation of the technology provider's license.

5.12.14 Provide the agents with the technical ability to distribute the proceeds of the video lottery in accordance with the requirements of these regulations and 29 Del.C. Ch. 48.

5.12.15 Supervise its employees and their activities to ensure compliance with these rules.

5.12.16 Promptly report to the Lottery any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto, excluding violations concerning motor vehicle laws.

5.12.17 Comply with such other requirements as shall be specified by the Director.

See 2 DE Reg. 115 (7/1/98)

See 2 DE Reg. 779 (11/1/98)

See 3 DE Reg. 1082 (2/1/00)

See 5 DE Reg. 1286 (12/1/01)

See 5 DE Reg. 1417 (1/1/02)

7.0 Game Requirements

7.1 The Director shall authorize such video games to be played on the agent's premises in conformity with approved business plans, as amended.

7.2 Video games shall be based on bills, coins, tokens or credits, worth between \$.05 and \$100.00 each, in conformity with approved business plans as amended.

7.3 The Director, in his or her discretion, may authorize extended play features from time to time to which the maximum wager limit of \$100.00 shall not apply.

7.4 Each video game shall display the amount wagered and the amount awarded for each possible winning occurrence based on the number of credits wagered.

7.5 Each video game shall provide a method for players to view payout tables.

7.6 Each player shall be at least twenty-one (21) years of age. In the event an underage player attempts to claim a prize, the video lottery agent should treat the play of the game as void and the underage player shall not be entitled to any prize won or a refund of amounts bet.

7.7 Agents shall redeem credit slips or tokens presented by a player in accordance with procedures proposed by the agent and approved by the Director prior to the opening of the premises for video game play. Such procedures shall be modified at the direction of the Director in his or her sole discretion at any time. Nothing in this subsection (7.7) shall prohibit the use of coin-in/coin-out machines.

7.8 Credit slips may be redeemed by a player at the designated place on the premises where the video game issuing the credit slip is located during the one hundred and eighty (180) day redeeming period commencing on the date the credit slip was issued.

7.9 No credit slip shall be redeemed more than one (1) year from the date of issuance. No jackpot from a coin-in/coin-out machine shall be redeemed more than one (1) year from the date on which the jackpot occurred. Funds reserved for the payment of a credit slip or expired unclaimed jackpot shall be treated as net proceeds if unredeemed one (1) year from the date of issuance of the credit slip or occurrence of the winning jackpot. The one year redemption policy in this regulation shall be prominently displayed on the premises of the video lottery agent.

7.10 No payment for credits awarded on a video lottery machine may be made unless the credit slip meets the following requirements:

7.10.1 It is presented on a fully legible, valid, printed credit slip on paper approved by the agency, containing the information as required;

7.10.2 It is not mutilated, altered, unreadable, or tampered with in any manner, or previously paid;

7.10.3 It is not counterfeit in whole or in part; and

7.10.4 It is presented by a person authorized to play.

7.11 Method of Payment - The management of each

licensed agent shall designate employees authorized to redeem credit slips during the hours of operation. Credits shall be immediately paid in cash or by check when a player presents a credit slip for payment meeting the requirements of this section. No credits may be paid in tokens, chips or merchandise.

7.12Restrictions on Payment - Agents may only redeem credit slips for credits awarded on video lottery machines located on its premises. The agency and the State of Delaware are not liable for the payment of any credits on any credit slips.

7.13Redeemed Tickets Defaced - All credit slips redeemed by a licensed agent shall be marked or defaced in a manner that prevents any subsequent presentment and payment.

7.14Liability for Malfunction - The agency and the State of Delaware are not responsible for any video lottery machine malfunction or for any error by the agent that causes credit to be wrongfully awarded or denied to players.

7.15Video lottery machines shall not be operated or available for play on Christmas, or after 4:00 a.m. on Easter, or between the hours of ~~2:00~~ 4:00 a.m. and ~~4:00~~ 12:00 p.m. on Sundays, or between the hours of ~~2:00~~ 4:00 a.m. and 8:00 a.m. on any day other than Sunday.

See 2 DE Reg. 115 (7/1/98)

See 2 DE Reg. 779 (11/1/98)

See 5 DE Reg. 1286 (12/1/01)

OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code,
Section 4805(a) (29 Del.C. §4805(a))

ORDER

Pursuant to 29 Del. C. §10118 and 29 Del. C. §4805(a), the Delaware Lottery Office issues this Order adopting proposed amendments to the Video Lottery Regulations. Following notice and a public hearing held on June 27, 2003 on the proposed Video Lottery Regulation amendments, the Lottery makes the following findings and conclusions:

Summary Of Evidence

1. The Lottery posted public notice of the proposed amendments in the June 1, 2003 Register of Regulations and in the Delaware Capital Review and the Delaware State News. The proposed amendments to the Video Lottery Regulations are as follows:

i) amend Video Lottery Regulation 5.2.1(2) to provide that the maximum bet of \$100 is subject to Video Lottery Regulation 7.3 which permits the Director to

authorize extended plays or games on a video lottery machine;

ii) amend Video Lottery Regulation 6.10 to provide that video lottery agents exercise caution and good judgment in extending credit and act in compliance with all federal and state laws;

iii) repeal Video Lottery Regulation 6.18 which prohibits video lottery agents from providing financial assistance or credit to players;

iv) amend Video Lottery Regulation 6.30 to provide that no automated teller machine may be within twenty-five feet of any video lottery machine;

v) amend Video Lottery Regulation 7.2 to lower the minimum bet on video lottery machines from \$.05 to \$.01; and

vi) amend Video Lottery Regulation 7.3 to provide that the Director may authorize extended plays and games on video lottery machines which are not subject to the \$100 maximum bet.

2. The Lottery held a public hearing on June 27, 2003 and received no public comments. The Lottery received no written comments from the public during the month on June, 2003.

Findings Of Fact And Conclusions

3. The public was given notice and an opportunity to provide the Lottery with comments in writing and by testimony at the public hearing on the proposed amendments to the Video Lottery Regulations.

4. The Lottery finds that the proposed amendments to the Video Lottery Regulations are necessary for the agency to achieve its statutory duty under 29 Del. C. §4805(a) to maximize net revenues consonant with the dignity of the State and general welfare of the people of Delaware. The Lottery concludes that the proposed amendments to the Video Lottery Regulations should be adopted in the proposed form. The Lottery adopts the proposed amendments to Video Lottery Regulations 5.2.1(2), 6.10, 6.18, 6.30, 7.2, and 7.3.

5. The effective date of this Order shall be ten (10) days from the publication of this order in the Register of Regulations on August 1, 2003. A copy of the enacted Video Lottery Regulation amendments is attached as Exhibit #1 to this Order.

IT IS SO ORDERED this 7th day of July, 2003.

Don Johnson, Deputy Director for Video Lottery Operations

5.0 Technology Providers: Contracts; Requirements; Duties

5.1 The Director shall, pursuant to the procedures set forth in 29 Del.C. §6924 enter into contracts with licensed

technology providers as he or she shall determine to be appropriate, pursuant to which the technology providers shall furnish by sale or lease to the State video lottery machines in such numbers and for such video games as the Director shall approve from time to time as necessary for the efficient and economical operation of the lottery, or convenience of the players, and in accordance with the agents' business plans as approved and amended by the Director. No single technology provider shall supply more than 65% of the total number of video lottery machines at the premises of any agent. No more than 1,000 video lottery machines shall be located within the confines of an agent's premises unless the Director approves up to an additional 1,000 machines or other number approved by the Director as permitted by law.

5.2 All contracts with technology providers shall include without limitation, provisions to the following effect:

(1) The technology provider shall furnish a person to work with the agency and its consultants to provide assistance as needed in establishing, planning and executing acceptance tests on the video lottery machines provided by such technology provider. Technology provider assistance shall be provided as requested by the agency in troubleshooting communication and technical problems that are discovered when video lottery machines are initially placed at the agent's site;

(2) The technology provider shall submit video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code and any other information requested by the Director for purposes of analyzing and testing the video lottery machines. A maximum of \$100 shall be permitted for wagering on a single play of any video game except that the Director pursuant to Regulation 7.3 may authorize extended plays or games on a video lottery machine in excess of the \$100 maximum bet limit.

(3) For testing, examination and analysis purposes, the technology provider shall furnish working models of video lottery machines, associated equipment, and documentation at locations designated by the Director. The technology provider shall pay all costs of any testing, examination, analysis and transportation of the video lottery machines, which may include the entire dismantling of the machines and some tests that may result in damage or destruction to one or more electronic components of the machines. The agency and its agents shall have no liability for any damage or destruction. The agency may require that the technology provider provide specialized equipment or the agency may employ the services of an independent technical laboratory expert to test the video lottery machine at the technology provider's expense;

(4) Technology providers shall submit all

hardware, software, and test equipment necessary for testing of their video lottery machines;

(5) The EPROMs of each video lottery machine shall be certified to be in compliance with published specifications;

(6) No video lottery machine shall be put into use prior to certification of its model by the Director;

(7) Technology providers shall agree to promptly report any violation or any facts or circumstances that may result in a violation of these rules; provide immediate access to all its records and its physical premises for inspection at the request of the Director; attend all trade shows or conferences as required by the Director; provide the Director with keys and locks subject to the Director's specifications for each approved video lottery machine;

(8) Technology providers shall agree to modify their hardware and software as necessary to accommodate video game changes directed by the agency from time to time;

(9) Technology providers shall provide such bonds and provide evidence of such insurance as the Director shall require from time to time and in such amounts and issued by such companies as the Director shall approve; and

(10) Technology providers shall have a valid license to conduct business in the State of Delaware, shall comply with all applicable tax provisions, and shall in all other respects be qualified to conduct business in Delaware.

5.3 Each video lottery machine certified by the Director shall bear a decal and shall conform to the exact specifications of the video lottery machine model tested and certified by the Director.

5.4 No video lottery machine may be transported out of the State until the decal has been removed and no decal shall be removed from a video lottery machine without prior agency approval.

5.5 Technology providers shall hold harmless the agency, the State of Delaware, and their respective employees for any claims, loss, cost, damage, liability or expense, including, without limitation, legal expense arising out of any hardware or software malfunction resulting in the wrongful award or denial of credits or cash.

5.6 A technology provider shall not distribute a video lottery machine for placement in the state unless the video lottery machine has been approved by the agency. Only licensed technology providers may apply for approval of a video lottery machine or associated equipment. The technology provider shall submit two copies of video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code, and any other information requested by the agency for purposes of analyzing and testing the video lottery machine or associated equipment.

5.7 The agency may require that two working models of a video lottery machine be transported to the location

designated by the agency for testing, examination, and analysis. The technology provider shall pay all costs of testing, examination, analysis and transportation of such video lottery machine models, which may include the entire dismantling of the video lottery machine and tests which may result in damage or destruction to one or more electronic components of such video lottery machine model. The agency may require that the technology provider provide specialized equipment or the services of an independent technical expert in testing the terminal.

5.8 After each test has been completed, the agency shall provide the video lottery machine technology provider with a report that contains findings, conclusions, and pass/fail results. Prior to approving a particular video lottery machine model, the agency may require a trial period not in excess of sixty (60) days for a licensed agent to test the video lottery machine. During the trial period, the technology provider may not make any modifications to the video lottery machine model unless such modifications are approved by the agency.

5.9 The technology provider is responsible for the assembly and initial operation, in the manner approved and licensed by the agency, of all its video lottery machines and associated equipment. The technology provider may not change the assembly or operational functions of any of its video lottery machines approved for placement in Delaware unless a "request for modification to an existing video lottery machine prototype" is made to the agency, that request to contain all appropriate information relating to the type of change, reason for change, and all documentation required. The agency must approve such request prior to any changes being made, and the agency shall reserve the right to require second testing of video lottery machines after modifications have been made.

5.10 Each video lottery machine approved for placement in a licensed agent's place of business shall conform to the exact specifications of the video lottery machine prototype tested and approved by the agency. Any video lottery machine which does not so conform shall be disconnected from the Delaware video lottery system until compliance has been achieved. Each video lottery machine shall at all times operate and be placed in accordance with the provisions of these regulations.

5.11 The following duties are required of all licensed technology providers, without limitation:

(1) Manufacture terminals and associated equipment for placement in Delaware in accordance with the specifications of the agency.

(2) Manufacture terminals and associated equipment to ensure timely delivery to licensed Delaware agents.

(3) Maintain and provide an inventory of associated equipment to assure the timely repair and continued, approved operation and play of licensed video

lottery machines acquired under the contract for placement in Delaware.

(4) Provide an appropriate number of service technicians with the appropriate technical knowledge and training to provide for the service and repair of its licensed video lottery machines and associated equipment so as to assure the continued, approved operation and play of those licensed video lottery machines acquired under contract for placement in Delaware.

(5) Obtain any certification of compliance required under the applicable provisions of rules adopted by the Federal Communications Commission.

(6) Promptly report to the agency any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations adopted pursuant thereto.

(7) Conduct video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the video lottery.

(8) Hold the agency and the State of Delaware and its employees harmless from any and all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the technology provider's participation in or the operation of a video lottery game.

(9) Defend and pay for the defense of all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the technology provider's participation in video lottery operations.

(10) Maintain all required records.

(11) Lease or sell only those licensed video lottery machines, validation units and associated equipment approved under these regulations.

(12) It shall be the continuing duty of the technology provider licensee to provide the Director with an updated list of the names and addresses of all its employees who are involved in the daily operation of the video lottery machines. These employees will include individuals or their supervisors involved with (1) the repair or maintenance of the video lottery machines, or (2) positions that provide direct access to the video lottery machines. It shall be the continuing duty of the technology provider licensee to provide for the bonding of each of these individuals to ensure against financial loss resulting from wrongful acts on their parts.

(13) It shall be the ongoing duty of the technology provider licensee to notify the Director of any change in officers, partners, directors, key employees, video lottery operations employees, or owners. These individuals shall also be subject to a background investigation. The failure of any of the above-mentioned individuals to satisfy a background investigation may constitute "cause" for the suspension or revocation of the technology provider's license.

(14) Provide the agents with the technical ability to distribute the proceeds of the video lottery in accordance with the requirements of these regulations and 29 Del. C. chapter 48.

6.0 Agents: Duties

The following duties are required of all licensed agents:

6.1 Provide a secure location for the placement, operation, and play of all licensed video lottery machines located on the licensed agent's premises.

6.2 Permit no person to tamper with or interfere with the approved operation of any licensed video lottery machine.

6.3 Assure that telephone lines from the agency's central computer to the licensed video lottery machines located on the licensed agent's premises are at all times connected, and prevent any person from tampering or interfering with the continuous operation of the lines.

6.4 With respect to video lottery operations, contract only with officers, directors, owners, partners, key employees, and suppliers of video lottery equipment and paraphernalia authorized by the agency to participate in video lottery operations within the State of Delaware.

6.5 Ensure that licensed video lottery machines are placed and remain as placed unless the agency authorizes their movement within the sight and control of the agent or a designated employee, through physical presence and by the use of surveillance cameras at all times.

6.6 Ensure that licensed video lottery machines are placed and remain as placed in the specific area of the premises as approved by the lottery. Any relocation of a licensed video lottery machine or machines requires prior approval from the agency.

6.7 Monitor video lottery machine play and prevent access to or play by persons who are under the age of twenty-one (21) years or who are intoxicated, or whom the agent has reason to believe are intoxicated.

6.8 Commit no violations of the laws of this State concerning the sale, dispensing, and consumption on the premises of alcoholic beverages that result in suspension or revocation of an alcoholic beverage license.

6.9 Maintain at all times sufficient change and cash in denominations accepted by the video machines located in the premises.

6.10 ~~Extend no credit~~ Exercise caution and good judgment in extending credit for video lottery machine play, and comply with all applicable federal and state laws.

6.11 Exercise caution and good judgment in providing cash for checks presented for video lottery machine play.

6.12 Report promptly all video lottery machine malfunctions to the appropriate technology provider and agency and notify the agency of any technology provider failure to provide service and repair of such terminals and associated equipment.

6.13 Conduct agency approved advertising and promotional activities related to video lottery operations.

6.14 Install, post and display prominently at locations within or about the premises signs, redemption information and other promotional material as may be required by the agency.

6.15 Permit video lottery games to be played only during those hours established and approved by the Director.

6.16 Assume responsibility for the proper and timely payment to players of credits or tokens awarded.

6.17 Prohibit the possession, use or control of gambling paraphernalia on the premises not directly related to the lottery or horse racing or harness horse racing and prohibit illegal gambling on the premises.

6.18 ~~Provide no form of financial assistance or grant credits other than credits issued by a video lottery machine to enable players to play video games.~~ (Reserved)

6.19 Attend all meetings, seminars, and training sessions required by the agency.

6.20 Supervise its employees and their activities to ensure compliance with these rules.

6.21 Assume responsibility for the proper and immediate redemption of all credits; however, no credits may be redeemed by a person under twenty-one (21) years of age, and no credits submitted for redemption beyond the 365 day time limit will be redeemed.

6.22 Provide dedicated power and a proper video lottery machine environment in accordance with the specifications of the agency.

6.23 Furnish to the Director complete information pertaining to any change in ownership of the agent or the owner of the premises or beneficial owner (other than a change in ownership by an owner of less than twenty (20) percent of the issued and outstanding capital stock of the agent or premises owner if such stock is publicly traded).

6.24 Promptly report to the lottery any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto, excluding violations concerning motor vehicle laws.

6.25 Conduct video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the lottery.

6.26 Hold the Director, the State of Delaware, and employees thereof harmless from and defend and pay for the defense of any and all claims which may be asserted against the Director, the State or the employees thereof, arising from the participation in the video lottery system, except claims arising from the negligence or willful misconduct of the Director, the State or the employees thereof.

6.27 Maintain all required records.

6.28 Provide at the request of the Director immediate access to the premises and to all records related to any aspect of these regulations, including without limitation the duties

imposed by these regulations.

6.29 Keep current on all payments, tax obligations and other obligations to the agency and other licensees with whom video lottery business is conducted. The agent shall pay the players and transfer the net proceeds to the State lottery fund in conformity with the requirements set forth in these regulations and 29 Del. C. chapter 48.

6.30 Ensure that there are no automated teller machines (ATMs) ~~on the premises or within twenty-five (25) fifty (50) feet of the boundary of the premises~~ any video lottery machine on the premises.

6.31 Locate all video lottery machines within the viewing range of closed circuit television cameras at all times, including both normal business hours and those periods when video lottery operations are closed. The presence of these cameras is to ensure the integrity of the lottery, the video lottery operations, and the safety of the patrons.

6.32 Comply with such other requirements as shall be specified by the Director. The agent shall submit to the Director a description of its system of internal procedures and administrative and accounting controls which shall conform to the rules and regulations of the agency and be otherwise satisfactory to the Director in his or her sole discretion.

6.33 Provide, on a continuing basis, to the Director the names and addresses of all employees who are involved in the daily operation of the video lottery machines. These employees will include individuals or their supervisors involved with (1) the security of the video lottery machines, (2) the handling or transporting of proceeds from the video lottery machines, or (3) positions that provide direct access to video lottery machines. It shall be the continuing duty of the video lottery agent licensee to provide for the bonding of any of the above-mentioned employees to ensure against financial loss resulting from wrongful acts on their parts. Likewise, the agent shall post a bond or irrevocable letter of credit in a manner and in an amount established by the agency. Any such bonds shall be issued by a surety company authorized to transact business in Delaware and said company shall be approved by the State Insurance Commissioner as to solvency and responsibility.

6.34 Notify the Director on a continuing basis of any change in officers, partners, directors, key employees, video lottery operations employees, and owners. Such persons will also be subject to a background investigation. The failure of any of the above-mentioned persons to satisfy a background investigation may constitute "cause" for the suspension or revocation of the video lottery agent's license, provided that an agent is first given a reasonable opportunity to remove or replace such person if the agent was unaware of such "cause" prior to the background investigation.

6.35 As soon as it is known to the agent, file with the Director a copy of any current or proposed agreement and

disclose to the Director any other relationship between the agent, its parents, subsidiaries, related entities, partners, owners, directors, officers or key employees for the sale, lease, maintenance, repair or other assignment of the agent's premises, or any other relationship of any vendor, manufacturer or other person who stands to benefit financially from the possession or use of video lottery machines by such agent.

6.36 Comply with the applicable requirements contained in Title 3, §10048 and §10148 and Title 28, §427 of the Delaware Code. The agent shall file an annual report, due January 15th of each year, which provides sufficient information for the Director to determine whether the agent has satisfied the requirements of this provision.

6.37 Comply with the provisions of the business plans as approved and amended.

6.38 Comply on a continuing basis with the requirements for obtaining or retaining a license under the provisions of these regulations and 29 Del. C. chapter 48.

7.0 Game Requirements

7.1 The Director shall authorize such video games to be played on the agent's premises in conformity with approved business plans, as amended.

7.2 Video games shall be based on bills, coins, tokens or credits, worth between ~~\$.01 \$-.05~~ and \$100.00 each, in conformity with approved business plans as amended.

7.3 The Director, in his or her discretion, may authorize extended plays or games on a video lottery machine ~~features~~ from time to time to which the maximum wager limit of \$100 shall not apply.

7.4 Each video game shall display the amount wagered and the amount awarded for each possible winning occurrence based on the number of credits wagered.

7.5 Each video game shall provide a method for players to view payout tables.

7.6 Each player shall be at least twenty-one (21) years of age. In the event an underage player attempts to claim a prize, the video lottery agent should treat the play of the game as void and the underage player shall not be entitled to any prize won or a refund of amounts bet.

7.7 Agents shall redeem credit slips or tokens presented by a player in accordance with procedures proposed by the agent and approved by the Director prior to the opening of the premises for video game play. Such procedures shall be modified at the direction of the Director in his or her sole discretion at any time. Nothing in this subsection (7.7) shall prohibit the use of coin-in/coin-out machines.

7.8 Credit slips may be redeemed by a player at the designated place on the premises where the video game issuing the credit slip is located during the one hundred and eighty (180) day redeeming period commencing on the date the credit slip was issued.

7.9 No credit slip shall be redeemed more than one

hundred and eighty (180) days from the date of issuance. No jackpot from a coin-in/coin-out machine shall be redeemed more than one hundred and eighty (180) days from the date on which the jackpot occurred. Funds reserved for the payment of a credit slip or expired unclaimed jackpot shall be treated as net proceeds if unredeemed one hundred and eighty one (181) days from the date of issuance of the credit slip or occurrence of the winning jackpot. The one hundred and eighty day redemption policy in this regulation shall be prominently displayed on the premises of the video lottery agent.

7.10 No payment for credits awarded on a video lottery machine may be made unless the credit slip meets the following requirements:

(1) It is presented on a fully legible, valid, printed credit slip on paper approved by the agency, containing the information as required;

(2) It is not mutilated, altered, unreadable, or tampered with in any manner, or previously paid;

(3) It is not counterfeit in whole or in part; and

(4) It is presented by a person authorized to play.

7.11 Method of Payment - The management of each licensed agent shall designate employees authorized to redeem credit slips during the hours of operation. Credits shall be immediately paid in cash or by check when a player presents a credit slip for payment meeting the requirements of this section. No credits may be paid in tokens, chips or merchandise.

7.12 Restrictions on Payment - Agents may only redeem credit slips for credits awarded on video lottery machines located on its premises. The agency and the State of Delaware are not liable for the payment of any credits on any credit slips.

7.13 Redeemed Tickets Defaced - All credit slips redeemed by a licensed agent shall be marked or defaced in a manner that prevents any subsequent presentment and payment.

7.14 Liability for Malfunction - The agency and the State of Delaware are not responsible for any video lottery machine malfunction or for any error by the agent that causes credit to be wrongfully awarded or denied to players.

7.15 Video lottery machines shall not be operated or available for play on Christmas, Easter, or between the hours of 2:00 a.m. and 1:00 p.m. on Sundays, or between the hours of 2:00 a.m. and 8:00 a.m. on any day other than Sunday.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

Note: The June 2003 issue of the Delaware Register Of Regulations inadvertently contained unrelated text, specifically Sections 15120.2 and 15200. The order adopting the final version is published below without the added text. At this time, DSS plans no further restrictions to the Transitional Medicaid Program.

Nature Of The Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM). The proposed change amends the rules used to determine eligibility for the State-funded medical assistance program. 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 June 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary Of Proposed Changes

Effective September 1, 2003, the State-funded medical assistance coverage is limited to those aliens who meet the following residency requirements:

- In order to be found eligible for the State-funded benefits, a legally residing nonqualified alien or a qualified alien must have resided in Delaware for at least three (3) consecutive months before he or she may be found eligible; and,
- A legally residing nonqualified alien or a qualified alien cannot use inpatient days in an institution to help establish this three (3) month residency requirement.

Summary Of Comments Received With Agency Response

The Governor's Advisory Council For Exceptional Citizens (GACEC), the Delaware Developmental Disabilities Council (DDDC), and the State Council for

Persons with Disabilities (SCPD) oppose the proposed regulations as it undermines TWWIAA (Ticket to Work and Workforce Incentives Improvement Act) implementation and discourages employment of persons with low incomes and/or disabilities. They have the following concerns:

First, 1996 Federal legislation limited Medicaid eligibility of some aliens. The State opted to provide full or limited coverage using solely State funds. DSS now proposes to restrict eligibility of covered aliens to those who can document State residency for at least 3 consecutive months exclusive of inpatient days in institutions. Consistent with the attached June 11, 2003 News Journal article, Delaware ranks 48th in the nation for infant deaths, ahead of only Alabama and Mississippi. Barring aliens from safety-net programs, including prenatal, delivery, and post-natal care, is shortsighted and may actually bring about an increase in the numbers of people with disabilities.

Agency Response: DSS implements the regulation for two reasons: 1) to limit individuals from other countries coming to Delaware institutions and then, applying for state-only medical assistance; and, 2) to sustain the program as currently funded.

Second, DSS Proposes changes to DSSM 15200, which addresses transitional Medicaid, in March 2003. The SCPD, GACEC, and DDDC endorsed continuation of transitional Medicaid for persons losing TANF eligibility due to earned income. However, we endorsed a 24-month extension rather than a 12-month extension for families qualifying after October 1, 2002. DSS adopted the final regulation with no changes in May 2003. Now, DSS proposes to amend the same regulation. It proposes a further restriction, i.e., families eligible prior to September 1, 2003 will be eligible for a 12-month earned income disregard. Families establishing eligibility after September 1, 2003 will not receive the 12-month earned income disregard.

Agency Response: The June 2003 issue of the Delaware Register of Regulations inadvertently contained unrelated text, specifically sections 15120.2 and 152000. The order adopting the final version is published in the August 2003 issue without the added text. At this time, DSS plans no further restrictions to the transitional Medicaid program.

Findings Of Fact:

The Department finds that the proposed changes, as set forth in the June 2003 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the State-funded medical assistance program as it relates to eligibility is adopted and shall be final effective August 10, 2003.

Karryl McManus for Vincent P. Meconi,
Secretary, DHSS
7/15/03

REVISIONS:

14300 Citizenship And Alienage

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) enacted on August 22, 1996, significantly changed Medicaid eligibility for individuals who are not citizens of the United States. The legislation revised the categories of noncitizens who may be determined eligible for Medicaid. The legislation identifies noncitizens as qualified aliens or nonqualified aliens. The term qualified refers to groups of aliens whose members may establish Medicaid eligibility under certain circumstances and subject to certain limitations. For specific groups of aliens identified as nonqualified, eligibility is limited to the treatment of an emergency medical condition as defined in this section.

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated State only funds to provide coverage of full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. Coverage for these aliens will be provided on a fee for service basis and is subject to the availability of State funding. In the event State funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only.

Aliens who may be found eligible for full Medicaid coverage using the state funds include legally residing nonqualified aliens and qualified aliens subject to the 5 year bar. Illegally residing aliens and ineligible aliens are not eligible for full Medicaid coverage, but remain eligible for emergency services and labor and delivery only.

Medicaid coverage for legally residing nonqualified aliens, qualified aliens subject to the PRWORA 5 year bar, illegally residing aliens, and ineligible aliens is limited to emergency services and labor and delivery only as described in DSSM 14360.

All applicants, whether aliens or citizens, must meet the technical and financial eligibility criteria of a specific eligibility group such as SSI related group, AFDC related group, or poverty level related group. Not every alien, qualified or nonqualified, will be eligible for Medicaid, emergency services and labor and delivery only, or the State funded benefits.

In order to be found eligible for the State funded benefits, a legally residing nonqualified alien or a qualified alien who is subject to the PRWORA 5 year bar, must have a current Delaware domicile and must have resided in Delaware for at least three (3) consecutive months before he or she may be found eligible. Documentation of three (3) consecutive months of Delaware residency is required for

the eligibility determination. Documentation includes but is not limited to a lease or landlord statement, a mortgage statement or deed, or a Delaware drivers license.

A legally residing nonqualified alien or a qualified alien subject to the PRWORA 5 year bar cannot use inpatient days in an institution to help establish this three (3) month residency requirement. This includes but is not limited to institutions such as inpatient hospitals, long term care facilities, residential treatment centers, inpatient substance abuse facilities, and institutions for mental diseases.

14320.1 Medicaid Eligibility For Qualified Aliens (PRWORA and/Or State Funds)

Effective January 1, 1998, all qualified aliens, regardless of the date of entry into the U.S., may be found eligible for full Medicaid benefits. This does not include long term care services. Legally residing nonqualified aliens may be found eligible for Medicaid long term care services upon residing in the United States for five years.

The PRWORA policy (as amended by the Balanced Budget Act) which follows describes the eligibility for qualified aliens prior to the appropriation of State funds. In the event such State funding is exhausted, eligibility for qualified aliens will be determined using the PRWORA policy described below.

Certain qualified aliens will be Medicaid eligible. Other qualified aliens will receive State funded benefits. The adult expansion population under the 1115 demonstration waiver entitled Diamond State Health Plan, is not eligible for emergency services and labor and delivery only or the State funded benefits.

The Delaware legislature appropriated State only funds to provide full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid because of PRWORA. Under PRWORA, certain qualified aliens entering the U.S. on or after 8/22/96 are subject to a 5 year bar on eligibility. Coverage for full Medicaid benefits for the qualified aliens who are under the PRWORA 5 year bar is subject to the availability of State funds.

14320.5 Eligibility For State Funded Benefits (Qualified Aliens)

The following qualified aliens who enter the U.S. on or after 8/22/96 and are subject to the PRWORA 5 year bar may be found eligible for State funded benefits.

- Lawful permanent resident
- Aliens granted parole (parolees)
- Aliens granted conditional entry (conditional entrants)
- Battered immigrants

The adult expansion population under the 1115 demonstration waiver entitled, Diamond State Health Plan, is not eligible for the State funded benefits. State funded

coverage does not include long term care.

Effective September 1, 2003, these aliens must meet a three (3) month residency requirement as described in DSSM 14300.

Once these aliens have been in the U.S. for five years, they may be found eligible for Medicaid.

14330.2 Eligibility For State Funded Benefits (Nonqualified Aliens)

Effective January 1, 1998, legally residing nonqualified aliens, regardless of the date of entry into the U.S., may be found eligible for full Medicaid benefits. This does not include long term care services. Legally residing nonqualified aliens may be found eligible for Medicaid long term care services upon residing in the United States for five years.

The Delaware legislature appropriated State only funds to provide full coverage of Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. Coverage for full Medicaid benefits for these legally residing nonqualified aliens is subject to the availability of State funds. In the event such State funding is exhausted, eligibility for legally residing nonqualified aliens will be determined using the PRWORA policy described in Section 14330.1. The adult expansion population, under the 1115 demonstration waiver, entitled Diamond State Health Plan, is not eligible for state funded benefits.

Legally residing nonqualified aliens may be found eligible for State funded benefits. The adult expansion population under the 1115 demonstration waiver entitled, Diamond State Health Plan, is not eligible for the State funded benefits. State funded coverage does not include long term care.

Effective September 1, 2003, these aliens must meet a three (3) month residency requirement as described in DSSM 14300.

DEPARTMENT OF JUSTICE DIVISION OF SECURITIES DELAWARE SECURITIES ACT

Statutory Authority: 6 Delaware Code,
Sections 7325(b) (6 Del. C. §7325(b))

Order Adopting Rules and Regulations Pursuant to the Delaware Securities Act

On April 1, 2003, the Division of Securities of the Delaware Department of Justice ("Division") published in the Delaware Register of Regulations proposed revisions to the Rules and Regulations Pursuant to the Delaware

Securities Act. The proposed revisions were held open for public comment until May 1, 2003.

Summary of Evidence and Information Submitted

During the thirty day comment period, no evidence or information was provided to the Division regarding the proposed revisions.

Findings of Fact

The Commissioner determines that the adoption of the proposed revisions to the Rules and Regulations Pursuant to the Delaware Securities Act is appropriate.

Decision to Adopt the Proposed Revisions

Wherefore, It is Hereby Ordered, pursuant to 6 Del.C. 7325 and 29 Del.C. 10118, the the proposed revisions to the Rules and Regulations Pursuant to the Delaware Securities Act, in the form attached hereto as Exhibit A, are adopted to be effective ten (10) days following publication of this order in the Delaware Register of Regulations.

SO ORDERED THIS 9TH DAY OF JULY, 2003.

James B. Ropp, Securities Commissioner

Part F. Broker-Dealers, Broker-Dealer Agents, and Issuer Agents

§600 Registration of Broker-Dealers

(a) A person applying for a license as a broker-dealer in Delaware shall make application for such license on Form BD (Uniform Application for Broker-Dealer Registration). Amendments to such applications shall also be made on Form BD.

(b) An applicant who is registered or registering under the Securities Exchange Act of 1934 shall file its application, together with the fee required by Section 7314 of the Act, with the NASD Central Registration Depository ("CRD") and shall file with the Commissioner such other information as the Commissioner may reasonably require.

(c) An applicant who is not registered or registering under the Securities Exchange Act of 1934 shall file its application; the fee required by Section 7314 of the Act; and an audited financial statement prepared in accordance with 17 C.F.R. §240.17a-5(d) with the Commissioner, together with such other information as the Commissioner may reasonably require.

~~(d) A broker-dealer registered with the Commissioner shall register at least one agent with the Commissioner. Except for a broker-dealer that is a sole proprietorship or the substantial equivalent, a broker-dealer registered with the~~

Commissioner shall register with the Commissioner at least on broker-dealer agent.

(e) Registration expires at the end of the calendar year. Any broker-dealer may renew its registration by filing with the NASD CRD, or with the Commissioner in the case of a broker-dealer not registered under the Securities Exchange Act of 1934, such information as is required by the NASD, together with the fee required by Section 7314 of the Act.

See 1 DE Reg 1978 (6/1/98)

§601 Registration of Broker-Dealer Agents

(a) A person applying for a license as a broker-dealer agent in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) An applicant for registration as an agent for a broker-dealer that is a member of the NASD shall file his or her application, together with the fee required by Section 7314 of the Act, with the NASD CRD and shall file with the Commissioner such other information as the Commissioner may reasonably require.

(c) Any applicant for registration as an agent for a broker-dealer that is not an NASD member shall file his or her application, together with the fee required by Section 7314 of the Act, with the Commissioner, together with such other information as the Commissioner may reasonably require.

~~(d) Any applicant for a broker-dealer agent license must also successfully complete the Uniform Securities Agent State Law Examination (Series 63 or 66) administered by the NASD. The Commissioner may waive the exam requirement upon good cause shown.~~

~~(e)~~ (d) Registration expires at the end of the calendar year. Any broker-dealer agent may renew its registration by filing with the NASD CRD, or with the Commissioner in the case of a broker-dealer agent employed by a broker-dealer not registered under the Securities Exchange Act of 1934, such information as is required by the NASD, together with the fee required by Section 7314 of the Act.

See 1 DE Reg 1978 (6/1/98)

§602 Registration of Issuer Agents

(a) A person applying for a license as an issuer agent in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) An applicant for registration as an issuer agent shall file his or her application and the fee required by Section 7314 of the Act with the Commissioner, together with such further information as the Commissioner may reasonably require.

(c) Any applicant for an issuer agent license must also

successfully complete the Uniform Securities Agent State Law Examination (Series 63 or 66) administered by the NASD. The Commissioner may waive the exam requirement upon good cause shown.

See 1 DE Reg 1978 (6/1/98)

§603 Continuing Obligation of Registrants to Keep Information Current

(a) Persons registering or registered as broker-dealers, broker-dealer agents or issuer agents are required to keep reasonably current the information set forth in their applications for registration and to notify the Commissioner of any material change to any information reported in their application for registration. An applicant or registrant who is registered with the NASD may notify the Commissioner of such material change by filing an amendment through the NASD CRD. All other persons shall notify the Commissioner directly.

(b) Failure to keep current the information set forth in an application or to notify the Commissioner of any material change to any information reported in the application shall constitute a waiver of any objection to or claim regarding any action taken by the Commissioner in reliance on information currently on file with the Commissioner.

See 1 DE Reg 1978 (6/1/98)

§604 Minimum Financial Requirements and Financial Reporting Requirements of Broker-Dealers

(a) Each broker-dealer registered or required to be registered under the Act shall comply with SEC Rules 15c3-1 (17 C.F.R. §240.15c3-1), 15c3-2 (17 C.F.R. §240.15c3-2), and 15c3-3 (17 C.F.R. §240.15c3-3).

(b) Each broker-dealer registered or to be registered under the Delaware Securities Act shall comply with SEC Rule 17a-11 (17 C.F.R. §240.17a-11) and shall file with the Commissioner, upon request, copies of notices and reports required under SEC Rules 17a-5 (17 C.F.R. §240.17a-5), 17a-10 (17 C.F.R. §240.17a-10), and 17a-11 (17 C.F.R. §240.17a-11).

(c) To the extent that the SEC promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Securities Division for violation of this section to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

§605 Bonding Requirements of Intrastate Broker-Dealers

Every broker-dealer registered or required to be registered under the Act whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange, and who is not registered under Section 15 of the Securities Exchange Act of 1934 shall be bonded in an amount of not less than \$100,000 by a bonding

company qualified to do business in this state.

§606 Record keeping Requirements of Broker-Dealers

(a) Unless otherwise provided by order of the SEC, each broker-dealer registered or required to be registered under the Act shall make, maintain, and preserve books and records in compliance with SEC Rules 17a-3 (17 C.F.R. §240.17a-3), 17a-4 (17 C.F.R. §240.17a-4), 15c2-6 (17 C.F.R. §240.15c2-6) and 15c2-11 (17 C.F.R. §240.15c2-11).

(b) To the extent that the SEC promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Securities Division for violation of this section to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

§607 Use of the Internet for General Dissemination of Information on Products and Services

(a) Broker-dealers and broker-dealer agents who use the Internet to distribute information on securities, products or services through communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on Bulletin Boards, displays on "Home Pages" or otherwise (an "Internet Communication") shall not be deemed to be "transacting business" in Delaware for purposes of Section 7313 of the Act based solely on the Internet Communication if the following conditions are met:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(i) the broker-dealer or agent in question may only transact business in a state requiring registration if first registered, excluded or exempted from state broker-dealer or agent registration requirements, as the case may be; and

(ii) follow-up, individual responses to persons in Delaware by such broker-dealer, or agent that involve either the effecting or attempting to effect transactions in securities, will not be made absent compliance with state broker-dealer or agent registration requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitations, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in Delaware, said broker-dealer or agent is first registered in Delaware or qualifies for an exemption or exclusion from such requirement. Nothing in this paragraph shall be construed to relieve a state registered broker-dealer or agent from any applicable securities registration requirement in Delaware;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in

securities in Delaware over the Internet, but is limited to the dissemination of general information on securities, products or services; and

(4) In the case of an agent:

(i) the affiliation with the broker-dealer is prominently disclosed within the Internet Communication;

(ii) the broker-dealer with whom the agent is associated retains responsibility for reviewing and approving the content of any Internet Communication by the agent;

(iii) the broker-dealer or investment adviser with whom the agent is associated first authorizes the distribution of information on the securities, products or services through the Internet Communication; and

(iv) in disseminating information through the Internet Communication, the agent acts within the scope of the authority granted by the broker-dealer;

(b) The position expressed in this rule extends to state broker-dealer and agent registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions;

(c) Nothing in this rule shall be construed to affect the activities of any broker-dealer and agent engaged in business in this state that is not subject to the jurisdiction of the Commissioner as a result of the National Securities Markets Improvement Act of 1996, as amended.

See 1 DE Reg 1978 (6/1/98)

§608 Registration Exemption for Certain Canadian Broker-Dealers

(a) A Canadian broker-dealer which meets the conditions of this rule as set forth below shall be exempt from the registration requirement of Section 7313 of the Act.

(b) To be eligible for this exemption, the broker-dealer must be resident in Canada, have no office or other physical presence in Delaware, and comply with the following conditions:

(1) Only effects or attempts to effect transactions in securities with, or for, one or more of the following;

(i) A person from Canada who is temporarily present in Delaware, with whom the Canadian broker-dealer had a bona fide business-client relationship before the person entered Delaware;

(ii) A person from Canada who is present in Delaware, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor; or

(iii) ~~A "U.S. institutional investor" or a "major U.S. institutional investor" to the extent permitted by SEC Reg. §240.15a-6 (17 CFR §240.15a-6) As otherwise permitted by the act;~~ and

(2) Is registered in its home province or territory, and a member in good standing of a self-regulatory organization or stock exchange in Canada;

(3) Files with the Securities Commissioner a notice in the form of the current application required by the jurisdiction in which its head office is located;

(4) Files with the Securities Commissioner a consent to service of process in a form which complies with the requirements of Section 7327 of the Act.

(5) Discloses to its clients in Delaware that it is not subject to the full regulatory requirements of the Act; and

(6) Is not in violation of Section ~~§~~ 7303 ~~or 7316~~ of the Act or any rules promulgated thereunder.

(c) Exempt transactions. Offers or sales of any security effected by a broker-dealer who is exempt from registration under this Regulation are exempt from the registration requirements of Section 7304 of the Act and the filing requirements of Section 7312 of the Act.

(d) Agent exemption: An agent who represents a Canadian broker-dealer who is exempt from registration under this Regulation is also exempt from the registration requirement of Section 7313 of the Act, provided such agent maintains his or her provincial or territorial registration in good standing.

(e) Denial, Suspension or Revocation. The Commissioner may by order deny, suspend, or revoke the exemption of a particular Canadian broker-dealer provided pursuant to Rule 608 if he finds that the order is in the public interest and that the Canadian broker-dealer (or any partner, officer, director, or any person occupying a similar status or performing similar functions, or any person directly or indirectly, controlling the broker-dealer) has done anything prohibited by Section 7316(a)(1) to (8),(12) or (13).

§609 Dishonest or Unethical Practices

(a) Each broker-dealer and broker-dealer agent registered in Delaware is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. The acts and practices described below in this rule, among others, are considered contrary to such standards and may constitute grounds for denial, suspension or revocation of registration or such other action authorized by the Act.

(b) Broker-Dealers. For the purposes of 6 Del.C. §7316(a)(7), dishonest or unethical practices by a broker-dealer shall include, but not be limited to, the following conduct:

(1) Engaging in an unreasonable and unjustifiable delay in the delivery of securities purchased by any of its customers or in the payment, upon request, of free credit balances reflecting completed transactions of any of its customers, or failing to notify customers of their right to receive possession of any certificate of ownership to which they are entitled;

(2) Inducing trading in a customer's account that is excessive in size or frequency in view of the customer's investment objective, level of sophistication in investments,

and financial situation and needs;

(3) Recommending a transaction without reasonable grounds to believe that such transaction is suitable for the customer in light of the customer's investment objective, level of sophistication in investments, financial situation and needs, and any other information material to the investment;

(4) Executing a transaction on behalf of a customer without prior authorization to do so;

(5) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(6) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(7) Failing to segregate and identify customer's free securities or securities held in safekeeping;

(8) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by SEC regulations;

(9) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit (commissions or profits equal to 10% or more of the price of a security are presumed to be unreasonable);

(10) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which, together with the preliminary prospectus, includes all information set forth in the final prospectus;

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(12) Charging any fee for which no notice is given to the customer, and consent obtained, prior to the event incurring the fee;

(13) Offering to buy from or sell to any person any security at a stated price, unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

(14) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price, unless such broker-dealer knows or has reasonable

grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

(15) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative or deceptive device, practice, plan, program, design or contrivance, that may include but not be limited to:

(i) Effecting any transaction in a security that involves no change in the beneficial ownership thereof;

(ii) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or false or misleading appearance with respect to the market for the security; provided, however, nothing in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(iii) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security for the purpose of inducing the purchase or sale of such security by others;

(16) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(17) Publishing or circulating or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind that purports to report any transaction as a purchase or sale of any security, unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or that purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona-fide bid for, or offer of, such security;

(18) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material, or presentation based on conjecture, unfounded or unrealistic claims or assertions in a brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(19) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common

control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, and, if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(20) Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter or a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

(21) Failing or refusing to furnish a customer, upon reasonable request, information to which he is entitled, including:

(i) with respect to a security recommended by the broker-dealer, material information that is reasonably available; and

(ii) a written response to any written request or complaint;

(22) Making a recommendation that one customer buy a particular security and that another customer sell that security, where the broker-dealer acts as a principal and such recommendations are made within a reasonably contemporaneous time period, unless individual suitability considerations or preferences justify the different recommendations;

(23) Where the broker-dealer holds itself out as a market maker in a particular security, or publicly quotes bid prices in a particular security, failing to buy that security from a customer promptly upon the customer's request to sell;

(24) Recommending a security to its customers without conducting a reasonable inquiry into the risks of that investment or communicating those risks to its agents and its customers in a reasonably detailed manner and with such emphasis as is necessary to make the disclosure meaningful;

(25) Representing itself as a financial or investment planner, consultant, or adviser, when the representation does not fairly describe the nature of the services offered, the qualifications of the person offering the services, and the method of compensation for the services;

(26) Falsifying any record or document or failing to create or maintain any required record or documents;

(27) Violating any ethical standard in the conduct rules promulgated by the National Association of Securities Dealers; or

(28) Aiding or abetting any of the conduct listed above.

(c) Broker-Dealer Agents and Issuer Agents. For the purposes of 6 Del. C. §7316(a)(7), dishonest or unethical practices by a broker-dealer agent or an issuer agent shall include, but not be limited to, the following conduct:

(1) Engaging in the practice of lending or

borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

(2) Effecting securities transactions not recorded on the regular books or records of the broker-dealer that the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) Establishing or maintaining an account containing fictitious information in order to execute transactions that would otherwise be prohibited;

(4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer that the agent represents;

(5) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer or for a broker-dealer under direct or indirect common control;

(6) Where a recommendation is made that an unsophisticated customer purchase an over-the-counter security that (A) trades sporadically or in small volume, and (B) is not traded on any United States securities exchange (excluding the Spokane Exchange) or on the NASDAQ National Market System, failing to inform the customer that he may not be able to find a buyer if the customer would subsequently want to sell the security;

(7) Where a recommendation is made to purchase an over-the-counter security in which the asked price is greater than the bid by 25 percent or more, failing to inform the customer of the bid and the asked prices and of the significance of the spread between them should the customer wish to resell the security;

(8) Using excessively aggressive or high pressure sales tactics, such as repeatedly telephoning and offering securities to individuals who have expressed disinterest and have requested that the calls cease, or using profane or abusive language, or calling prospective customers at home at an unreasonable hour at night or in the morning;

(9) Conducting or facilitating securities transactions outside the scope of the agent's relationship with his broker-dealer employer unless he has provided prompt written notice to his employer;

(10) Acting or registering as an agent of more than one broker-dealer without giving written notification to and receiving written permission from all such broker-dealers; or

(11) Holding himself out as an objective investment adviser or financial consultant without fully disclosing his financial interest in a recommended securities transaction at the time the recommendation is made;

(12) Engaging in any of the conduct specified in subparagraph (b) above; or

(13) Aiding or abetting any of the conduct listed above.

(d) Prohibited practices in connection with investment company shares. For purposes of 6 Del. C. §7316(a)(7), unethical practices by a broker-dealer, broker-dealer agent or issuer agent shall include, but not be limited to, the following conduct:

(1) In connection with the offer or sale of investment company shares, failing to adequately disclose to a customer all sales charges, including asset based and contingent deferred sales charges, which may be imposed with respect to the purchase, retention or redemption of such shares;

(2) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, that the shares are sold without a commission, are "no load" or have "no sales charge" if there is associated with the purchase of the shares a front-end loan, a contingent deferred sales load, a SEC Rule 12 b-1 fee or a service fee which exceeds .25 percent of average net fund assets per year, or in the case of closed-end investment company shares, underwriting fees, commissions or other offering expenses;

(3) In connection with the offer or sale of investment company shares, failing to disclose to a customer any relevant sales charge discount on the purchase of shares in dollar amounts at or above a breakpoint or the availability of a letter of intent feature which will reduce the sales charges to the customer;

(4) In connection with the offer or sale of investment company shares, recommending to a customer the purchase of a specific class of investment company shares in connection with a multi-class sales charge or fee arrangement without reasonable grounds to believe that the sales charge or fee arrangement associated with such class of shares is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and the associated transaction or other fees;

(5) In connection with the offer or sale of investment company shares, recommending to a customer the purchase of investment company shares which results in the customer simultaneously holding shares in different investment company portfolios having similar investment objectives and policies without reasonable grounds to believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and any associated transaction charges or other fees;

(6) In connection with the offer or sale of investment company shares, recommending to a customer the liquidation or redemption of investment company shares for the purpose of purchasing shares in a different investment company portfolio having similar investment objectives and policies without reasonable grounds to

believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings and any associated transaction charges or other fees;

(7) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, the fund's current yield or income without disclosing the fund's most recent average annual total return, calculated in a manner prescribed in SEC Form N-1A, for one, five and ten year periods and fully explaining the difference between current yield and total return; provided, however, that if the fund's registration statement under the Securities Act of 1933 has been in effect for less than one, five, or ten years, the time during which the registration statement was in effect shall be substituted for the periods otherwise prescribed;

(8) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, that the investment performance of an investment company portfolio is comparable to that of a savings account, certificate of deposit or other bank deposit account without disclosing to the customer that the shares are not insured or otherwise guaranteed by the FDIC or any other government agency and the relevant differences regarding risk, guarantees, fluctuation of principal and/or return, and any other factors which are necessary to ensure that such comparisons are fair, complete and not misleading;

(9) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing, the existence of insurance, credit quality, guarantees or similar features regarding securities held, or proposed to be held, in the investment company's portfolio without disclosing to the customer other kinds of relevant investment risks, including but not limited to, interest rate, market, political, liquidity, or currency exchange risks, which may adversely affect investment performance and result in loss and/or fluctuation of principal notwithstanding the creditworthiness of such portfolio securities;

(10) In connection with the offer or sale of investment company shares, stating or implying to a customer, either orally or in writing,

(i) that the purchase of such shares shortly before an ex-dividend date is advantageous to such customer unless there are specific, clearly described tax or other advantages to the customer, or

(ii) that a distribution of long-term capital gains by an investment company is part of the income yield from an investment in such shares;

(11) In connection with the offer or sale of investment company shares, making representations to a customer, either orally or in writing, that the broker-dealer or agent knows or has reason to know are based in whole or in

part on information contained in dealer-use-only material which has not been approved for public distribution; or

(12) Aiding or abetting any of the conduct listed above.

(13) In connection with the offer or sale of investment company shares, the delivery of a prospectus shall not be dispositive that the broker-dealer or agent has fulfilled the duties set forth in the subparagraphs of this rule.

(e) The conduct set forth above is not exclusive. Engaging in other conduct such as forgery, embezzlement, theft, exploitation, nondisclosure, incomplete disclosure or misstatement of material facts, manipulative or deceptive practices, or aiding or abetting any unethical practice, shall be deemed an unethical business practice and shall also be grounds for denial, suspension or revocation of registration.

See 1 DE Reg 1978 (6/1/98)

§610 Examination Requirement

An individual applying to be registered as a broker-dealer or a broker-dealer agent under the Act must successfully complete the Uniform Securities Agent State Law Examination (Series 63 or 66) administered by the NASD. The Commissioner may waive the exam requirement upon good cause shown.

Part G. Investment Advisers and Investment Adviser Representatives

§700 Registration of Investment Advisors

(a) A person applying for a license as an investment adviser in Delaware shall make application for such license on Form ADV (Uniform Application for Investment Adviser Registration under the Investment Advisers Act of 1940). Amendments to such application shall also be made on Form ADV.

(b) The applicant shall file the following items with the Commissioner: (i) the application on Form ADV; (ii) the fee required by Section 7314 of the Act; (iii) a balance sheet prepared in accordance with Schedule G of Form ADV; (iv) a list of all investment adviser representatives employed by the investment adviser; and (v) proof of compliance with Rule 710 by filing an Investment Adviser Affidavit available at <http://www.state.de.us/securities> or by contacting the Division of Securities; and (vi) such other information as the Commissioner may reasonably require.

(c) Registration expires at the end of the calendar year. Any investment adviser may renew its registration by filing with the Commissioner an updated Form ADV, together with the fee required by Section 7314 of the Act and a list of all investment adviser representatives employed by the investment adviser.

~~(d) Every investment adviser must have at least one investment adviser representative registered with the Commissioner to obtain or to maintain its license as an~~

~~investment adviser. Except for an investment advisor that is a sole proprietorship or the substantial equivalent, an investment adviser registered with the Commissioner shall register with the Commissioner at least one investment advisor representative.~~

See 4 DE Reg 510 (9/1/00)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code,
Sections 103 and 1902 (7 Del.C. §§103, 1902)

Order No. 2003-f-0039

Summary Of Evidence And Information

Horseshoe crabs are a vital component to the estuarine foodweb and support several important commercial industries. Horseshoe crabs are important in the diets of the federally protected loggerhead sea turtle, and the eggs are a seasonally important food item in the diets of at least seven species of commercially and/or recreationally important finfish species. Horseshoe crab eggs also are an important component in the diets of migratory shorebirds using Delaware Bay, which serves as one of the most important migratory stopover sites in North America. The spectacle of the birds feeding on horseshoe crab eggs supports an ecotourism industry of regional significance. In addition, horseshoe crabs are harvested for the manufacture of Limulus Amoebocyte Lysate (LAL). LAL is the worldwide standard for testing virtually all pharmaceuticals for the presence of gram negative bacteria. Horseshoe crabs are also extensively harvested for use as a primary bait in the American eel and conch (whelk) pot fisheries and to a lesser extent in several other fisheries. Although the epicenter of horseshoe crab spawning and nursery areas is in the Delaware Bay, the horseshoe crab resource is cooperatively managed coastwide through the Atlantic States Marine Fisheries Commission (ASMFC). The ASMFC has recognized the particular importance of the Delaware Bay to horseshoe crabs and migratory shorebirds.

Horseshoe crabs take 8 - 12 years to reach sexual maturity. Current estimates place fecundity at approximately 88,000 eggs annually. To place this in context, weakfish often reach sexual maturity in one year and a large (22-inch) female may produce 1,700,000 eggs in a single spawning season. Therefore, failure to adequately protect the horseshoe crab resource may result in

consequences not fully realized for a period of 8 - 12 years.

There are several sources of fishery-independent survey information available for assessing the status of the horseshoe crab population using the Delaware Bay. The Delaware Division of Fish and Wildlife conducts both 30-foot and 16-foot trawl surveys in the Delaware portion of the Delaware Estuary. The Division's 16-foot trawl survey is used to monitor juvenile horseshoe crab relative abundance. Juvenile (<160mm) horseshoe crab relative abundance has declined marginally ($P=0.0632$) since 1992 and young-of-the-year relative abundance has generally followed a declining trend, though not statistically significant. Horseshoe crab relative abundance in the Division's 30-foot trawl survey has declined significantly ($P=0.0007$) relative to 1990; however, since 1998 when stringent management measures were adopted, there has been no detectable trend in horseshoe crab relative abundance. In addition, the Delaware Bay horseshoe crab spawning survey indicated that the index of spawner abundance has been stable since 1999. These indices are currently the best long-term fishery-independent surveys available for assessing horseshoe crabs.

Although there is evidence that horseshoe crabs are stable at a low level of abundance (relative to the early 1990's), there is concern that this stability is not sufficient to ensure adequate horseshoe crab egg resources are available for migratory shorebird populations, particularly red knots (*Calidris canutus rufa*). Surface horseshoe egg densities at five of six beaches sampled in Delaware declined in 2002 relative to 2001, with a less than a two percent increase at a single beach. Surface egg densities at six beaches sampled in New Jersey by the Department of Environmental Protection declined significantly ($P < 0.0001$) from 2000 to 2002. Though these surveys are not sufficient to provide a statistically robust baywide indicator of surface egg abundance, they do suggest that egg availability has declined in recent years.

Of further concern, are indications that the red knot population has declined in recent years. Aerial survey data provided by the New Jersey Department of Environmental Protection indicate that wintering red knot populations in Bahia Lomas, Chile declined from 45,705 in 2000 to 20,000 in 2003 and that wintering populations in Chile and Argentina (combined) declined from 67,496 in 1986 to 29,271 in 2002. Though it is difficult to establish direct causal links between these declines and evidence of declines in horseshoe crab egg availability on Delaware Bay, a more precautionary management approach is warranted based on the available information and the risks associated with a failure to act.

The Delaware Department of Natural Resources and Environmental Control and the New Jersey Department of Environmental Protection have both agreed to measures that will increase the availability of horseshoe crab eggs and allow for the continuance of a reduced commercial fishery.

New Jersey took action in 2003 by Emergency Order to restrict their harvest to 150,000 horseshoe crabs and to close the season from May 1 through June 7. Subsequent to the expiration of the 60 allowable period for emergency regulations to remain in effect, New Jersey implemented these same catch restrictions and closure by the normal regulatory process. By taking similar action for the 2004 fishing season, Delaware would be acting in concert with New Jersey. Failure to act in a timely manner could result in long-term negative consequences for horseshoe crabs, dependant wildlife and dependant industries.

Findings Of Fact

- Section 103 of 7 Delaware Code entitles the Department of Natural Resources and Environmental Control to promulgate regulations that it deems necessary for the protection and conservation of any protected species of wildlife, including those measures needed to protect shorebirds. Section 1902 of 7 Delaware Code also entitles the Department to pass regulations designed to provide for the preservation and improvement of the shellfish resources of this state, including horseshoe crabs.
- The Atlantic States Marine Fisheries Commission's (ASMFC's) Horseshoe Crab Board voted to initiate development of an addendum to the Horseshoe Crab Fishery Management Plan that would impose a harvest cap of 150,000 horseshoe crabs for both New Jersey and Delaware and include a seasonal closure on harvesting from May 1 through June 7.
- The ASMFC's Shorebird Technical Committee recommended a 66-75% reduction in horseshoe crab harvest for the states of Delaware, New Jersey, and Maryland in a risk adverse strategy to ensure that adequate numbers of spawning horseshoe crabs are available to meet the bird's dietary needs for horseshoe crab eggs.
- The New Jersey Department of Environmental Resources passed an emergency regulation in the spring of 2003 to restrict their horseshoe crab harvest to the agreed upon 150,000 crabs and also closed their harvesting season from May 1 through June 7. Since the expiration of the 60-day emergency closure period, New Jersey has implemented more permanent regulations for the remainder of 2003 and next year.
- Although there is evidence that horseshoe crabs are stable at a low level of abundance (relative to the early 1990's), there is concern that this stability is not sufficient to ensure adequate horseshoe crab egg resources are available for migratory shorebird populations, particularly red knots (*Calidris*

canutus rufa), or to allow the horseshoe crab population to rebuild to levels of abundance observed in the early 1990s.

Conclusions

I have reached the following conclusions:

- These regulation changes (attached) are necessary to conserve the horseshoe crab resource and to benefit the estuarine fishes, marine reptiles and the shorebirds that utilize horseshoe crab eggs and early life stages as a food resource. The rationale for these regulatory changes are as stated above and in the Hearing Officer's Report to the Secretary of the Department of Natural Resources and Environmental Control, July 9, 2003.

Order

IT IS HEREBY ORDERED, the 15th day of July, 2003 that the amendments and additions to shellfish regulation Nos. S-50 through S-61, copies of which are attached hereto, are adopted pursuant to Sections 103, 1902, 2701, and Chapters 18 and 28 of 7 Delaware Code.

John A. Hughes, Secretary, Department of Natural Resources And Environmental Control

The following regulations are adopted pursuant to Title 7, Delaware Code, Chapters 1, 18, 19, 27, and 28.

~~2S-50~~ **HC-1** Definitions

The following definitions shall apply to terms in Chapter 27, Title 7, Delaware Code relative to horseshoe crabs.

1) 'Dispose of said crabs properly' shall mean bury on the beach, incorporate into soil as fertilizer or any other method approved by the Department.

2) Personal, non-commercial use' shall mean to be used as food, fertilizer or bait or otherwise properly disposed without trading, bartering, or selling by one individual to another, or without transporting, shipping, or causing to be transported or shipped, out of state.

3) 'Collect' shall mean to take live horseshoe crabs by any means other than by dredge.

4) 'Dredge' shall mean to use any device to gather, scrape, scoop, fish for or otherwise take bottom dwelling horseshoe crabs.

5) 'Bait saving device' shall mean any device that when so deployed in or on a pot reduces either the rate at which bait, meaning horseshoe crabs or parts thereof, must be replenished or reduces the number or quantity of horseshoe crabs used as bait.

HC - 2 Horseshoe Crabs As Bait In Pots; Conch Pots

(a) It shall be unlawful for any person to place more than one-half of a female horseshoe crab or one male horseshoe crab as bait in any type of pot on any one day in the waters of this State.

(b) It shall be unlawful for any person to fish with a conch pot that is not equipped with a bait saving device, provided that a horseshoe crab or parts thereof are used as bait.

~~S-51~~ **HC-3 Seasons And Area Closed To Taking Horseshoe Crabs With Dredges**

(a) It shall be unlawful for any person ~~to collect or dredge or attempt to collect or dredge~~ by means of a dredge horseshoe crabs [or parts thereof] from any state or federal land owned in fee simple or the tidal waters of this state during a period beginning at 12:01 am on May 1 and continuing through midnight, June 30, next ensuing, except that It shall be lawful for persons with valid horseshoe crab collecting permits and eel licensees and their alternates may to collect [adult] horseshoe crabs on Tuesday and Thursday from state owned lands to the east of state road No. 89 (Port Mahon Road) from 12:01 a.m. on June 8 and continuing through midnight on June 30.

(b) It shall be unlawful for any person to collect or attempt to collect, any horseshoe crabs **[or parts thereof]** from any land not owned by the state or federal government during the period beginning at 12:01 a.m. on May 1 and continuing through midnight, June ~~7~~ 30, next ensuing., ~~except that~~ It shall be lawful, during a period beginning at 12:01 a.m. on June 8 and continuing through midnight on June 30, for persons with valid horseshoe crab collecting permits and eel licensees and their alternates to may collect horseshoe crab [adults] on Mondays, Wednesdays and Fridays from such private lands.

(c) It shall be unlawful for any person to collect or attempt to collect any horseshoe crabs from any land not owned by the State or federal government unless said person has on his or her person written permission, signed by the owner of said land with the owner's address and phone number, indicating the individual to whom permission to collect horseshoe crabs is granted.

(d) It shall be unlawful for any person to collect or dredge or to attempt to collect or dredge horseshoe crabs at any time prior to May 1 in any given year after during a calendar year after 35% of the annual quota of the date the Department determines the annual quota of horseshoe crabs are, approved for Delaware by the Atlantic States Marine Fisheries Commission, is landed."

~~S-52~~ **HC-4 Requirement For Collecting Horseshoe Crabs For Persons Under 16**

(a) It shall be unlawful for any person with a valid horseshoe crab collecting permit to collect any horseshoe

crabs as an alternate to a person with a valid commercial eel fishing license.

(b) It shall be unlawful for any person under the age of sixteen (16) years to possess ~~more than six (6)~~ any horseshoe crabs unless accompanied by a person who has been issued a valid horseshoe crab scientific collecting, commercial collecting or dredge permit.

S-53 HC-5 Number Of Persons Accompanying A Person With A Valid Horseshoe Crab Collecting Permit

(a) It shall be unlawful for any person with a valid horseshoe crab commercial collecting permit when collecting horseshoe crabs to be assisted by more than three (3) persons under the age of 16 who are not required to have valid horseshoe crab commercial collecting permits.

(b) It shall be unlawful for any person 16 years of age or older who does not have a valid commercial horseshoe crab collecting permit, to assist any person with a valid commercial horseshoe crab collecting permit in the handling, loading or driving a vehicle used to transport horseshoe crabs collected by said horseshoe crab collecting permittee while within 300 feet of the shoreline of the water from which said horseshoe crabs are collected or the point on shore where said horseshoe crabs are landed from a vessel.

S-54 HC-6 Possession Limit Of Horseshoe Crabs, Exceptions

(a) Unless otherwise authorized, it shall be unlawful for any person to possess ~~more than six (6)~~ a horseshoe crabs, except a person with a validated receipt from a person with a valid horseshoe crab commercial collecting or dredge permit for the number of horseshoe crabs in said person's possession. A receipt shall contain the name, address and signature of the supplier, the date and the number of horseshoe crabs obtained.

(b) Any person who has been issued a valid commercial eel fishing license by the Department or said person's alternate while in the presence of the licensee, is exempt from the prohibition on the possession limit of six (6) horseshoe crabs, provided said commercial eel fishing licensee has submitted all required reports of his/her and his/her alternate's previous week's harvest of horseshoe crabs with the Department in accordance with S-57 HC-10. Any person who has been issued a commercial eel fishing license and said person's alternate while in the presence of the licensee, may collect horseshoe crabs by hand without a horseshoe crab commercial collecting permit provided all horseshoe crabs taken are for personal, non-commercial use, as bait for the licensee's eel pots fished in this state.

(c) It shall be unlawful for any person with a valid commercial eel fishing license to be assisted in collecting horseshoe crabs by any person who is not listed on his commercial eel fishing license as the alternate.

(d) Any person with both a valid commercial eel

fishing license and a valid commercial horseshoe crab collecting permit shall be considered as a commercial horseshoe crab collecting permittee for purposes of enforcing the provisions of ~~chapter 27, 7 Del. C. Chapter 27~~ and/or shellfish regulations pertaining to horseshoe crabs.

(e) It shall be unlawful for any person with a valid commercial eel fishing license to commingle any horseshoe crabs collected either by said commercial eel fishing licensee or by his or her alternate with horseshoe crabs either collected by a person with a valid horseshoe crab dredge permit or by a person with a valid commercial horseshoe crab collecting permit.

(f) It shall be unlawful for any person with a valid horseshoe crab dredge permit or with a valid commercial horseshoe crab collecting permit to commingle any horseshoe crab dredged or collected by said horseshoe crab dredge permittee or horseshoe crab collecting permittee with horseshoe crabs collected by any person with a valid commercial eel fishing license.

(g) It shall be unlawful for any person to possess more than 300 cubic feet of horseshoe crabs except in a stationary cold storage or freezer facility.

(h) It shall be unlawful for any person to collect or attempt to collect more than 300 cubic feet of horseshoe crabs during any 24 hour period beginning at 12:01 AM and continuing through midnight next ensuing.

S-55 HC-7 Horseshoe Crab Dredging Restrictions

(a) It shall be unlawful for any person to dredge horseshoe crabs in the area in Delaware Bay designated as leased ~~S~~shellfish grounds except on one's own leased shellfish grounds or with permission from the owner of leased shellfish grounds. The area in Delaware Bay designated as leased shellfish grounds is within the boundaries that delineate leasable shellfish grounds and is described as follows: Starting at a point on the "East Line" in Delaware at Loran-C coordinates 27314.50/42894.25 and continuing due east to a point at Loran-C coordinates 27294.08/42895.60 and then 27270.80/42852.83 and then continuing southwest to a point at Loran-C coordinates 27281.31/42803.48 and then continuing west to a point at Loran-C coordinates 27280.75/42795.50 and then in a northerly direction on a line 1000' offshore, coterminous with the existing shoreline to the point of beginning on the "East Line."

(b) It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have on board or to land more than 1500 horseshoe crabs during any 24 hour period beginning at 12:01 a.m. and continuing through midnight next ensuing.

(c) It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have or possess on board said vessel any horseshoe crabs at any time during the period beginning 12:01 a.m. on May 1

and continuing through midnight, June 30, next ensuing.

(d) It shall be unlawful for any person to land horseshoe crabs taken from the Exclusive Economic Zone unless said person has a valid horseshoe crab dredge permit."

~~S-55-A~~ HC-8 Horseshoe Crab Dredge Permit Lottery

(a) The Department of Natural Resources and Environmental Control shall hold an annual lottery to select eligible individuals for the five horseshoe crab dredge permits authorized to be issued each year if more than five applications are received by the Department. Applications for an annual commercial horseshoe crab permit shall be accepted by the Department until 4:30 PM December 31 or 4:30 PM on the Friday preceding if December 31 is a Saturday or Sunday. If an annual lottery is necessary it shall be conducted at 1:00 PM on January 1, or the first work day thereafter, in the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware."

(b) To be eligible an applicant for a horseshoe crab dredge permit shall be the current holder of and oyster harvesting license issued by the Department."

Note: This regulation was adopted by order of the Secretary on March 4, 1997, as "S-55." However, with the adoption of a second S-55 ("Horseshoe Crab Dredging Restrictions") on February 11, 1998, this regulation has been designated as "S-55-A."

S-56 HC-9 Horseshoe Crab Sanctuaries

(a) All state and federal lands owned in fee simple are horseshoe crab sanctuaries during the period beginning 12:01 a.m. on May 1 through midnight June 30.

(b) Any land owner(s) may register their land with the Department to be designated as a horseshoe crab sanctuary for a period to be specified by the land owner(s).

(c) It shall be unlawful to collect any horseshoe crabs at any time from a horseshoe crab sanctuary except as provided in ~~S-51~~ HC-3 (a)."

S-57 HC-10 Horseshoe Crab Reporting Requirements

(a) It shall be unlawful for any person who has been issued a horseshoe crab dredge permit, a horseshoe crab commercial collecting permit or a commercial eel pot license to not report his/her harvest of horseshoe crabs to the Department on a weekly basis. Said weekly reports shall not be required to be submitted to the Department during any month said person indicates previously in writing to the Department that he/she will not be harvesting horseshoe crabs. Any person required to submit a weekly report on his/her harvest of horseshoe crabs to the Department shall submit said report on or before 4:30PM on the Monday following the week covered by said report. If Monday is a legal State holiday, said report shall be submitted on or

before 4:30PM on Tuesday, next ensuing. For purposes of this section, a week shall commence at 12:01AM on Monday and conclude at midnight on Sunday, next ensuing. Said report shall include but not be limited to said person's unique identification number assigned by the Department, the dates and location horseshoe crabs were harvested, the number and sex of horseshoe crabs harvested and the method of harvest of horseshoe crabs. Said report shall be submitted to the Department by telephone by calling a phone number, dedicated by the Department for the reporting of harvested horseshoe crabs, and entering the required data by code or voice as indicated.

(b) Any person who fails to submit a weekly report on his/her harvest of horseshoe crabs to the Department on time shall have his/her permit to dredge or his/her permit or authority to collect horseshoe crabs suspended until all delinquent reports on harvested horseshoe crabs are received by the Department."

(c) In addition to the requirement to phone in weekly catch reports, horseshoe crab collectors and harvesters and commercial eel fishermen are required to compile and file monthly log sheets detailing daily landings of horseshoe crabs on forms supplied by the Department. These forms must be submitted by the 10th day of the month next ensuing. Failure to submit these monthly reports on a timely basis may be cause for horseshoe crab collecting or horseshoe crab dredge permit revocation or non-renewal of said permit the following year; or in the case of a commercial eel licensee, forfeiture of permission to possess or use horseshoe crabs as bait for the remainder of the year.

S-59 HC-11 Horseshoe Crab Commercial Collecting Permit Eligibility And Renewal Requirements

(a) The Department may only issue a horseshoe crab commercial collecting permit to a person who makes application for such a permit in calendar year 1998, and who, prior to July 1, 1997, had applied for and secured from the Department at least 2 valid horseshoe crab commercial collecting permits. Any person holding a horseshoe crab commercial collecting permit in 1998 may apply for renewal of their horseshoe crab commercial collecting permit by April 1 each year. ~~Failure of~~ If any person holding a horseshoe crab commercial collecting permit from the previous year fails to apply for renewal of their horseshoe crab commercial collecting permit by April 1, will limit they forfeit their eligibility to obtain a horseshoe crab commercial collecting permit in the future. ~~in the lottery process of subsection (b).~~

~~(b) When the total number of horseshoe crab commercial collecting permits drops to 45 or below, as of April 2 of any year, the Department may schedule a lottery to take place prior to April 30 of that year to allow the total number of horseshoe crab commercial collecting permits to increase to 50."~~

S-60 HC-12 Prohibitions; Sale Of Horseshoe Crabs

(a) It shall be unlawful for any person who collects or dredges horseshoe crabs, except a person with a valid horseshoe crab commercial collecting permit or a person with a valid horseshoe crab dredge permit, to sell, trade and/or barter or to attempt to sell, trade and/or barter any horseshoe crab."

S-61 HC-13 Collecting Horseshoe Crabs At Night, Prohibited

(a) It shall be unlawful for any person with a valid commercial eel fishing license to collect horseshoe crabs between sunset and sunrise."

S-62 HC-14 Horseshoe Crab Annual Harvest Limit

(a) The annual harvest limit for horseshoe crabs taken and/or landed in the State shall be 150,000 or whatever the Atlantic States Marine Fisheries Commission has approved as Delaware's current annual quota, whichever number is less.

(b) When the Department has determined that the annual horseshoe crab quota has been met, the Department shall order the horseshoe crab fishery closed and no further horseshoe crabs may be taken during the remainder of the calendar year.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES**

**Rehabilitative Services/Community Support Services
Program**

Nature Of The Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Title XIX Medicaid State Plan. Pursuant to the notice requirements of 42 CFR 447.205, the Department publishes this notice of proposed changes in methods and standards for establishing payment rates for the Rehabilitative Services/Community Support Services Program under the Delaware Medicaid/Medical Assistance Program (DMAP). 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 June 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No comments were received during the public comment period.

Summary Of Proposed Changes

- Division name change: DADAMH to the Division of Substance Abuse and Mental Health (DSAMH);
- Add *Rehabilitative Services Assistant* to the list of staff qualified to provide support services;
- Psychosocial rehabilitative therapy will be provided in 4-hour blocks, instead of 5-hour blocks;
- Residential Rehabilitation Services facilities shall be required to comply with all applicable facility licensing requirements;
- Delete from the list of limitations on services, the following: 1) minimum of one face-to-face clinical contact per week; 2) clients treated with psychotropic drugs must be evaluated monthly face-to-face by a physician; and 3) component services may not be subcontracted to independent provider organizations.
- Allows DSAMH to move to uniform daily rates for the services; essentially, from a fee-for-service to a monthly case rate (per member per month for each client who received a service during that month).

Findings Of Fact:

The Department finds that the proposed changes, as set forth in the June 2003 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding the Rehabilitative Services/Community Support Services Program is adopted and shall be final effective August 10, 2003.

Karryl McManus for Vincent P. Meconi, Secretary, DHSS
7.15.03

Attachment 3.1-A
Page 6a

State: DELAWARE

LIMITATIONS ON REHABILITATIVE SERVICES

13d. Rehabilitative Services:

Rehabilitative Services are limited to: 1) *community support services* for individuals who would benefit from services designed for or associated with mental illness, alcoholism or drug dependence, excluding those services of an educational or vocational nature; and 2) *day health and rehabilitation services* for individuals who would benefit from services designed for or associated with the treatment of mental retardation or developmental disabilities.

1) *Community Support Services*

ELIGIBLE PROVIDERS

Providers are organizations certified by the Division of ~~Alcoholism, Drug Substance Abuse and Mental Health (Division)~~ in accordance with the Delaware Medical Assistance Program Medicaid Provider Manual for Rehabilitative/Community Support Service Programs.

DEFINITION OF COMMUNITY SUPPORT SERVICES

Community support services are medically related treatment, rehabilitative and support services provided through self-contained programs by teams of clinicians, associate clinicians and assistant clinicians under the supervision of a physician.

FREQUENCY, DURATION AND SCOPE

Community support services are provided, as medically necessary subject to the limitations of the state plan, to assist eligible persons cope with the symptoms of their illnesses, minimize the effects of their disabilities on their capacity for independent living and prevent or limit periods of hospital treatment.

Eligible recipients are Medicaid recipients who would benefit from services designed for or associated with mental illness, alcoholism or drug addiction. The provider's physician must certify medical necessity for community support services based on a completed comprehensive medical/psycho-social evaluation.

QUALIFIED STAFF

Community support programs may bill Medicaid for community support services only when authorized as medically necessary by a physician and delivered by qualified staff. Services rendered by any qualified staff other than a physician must be provided under a physician's supervision as defined in the Medicaid Provider Manual for Rehabilitative/Community Support Service Programs. Component community service activities require specific staff qualifications as defined in the Medicaid Provider Manual for Rehabilitative/Community Support Service Programs. Following are illustrative definitions of staff listed as qualified to provide one or more community support service activities.

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

2. **Clinician:** a person with a doctoral or master's degree in psychology, social work, nursing, rehabilitation or counseling from an accredited college or university (or a registered nurse with a certificate in mental health nursing from the American Nurses Association).

3. **Associate Clinician:** a person with a bachelor's degree in a human service field or a registered nurse.

4. **Assistant Clinician:** a person with an associate degree, a licensed practical nurse or a certified counselor lacking the academic credentials of an associate clinician.

5. **Rehabilitative Services Assistant:** a person with a high school diploma or GED who has received documented training that shall, at a minimum, include: 1) a complete course in medications used in the treatment used in the treatment of mental illness including side effects assigned; 2) a course in mental illness including symptoms of the major mental illnesses, mood and personality disorders; 3) a course in first aid, including CPR training.

A clinician with clinical/administrative experience in provision of community support services serves as program coordinator. A physician serves as clinical supervisor, providing direct supervision of the aspects of the program that relate to client treatment and providing clinical supervision of staff. The physician is available full- or part-time at provider sites to provide direct service, to provide direct supervision to other staff, and to

participate in assessment of client needs and planning of service provision. The physician has 24-hour backup arrangements with other physicians for coverage when he/she is unavailable.

COVERED SERVICES

Enrolled providers may bill Medicaid for community support services when one or more of the following community support service activities are rendered to eligible recipients by qualified staff:

Comprehensive Medical/Psychosocial Evaluation: A multi-functional assessment of the client conducted by a physician (psychiatrist, internist or family practitioner), and clinicians under the supervision of the physician, to establish the medical necessity of provision of services by the community support service provider and to formulate a treatment plan.

The comprehensive medical/psychosocial evaluation will be conducted with 30 days of admission to the program and at least annually thereafter. It must be documented in the client's record on forms approved by the Division.

The comprehensive medical/psychosocial evaluation will include the following assessments: 1) extent and effects of drug and/or alcohol use; 2) medical systems survey; 3) medication history; 4) psychiatric history and mental status examination; 5) social history/update; 6) quality of life inventory; 7) social skills and daily living skills assessment; 8) diagnosis on all axes in accordance with DSM-III-R criteria; and 9) clinical risk factors. The evaluation will also include the formulation and review with the client of an individual treatment plan.

Physician Services: Services provided within the scope of practice of medicine or osteopathy as defined by State law and by or under the personal supervision of an individual licensed under State law to practice medicine or osteopathy.

In the context of community support service programs, physician services refer to medical or psychiatric assessment, treatment, and prescription of pharmacotherapy. Medical and psychiatric nursing services including components of physical assessment, medication assessment and medication administration provided by registered nurses and licensed practical nurses are provided under personal supervision of the physician.

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

Counseling and Psychotherapy: Counseling is supportive psychotherapy performed as needed in a direct

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

In addition to supportive psychotherapy there are several highly specific modalities of psychotherapy, each based on an empirically valid body of knowledge about human behavior. Provision of each requires specific credentials. Although the nature of the client's needs and the specific modality of therapy determine its duration, psychotherapy has circumscribed goals, a definite schedule and a finite duration. Examples include: psychodynamic therapy, psychoeducational therapy, multi-family group therapy, and cognitive therapy. The assessments, treatment plans and progress notes in client records must justify, specify and document the initiation, frequency, duration and progress of such specialized modalities of psychotherapy.

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

Psychiatric Rehabilitative Services: Rehabilitative therapy provided on an individual and small group basis to assist the client to gain or relearn skills needed to live independently and sustain medical/psychiatric stability. Psychiatric rehabilitation is provided primarily in home and community based settings where skills must be practiced. Psychiatric rehabilitative services are provided by a physician, clinician, associate clinician, ~~or~~ assistant clinician or rehabilitative services assistant.

Psychosocial Rehabilitation Center Services: Facility based, group rehabilitative therapy for clients who can not be adequately served through only individualized home and community based psychiatric rehabilitative services. Psychosocial rehabilitative therapy is provided to assist the client to gain or relearn skills needed to live independently and sustain medical / psychiatric stability. Therapy is provided in ~~5~~ 4-hour blocks for up to five days per week at a psychosocial rehabilitation center facility. Services are provided by a physician, clinician, associate clinician, ~~or~~ assistant clinician or rehabilitative services assistant.

Residential Rehabilitation Services: Facility-based, 24-hour rehabilitative therapy for clients who can not

be adequately served through psychosocial rehabilitation center and/or individualized home and community based psychiatric rehabilitative services. Residential rehabilitation services are provided to assist the client to gain or relearn skills needed to live independently and sustain medical / psychosocial stability. Residential Rehabilitation Services ~~are provided in a licensed mental health group home or a licensed alcoholism and drug abuse residential treatment program~~ facilities shall be required to comply with all applicable facility licensing requirements. Services are provided by a physician, clinician, associate clinician, ~~or~~ assistant clinician or rehabilitative services assistant.

Services must be authorized by a physician's determination of medical necessity, must be supported by an individual treatment plan signed by the physician and must be supervised by a physician in a manner prescribed by the Medicaid Provider Manual for Rehabilitative / Community Support Service Programs.

LIMITATIONS

Services provided beyond 60 days following entry to the program, or the anniversary date of entry to the program, without completion of a comprehensive medical and psychosocial assessment, treatment plan and physician's certification of medical necessity are not reimbursable. Psychosocial rehabilitation center services must be re-certified by the program physician every six months.

Vocational counseling, vocational training at a classroom or job site, academic/remedial educational services and services which are solely recreational in nature are not reimbursable by Medicaid.

Services must be provided in accordance with the Medicaid Provider Manual.

~~Providers must attempt to provide each client a minimum of one face-to-face clinical contact per week.~~

Services provided in an institution for mental diseases are not reimbursable.

~~Clients who are treated with psychotropic medication must be evaluated monthly face-to-face by a physician.~~

~~Component services of community support service programs may not be sub-contracted to independent provider organizations.~~

Room and board services are not coverable.

Attachment 4.19-B

Page 4

Reimbursement Methodologies for Rehabilitative Services:

1) *Community Support Service Programs*

General Provisions:

~~Payment for community support services is based on a fee for service, the rates for which are calculated on a~~

prospective basis for each fiscal year. Rates exclude costs related to room and board. Rates are based on the provider's budget, projected census of active clients and productivity standards of billable staff time. Rates are based on each provider's projected operating expenses, and thus may vary from provider to provider. For each provider, a single rate will be paid for all service units, with the exception of Psychosocial Rehabilitation Center and Residential Rehabilitation Service units, the rates for which shall be separately determined. These expenses are costs which are allowable and reasonable as defined within the Division of Alcoholism, Drug Abuse and Mental Health (DADAMH) Provider Reimbursement Manual. Prospective costs are the costs reported in each provider's annual budget submitted to DADAMH in accordance with the Division's prescribed methodology. Each provider's prospective budget and rate per unit of community support service is subject to approval by DADAMH. A rate setting committee (including representatives of the Department of Health and Social Services' Divisions of Social Services and Management Services) recommends the rates to be established for each provider by DADAMH. Providers are required to submit quarterly cost/expenditure reports against the prospective rate setting budget.

Reimbursement Methodology for Community Support Services

Rates for Community Support Services as defined in Attachment 3.1-A will be established by a rate setting committee composed of representatives of various Divisions of the Delaware Department of Health and Social Services, including the Division of Social Services (DSS), the Division of Management Services, and the Division of Substance Abuse and Mental Health.

Rates for all services with the exception of Psychosocial Rehabilitation Center Services and Residential Rehabilitation Services are to be set initially and for three subsequent fiscal years based upon a trend analysis of Medicaid expenditures for individualized home and community based Community Support Services during the base period of SFY 2000 through SFY 2002 and adjusted thereafter by the rate setting committee.

Rates for Psychosocial Rehabilitation Center Services and Residential Rehabilitation Services are provider specific and are calculated by determining the total costs for each provider of the respective services, including cost of services to all clients regardless of Medicaid eligibility.

New Programs:

New providers will submit projected costs of services. The rate setting committee will compare the provider's proposed budget against a statewide model budget to determine the reasonableness of various cost components. The prospective rate for providers of new community

support service programs (other than Psychosocial Rehabilitation Centers and Residential Rehabilitation) will be initially set based on anticipated 40 percent utilization of budgeted billable units in the first year, 70 percent in the second year, 90 percent in the third year and 100 percent in the fourth and successive years. Psychosocial Rehabilitation Center services will be initially set based on anticipated 90 percent utilization of budgeted billable units in the first year, and 100 percent in the second and successive years. Residential Rehabilitation services will be established based on an anticipated ongoing occupancy rate of 90 percent. Rates for new providers will be set and reviewed semi-annually during the implementation years for each. Actual provider utilization of budgeted billable units will be monitored. A significant upward variation from that upon which the rate was initially set will prompt a prospective mid-year rate adjustment commensurately based upon utilization during the previous period.

DEPARTMENT OF AGRICULTURE**Standardbred Breeder's Fund Regulations**

The Department proposes these amendments to the Standardbred Breeder's Fund Regulations pursuant to 29 Del.C. §4815(b)(3)b.2.D and 29 Del.C. §8103(8). Its purpose in proposing these amendments is to comply with Delaware Harness Racing Commission Rules, to make the program language more specific under certain racing conditions, to promote fairness, and to allow the races to be contested within the normal racing card at Harrington Raceway and Dover Downs. These proposed amendments to the regulations will be considered at a public hearing scheduled for Friday, September 5, 2003 at 1:00 P.M. at the Delaware Department of Agriculture Building in Conference Room 1. Copies of the proposed amendments may be obtained from Ms. Judy Davis-Wilson, Director, Delaware Standardbred Breeder's Fund by calling (302) 698-4610. Public comments may be submitted in writing to Ms. Davis-Wilson on or before September 5, 2003. Also, written submissions and/or oral comments are welcomed at the public hearing. The Delaware Department of Agriculture is located at 2320 South DuPont Highway, Dover, Delaware.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, August 21, 2003 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION****PUBLIC NOTICE****Neighborhood Homes for Persons with Developmental Disabilities**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection (DLTCRP), has drafted regulations replacing in their entirety regulations pertaining to Neighborhood Homes. In addition to replacing regulations currently enforced by DLTCRP, these regulations incorporate Certification Standards enforced by the Division of Developmental Disabilities

Services (DDDS), but not previously promulgated as regulations. These proposed regulations also replace the DDDS Certification Standards in their entirety. The proposed regulations address provisions required of Neighborhood Homes including general licensing requirements, provider performance standards, services required for persons residing in Neighborhood Homes, environmental, medical, transportation, and safety standards.

These regulations were the subject of public hearings on July 1 and July 2, 2003. Some comments received during those public hearings have led to revisions in the proposed regulations, and those revisions are incorporated in the accompanying regulations. Other comments received at the July public hearings will be discussed in the summary of evidence when the final order is issued.

Invitation For Public Comment

Public hearings will be held as follows:

Wednesday, September 3, 2003, 9:00 AM
Room 301, Main Building
Herman Holloway Campus
1901 North DuPont Highway
New Castle

Thursday, September 4, 2003, 10:00 AM
Department of Natural Resources &
Environmental Control Auditorium
89 Kings Highway
Dover

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are invited on these proposed regulations and should be sent to:

Katie McMillan
Division of Long Term Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the September 4 public hearing.

DIVISION OF SOCIAL SERVICES**PUBLIC NOTICE****Food Stamp Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/ Medical Assistance Program is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM). The proposed changes address exempt aliens and reporting changes and are effective October 1, 2003.

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 Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by August 31, 2003.

The action concerning the determination of whether to adopt the proposed regulation 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.

DEPARTMENT OF LABOR

Pursuant to the Authority granted to the Department of Labor under 29 **Del.C.** §8503(7), the Department is proposing an amendment to regulations under 29 **Del.C.** §6960, "**Prevailing Wage Requirements**". Interested parties are invited to present their views at the public hearing which is scheduled for:

9:00 a.m., Thursday, August 21, 2003,
Division of Motor Vehicles,
2nd Floor Conference Room,
Public Safety Building,
303 Transportation Circle,
Dover, DE 19901.

Interested parties can obtain copies of the proposed amendments at no charge by contacting the Office of Labor Law Enforcement at:

4425 North Market Street
Wilmington, DE 19802
or by telephone at (302) 761-8318.

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