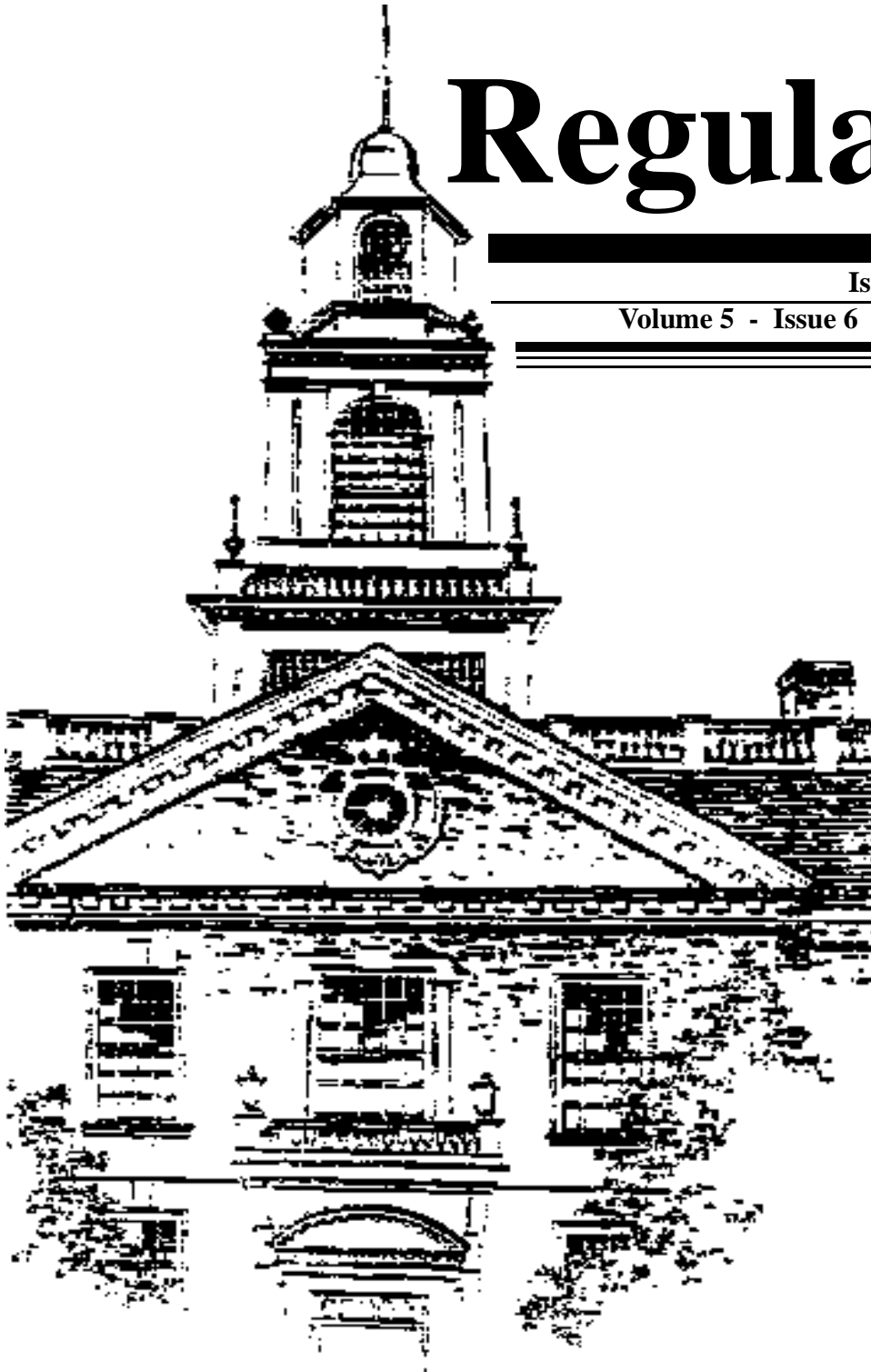

Delaware Register of Regulations



Issue Date: December 1, 2001

Volume 5 - Issue 6

Pages 1176 - 1324

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Proposed

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Governor

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Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before November 15, 2001.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

4 **DE Reg.** 769 - 775 (11/1/00)

Refers to Volume 4, pages 769 - 775 of the Delaware Register issued on November 1, 2000.

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The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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
JANUARY 1	DECEMBER 15	4:30 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.
MAY 1	APRIL 15	4:30 P.M.

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Reg. No. 5.1101etal.0006, Estimated Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware.....	5 DE Reg. 659 (Final)
Reg. No. 5.1101etal.0007, Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware.....	5 DE Reg. 89 (Prop.)
Reg. No. 5.1101etal.0007, Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware.....	5 DE Reg. 660 (Final)

CUMULATIVE TABLES

Reg. No. 5.1101etal.0009, Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks.....	5	DE Reg.	90 (Prop.)
			5 DE Reg. 661 (Final)
Reg. No. 5.1101etal.0010, Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks.....	5	DE Reg.	94 (Prop.)
			5 DE Reg. 665 (Final)
Reg. No. 5.1101etal.0011, Final Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks.....	5	DE Reg.	96 (Prop.)
			5 DE Reg. 667 (Final)
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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
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION**

REAL ESTATE COMMISSION

24 DE Admin. Code 2900

Statutory Authority: 24 Delaware Code,
Section 2905(a)(1), (24 **Del.C.** §2905(a)(1))

PLEASE TAKE NOTICE, pursuant to 29 **Del. C.** Chapter 101 and 24 **Del. C.** Sections 2905(a)(1) and 2911(b), the Delaware Real Estate Commission proposes to revise its Guidelines for Fulfilling the Delaware Real Estate Education Requirement. The proposed amendments revise the quorum requirement for meetings of the Education Committee and provide that members of the Education Committee attending at least eighty percent (80%) of meetings during a biennial licensure period may receive up to six (6) elective credit hours of continuing education.

A public hearing will be held on the proposed Education Guidelines on Thursday, January 10, 2002 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in writing from any person on the proposed Education Guidelines. Any written comments should be submitted to the Commission in care of Joan O'Neill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Education Guidelines or to make comments at the public hearing should notify Joan O'Neill at the above address by calling (302) 744-4519.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

- 1.0 Introduction
- 2.0 Objective
- 3.0 Administration
- 4.0 Education Committee
- 5.0 Course Approval
- 6.0 Program Criteria
- 7.0 Course Approval Process
- 8.0 Provider Responsibilities
- 9.0 Instructor Qualifications
- 10.0 Instructor Approval Process

**Guidelines for Fulfilling the Delaware Real Estate
Education Requirements**

1.0 Introduction -- Mandate for Continuing Education

1.1 24 **Del.C.** §2911(b) sets forth a requirement that "...each Delaware Real Estate Certificate holder applying for renewal shall be required to successfully complete in the two year period prior to renewal, continuing education hours in an amount to be prescribed by the Rules and Regulations of the Commission. Each Delaware Real Estate Certificate holder at the time of certificate renewal shall be required to furnish to the Commission satisfactory evidence that they have successfully completed the required number of hours in approved courses....."

1.2 The continuing education requirements apply to all licensees whether or not the certificate holder has been officially active or inactive during the two year period prior to expiration. The Delaware Real Estate Commission shall

be informed of the completion of the continuing education requirement at the time of submission of the Real Estate Certificate Renewal Application. In the case of an inactive licensee proof of completion of the continuing education requirement will be due upon reactivation of the license. The number of continuing education credit hours required is established within the Rules and Regulations of the Commission. The number and content of mandated courses may vary at the discretion of the Commission. The current requirement for continuing education is included within these guidelines. Updates may be obtained from the offices of the Real Estate Commission or the Real Estate Education Committee.

2.0 Objective

Through education, the licensee shall be reasonably current in real estate knowledge and shall have improved ability to provide greater protection and service to the real estate consumer, thereby meeting the Delaware Real Estate Commission's primary objective of protection of the public.

3.0 Administration

The Delaware Real Estate Commission has the governing powers to approve or disapprove educational course offerings and instructor certification and reserves the right to suspend or revoke the privilege of conducting any educational course to any course provider(s) or instructor(s) who fail to adhere to the educational guidelines as established by the Commission.

4.0 Education Committee

4.1 The Commission may utilize the services of a committee, appointed by the Commission, to assist in the educational objectives of the Commission.

4.2 Committee Structure - The Committee shall be comprised of twelve (12) members, four (4) from each county. Three (3) members shall be public members and the remaining members shall hold a valid Delaware real estate license.

4.3 Committee Officers - (Chairperson and Vice-Chairperson) shall be elected from the Committee and shall serve one year terms. Election of said officers will be held in January.

4.4 Term of Office

4.4.1 Each appointment shall be for four (4) full years. No person who has been appointed to the Committee shall again be appointed to the Committee until an interim period of at least one (1) year has passed since such person last served.

4.4.2 ~~A majority of members (7)~~ Five (5) members shall constitute a quorum; and no recommendation shall be effective without the affirmative vote of a majority of the quorum. Any member who fails to attend at least half of all regular business meetings without valid excuse, or who fails

to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Commission.

4.4.3 Committee members shall be appointed by the Commission. Applications for committee membership will be received by the Commission, via a letter of intent and a current resume 60 days prior to an anticipated vacancy. Committee members may be removed by the Commission for good cause. If an interim vacancy should occur, the Commission shall appoint a person to fill the position for a full four (4) year term commencing with the date of appointment.

4.5 Committee Responsibilities

4.5.1 It shall be the duty of the Education Committee to monitor the content and conduct of all pre-licensing courses for salesperson and broker as well as continuing education programs offered to fulfill the educational requirements for obtaining and maintaining licensure in the State of Delaware.

4.5.2 The Education Committee shall have the responsibility for reviewing all applications for pre-licensing and continuing education credit as well as certification of instructor applicants, to insure that all applications satisfy the requirements.

4.5.3 After this review, the Education Committee shall recommend that an application be approved or disapproved by the Commission. If approval is recommended with regard to continuing education, the Committee shall indicate the number of full credit hours for the course. In making its decisions, the Education Committee shall follow the provisions contained in these guidelines. Any recommendation for non-approval shall be accompanied by a specific reason. Only the Delaware Real Estate Commission shall have the power to approve or disapprove the application for a course offering or instructor certification.

4.5.4 The Education Committee shall undertake such other duties and responsibilities as the Commission shall direct from time to time.

4.5.5 Committee meeting times and places shall be as necessary, but in all cases within two weeks prior to the next regularly scheduled meeting of the Commission. Committee meetings shall be conducted in accordance with the Administrative Procedures Act.

4.5.6 Notwithstanding any rule, regulation, or guideline to the contrary, members of the Education Committee who attend at least eighty percent (80%) of the meetings of the Education Committee during a biennial licensure period may receive up to six (6) continuing education credit hours applicable to elective credit hours only. This guideline will become effective beginning May 1, 2002.

5.0 Course Approval

5.1 General Requirements - An educational activity to be approved as satisfying Delaware's real estate continuing education requirements must be an organized real estate related activity, offered under responsible sponsorship, facilitated by an instructor certified by the Commission.

5.2 Organization - The sponsoring organization must have a designated individual responsible for the administration and coordination of the education program. That designee shall be responsible to report to the Commission and/or the Committee for the proper conduct of each such program.

5.3 Facilities - The sponsoring organization must provide or arrange for appropriate educational facilities, and when necessary, library and reference materials and all instructional aids and equipment consistent with the content, format, and objective of each learning experience.

5.4 Performance - Attendance shall be used as the minimum requirement for satisfactory completion, in addition, alternative criteria for evaluating student performance may be established by the sponsoring organization or class instructor.

5.5 Maintenance and Availability of Records - An individual record of participation must be maintained by the sponsoring organization for a period of not less than three (3) years from the date of the activity and upon request made readily available as an official statement to each student of his or her participation. Information which must be included as part of this record is:

5.5.1 Name and address of the organization offering the course.

5.5.2 Name of course topic.

5.5.3 Title of the course

5.5.4 Name, resume and certificate number of the individual instructors.

5.5.5 Completion date of the course offering.

5.5.6 Number of hours of approved credit.

5.5.7 A detailed outline of the course.

5.5.8 A copy of the approval letter received from the Commission

5.5.9 A copy of the individual instructor(s) certification(s) letter(s) issued by the Commission.

5.5.10 A copy of the individual student evaluations on forms provided by the Commission.

5.5.11 A list of the individual students attending the course offering and their completion status, e.g., satisfactory or unsatisfactory.

5.6 Program Evaluation - Evaluation forms, approved by the Real Estate Commission shall be used to measure the effectiveness of the program design, operation and effectiveness of the instructor(s). These forms must be returned to the Education Committee for review within fifteen (15) calendar days of completion of the program.

6.0 Program Criteria

6.1 Areas of Concentration for Acceptable Courses

6.1.1 Courses of instruction and seminars, to be considered eligible for continuing education credit approval must be in a definable real estate topic area. Courses that may be considered eligible must be in the following topic areas:

6.1.1.1 Federal, State or Local Legislative Issues (Legislative Update).

6.1.1.2 Fair Housing Law

6.1.1.3 Anti-Trust Law

6.1.1.4 Real Estate Ethics or Professional Standards

6.1.1.5 Agency Relationships and Responsibilities

6.1.1.6 Professional Enhancement for Practicing Licensees

6.1.2 Courses of instruction which Are Not acceptable for credit include, but are not limited to:

6.1.2.1 Offerings in mechanical office and business skills such as typing, business machines and computer operations.

6.1.2.2 Personal development and/or enrichment and motivational courses, speed reading memory improvement, and language report writing.

6.1.2.3 Correspondence courses and program learning courses not under the direct supervision of a certified instructor, except those courses that have been certified through The Association of Real Estate License Officials (ARELLO) Distance Education Certification Program.

6.1.2.4 General training or education required of licensees to function in a representative capacity for an employing broker except if said training or education complies with the above stated topic areas, has been approved by the Commission and is taught by a certified instructor.

6.1.2.5 Meetings which are a normal part of in-house staff or licensee training, sales promotions or other meetings held in connection with the general business of the licensee and/or broker; any meetings that a licensee is required to attend as a condition of continued employment, whether imposed by rules of the employing broker or by a contractual agreement between broker and franchiser, does not qualify for continuing education credit. Work experience does not qualify for continuing education credit.

6.1.2.6 Non-educational activities of associations, trade organizations, and professional and occupational group membership or certification are not considered creditable continuing education activities. Examples of such activities are, but not limited to:

6.1.2.6.1 membership or service in a professional, occupational or other society or organization;

6.1.2.6.2 attendance at annual, periodic or

special meetings, conventions, conferences, rallies and retreats;

6.1.2.6.3 writing or presentation of articles or research papers;

6.1.2.6.4 a program or other type of organizational assignment;

6.1.2.6.5 self-directed reading or study. As a guiding principle "self-directed studies" and "individual scholarship" are not considered creditable educational activities.

See 5 DE Reg. 1171 (11/1/01)

7.0 Course Approval Process

7.1 An application for course approval (on forms approved by the Commission), course outline, all applicable fees and any other documentation that may be required, must be filed by the course sponsor or provider, with the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904-2467, at least sixty (60) days prior to the date that the course is to be held. Failure to file within the appropriate time limit may be cause for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the completed application. An application that is incomplete when filed shall not be considered to have been filed.

7.2 A course may be certified for a period of two (2) calendar years, provided the course is conducted by the sponsor or provider making application, the curriculum and course length remains exactly as approved, and certified instructors are utilized. The Education Committee may recommend a shorter or probationary approval where good cause for limited approval can be demonstrated. A sponsor who receives approval to conduct a certified course or activity, must notify the Commission in writing, of the intent to hold such activity, at least seven (7) days in advance of the start of the activity. Included in the letter of intent shall be the course approval number, date(s) and time(s) and location of the course, topic area, course name, instructor name(s) and instructor certification number(s). Courses can not be automatically renewed. Sponsors providers will need to reapply by the course expiration date and before conducting further courses. The Education Committee shall have the right to recommend to the Commission that a provider's privilege of conducting a certified course be revoked for the remainder of the approval period, if the Education Committee determines that the provider is not maintaining the standards required in these guidelines

8.0 Provider Responsibilities

8.1 The organization receiving approval of a course or program accepts the responsibility to maintain a permanent

record of the course activity for not less than three years from the date of the course offering. The permanent record shall include the documents as listed in "Maintenance and Availability of Records".

8.2 The sponsor or provider of all continuing education courses shall arrange for an on-site monitor in addition to the certified instructor for each activity. The monitor shall be responsible, at a minimum, for ensuring faithful and complete attendance by students, as well as facilities management. The monitor may be a student for educational credit for that course or activity. This guideline shall not apply to courses that have been certified through ARELLO's Distance Education Certification Program.

8.3 The course sponsor or provider, will supply to the student at the completion of the course or program, a certificate of completion. This certificate must contain, but is not limited to, the following information:

- Student Name
- Sponsors Name
- Topic Area Name
- Course Title
- Date course was completed
- Number of Credit Hours
- Course Approval Number
- Instructor Name(s)
- Instructor Certificate Number(s)

8.4 The organization offering the course, shall, within fifteen (15) days after the completion of the activity, provide a list of participants, their real estate license numbers (if applicable) and a copy of each student's course and instructor evaluation form and an evaluation summary report form to the Commission's Office. The evaluation summary report form shall be signed by any instructors who participated in the delivery of the course thus indicating each has had the opportunity to review the evaluation result. Failure of the organization to provide this information may be grounds to suspend the approval of that course or educational activity, in the absence of a showing of good cause for that failure.

8.5 Where the provider is a prelicensing school, the administrator thereof is responsible to apply to the Delaware Department of Public Instruction for certification and to maintain such certification. Proof of current certification must be attached to the application for course approval submitted to the Education Committee.

8.6 Prelicensing schools are to solicit the names of students interested in being contacted by recruiters by the second class meeting. Any students joining after the first class must be informed of the opportunity to be a part of the recruiting roster at the first class attended. Schools must supply the recruiting roster within seven (7) days of receiving a request from a broker.

8.7 Prelicensing schools will also furnish each student with current information regarding the prelicensing examination to include the "Real Estate Candidate

Handbook" which is available to prelicensing schools through the testing service for this purpose.

8.8 Members of the Real Estate Commission or Education Committee And/or Their Official Representatives Shall Have the Right to Monitor Any Approved Course Without Notice.

See 5 DE Reg. 1171 (11/1/01)

9.0 Instructor Qualifications

9.1 It is the stated policy of the Delaware Real Estate Commission that qualified instructors must be directly involved in presenting any professional educational activity. Qualifications are determined by all or a combination of:

9.1.1 competence in the subject matter (may be evidenced by experience in which command of subject matter is recognized by the individual's peers, and/or by a formal education or training, and/or by demonstrated knowledge through publication in professional journals or appropriate media);

9.1.2 ability to transmit the educational content to the participants as determined by student evaluations and/or test results from previous instructional assignments;

9.1.3 understanding of the program objectives; and

9.1.4 knowledge and skill in the instructional methodology and learning processes to be employed.

9.2 The persons applying for instructor certification in teaching a real estate related topic must have five (5) years of full time experience in the trade, business, or profession that relates to the topic of instruction to be taught, and meet at least one (1) of the following sets of qualifications:

9.2.1 An approved instructor must meet two of the following criteria:

9.2.1.1 a Bachelor's degree

9.2.1.2 a Broker's Certificate

9.2.1.3 a professional designation such as, but not limited to; ALC (Accredited Land Consultant), CRS (Certified Residential Specialist), CCIM (Certified Commercial Investment Member) CPM (Certified Property Manager), CRB (Certified Residential Broker), CRE (Counselor Real Estate), MAI (Member Appraisal Institute), SIOR (Society Industrial Office Realtors) SRA (Senior Residential Appraiser), SRPA (Senior Real Property Appraiser), but not including GRI (Graduate Realtor Institute);

9.2.2 Possession of a valid teaching credential or certificate issued in the State of Delaware (or any State with qualifications that are equal to, or that exceed the qualification standards of the State of Delaware), and/or five (5) years of teaching experience in an accredited public, private, or parochial school; and/or five (5) years teaching experience in an accredited junior college, college or university.

9.2.3 A fully designated senior member of the Real Estate Educators Association who has been issued the DREI

(Designated Real Estate Instructor) designation.

9.3 The Commission may waive the above requirements contingent upon review of proof of collateral experience in related fields of real estate. The Commission reserves the right to exercise its discretion in denying an applicant who has had a disciplinary action taken against him/her.

9.4 In addition to the qualifications listed above, the Commission shall take into consideration evaluations from previous programs that the applicant has instructed. The Commission will also take into consideration recommendations or absence thereof of course providers, course coordinators, administrators and institutions that have employed the applicant.

9.5 The Education Committee may, at its discretion, subject to Commission approval, require a potential instructor to take a teaching methodology course (such as those given by colleges and universities) and/or a teaching methods seminar (such as currently given by the National Association of Realtors or Real Estate Educator's Association).

10.0 Instructor Approval Process

10.1 Applicants for instructor shall submit an application (on forms approved by the Commission), resume and any applicable fees to the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467, **at least sixty (60) days prior to the employment starting date.** Failure to file within the appropriate time limit may be cause for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the application. An application that is incomplete when filed shall not be considered to have been filed.

10.2 Upon approval, an instructor may be certified for a period of two (2) calendar years. An instructor may be certified in more than one subject or topic area, (e.g. pre-licensing math, pre-licensing law, fair housing, ethics, etc.). An instructor may only teach courses as preapproved by the Commission. Instructor certification can not be automatically renewed. Instructors will need to reapply by the certification expiration date and before teaching any further courses or programs. Applications are available from the Commission office.

10.4 An Instructor may receive credit for continuing education hours towards the real estate license renewal requirement in the same amount of hours as approved for credit for the course/topic being taught. This is a one time credit per licensure period, regardless of the number of times that said course/topic is taught during said course or instructor certification period.

10.5 The Education Committee shall have the right to

recommend to the Commission that a certified instructor lose the privilege of certification for the remainder of the certification period if the Education Committee determines that the instructor is not maintaining the standards and/or policies required in these guidelines.

10.6 It is the Stated Policy of the Delaware Real Estate Commission That at No Time During Periods of Instruction Shall Any Person Involved in Any Approved Real Estate Educational Activity, Use, or Attempt to Use, the Position of Instructor, Sponsor or Provider Etc., to Solicit Employees or Sales Representatives.

DEPARTMENT OF AGRICULTURE

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

Aquaculture Regulations

The Department proposes these regulations pursuant to 3 **Del.C.** §407(a). The proposed regulations contain the following general sections: Definitions, Aquaculture Registration, General Aquaculture Permits, Restricted Aquaculture Permits, Aquaculture Stock Certification, Aquaculture Broodstock, Identification and Certification, Inspection of Premises, Enforcement, Future Considerations, Fee Fishing, Aquaculture Facility Protection, and Civil Penalties. These regulations are intended to more clearly define the role of the Department in the Delaware aquaculture industry. The proposed regulations will be considered at a public hearing scheduled for January 15, 2002 at 1:00 p.m. at the Delaware Department of Agriculture Building, Veterinarians office. Comments may be submitted in writing to Bruce Walton on or before 1:00 p.m. on January 15, 2002, and/or in person at the hearing. The Delaware Department of Agriculture is located at 2320 S. DuPont Highway, Dover, Delaware, 19901 and the phone number is (302) 698-4503.

1.0 Authority

1.1 These regulations are promulgated under the authority of 3 **Del.C.** §407.

2.0 Purpose

2.1 The purpose of these regulations is to encourage the orderly development of an aquaculture industry in Delaware, while ensuring that aquaculture operations do not adversely impact upon the State's wild stocks of fish by introducing any non-indigenous species that harbor disease or parasites or are capable of surviving and adversely competing with indigenous plant or animal species.

3.0 Definitions

As used in these regulations:

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

"**Aquaculturists**" means an individual, partnership or corporation involved in the production of cultured aquatic stock or parts thereof.

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

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

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

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

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

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

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

"**DNREC**" means the Department of Natural Resources and Environmental Control.

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

"**Fee Fishing**" means removing cultured aquatic stock from a registered aquaculture facility in a sportsman-like manner for payment of a fee.

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

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

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

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

"**Non-Native Species**" means any species or hybrid thereof of any plant or animal that does not occur naturally in

the waters of the State.

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

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

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

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

"Shellfish" means any molluska, crustacea, and chilcerata that includes oysters, clams, lobsters, mussels, whelks, crabs, shrimp and horseshoe crabs.

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

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

4.0 Aquaculture Registration

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

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

5.0 General Aquaculture Permit

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

5.2 DNREC shall issue a general aquaculture permit for the propagation, production, possession and disposition of cultured aquatic stock, including Black crappie, *Pomoxis*

nigromaculatus; white crappie, *Pomoxis annularis*; striped bass, *Morone saxatilis*; white perch, *Morone americana*; walleye, *Stizostedion vitreum*; northern pike, *Esox lucius*; chain pickerel, *Esox niger*; Muskellunge, *Esox masquinongy*; tiger muskellunge, *Esox lucius x Esox masquinongy*; rock bass *Ambloplites rupestris*; salmon and trout except Pacific salmon, *Salmonidae* (family) (including rainbow trout *Oncorhynchus mykiss*, but no other *Oncorhynchus* spp.) sunfishes, *Lepomis* spp.; channel catfish, *Ictalurus punctatus*; yellow perch, *Perca flavescens*; and other food fish included in 7 **Del.C.** §906(28). Size limits and/or creel limits shall be waived. There will be no restrictions on their disposition, provided none are stocked into the waters of this State without approval from DNREC. Upon registering a facility culturing of these species, the registrant will be supplied a general aquacultural permit by DDA.

6.0 Restricted Aquaculture Permits

6.1 The possession and disposition of certain species, those listed in Section 5.0, are strictly regulated under these regulations. When a facility is to be used to grow restricted species it then must have DNREC approval.

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

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

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

6.5 Prohibited Species

6.5.1 DNREC shall not issue any aquaculture permits for walking catfish, *Clarias batrachus*.

6.6 Restricted Species

6.6.1 Black bass - *Micropterus* spp.

6.6.1.1 No wild black bass shall in any way be made part of, or used for, an aquaculture facility or co-mingled with any domesticated black bass raised in an aquaculture facility except as authorized under Section 8.0, Broodstock, of these regulations.

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

6.6.1.3 The sale of Large and Smallmouth bass for any purpose, including, but not limited to, stocking or consumption, shall be legal for any registered and permitted aquaculture operation.

6.6.2 Grass Carp - *Ctenopharyngodon idella*

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

6.6.3 Hybrid striped bass - *Morone saxatilis* x *Morone*-spp.

6.6.3.1 Size limits and/or creel limits shall be waived. An aquacultural facility must be a DNREC approved closed system. There are no restrictions on their disposition except they may not be released into any open system.

6.6.4 Eels - *Anquilla rostrata*

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

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

6.7 Unrestricted Species

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

7.0 Stock Certification Fish Health

7.1 All non-aquarium trade shipments of cultured aquatic stock into the State shall be accompanied by documentation of origin which describes the species involved and the name and address of the original source. It must also include the name and address of additional premises where the shipment has been held for more than a twenty-four hour period. Certificates of health must also be included when local facilities for their procurement exist and their preparation is practical. If a shipment will not be accompanied by a certificate of health, before shipment enters the State a written or oral authorization must be obtained from the Department of Agriculture. All incoming international shipments must be accompanied by a valid health certificate or be held in a Department of Agriculture approved closed system until the State Veterinarian is satisfied of the shipment's health status and authorizes its distribution.

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

7.1.2 Commercially grown aquacultural species in the State of Delaware are considered in the same class with

livestock and poultry and, therefore, in the case of a serious contagious or infectious disease, would be subject to quarantine, testing or destruction under 3 Del.C. §7107.

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

8.0 Broodstock

8.1 Broodstock for aquaculture facilities may be obtained as follows:

8.1.1 By propagation of existing broodstock and maturation of the offspring.

8.1.2 By purchase from a legal aquaculture facility.

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

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

8.1.5 Broodstock acquired under 8.1.1 and 8.1.2 above may be bought, sold, traded and transported at any time as stated in 7.0 Fish Health. Wild game fish, as defined in 7 Del.C. § 906 (3) obtained under 8.1.3 and 8.1.4 above must be marked (i.e. fin clipped) upon capture and shall not be bartered, sold or traded. However such broodfish may be transported out of State with written authorization from DNREC. Interstate transport or sale of commercially harvested wild food fish as broodstock may be permitted providing DDA and DNREC are notified at least 48 hours in advance.

9.0 Identification and Certification

9.1 Except as provided in Section 6.0 above, any aquatic organisms that have been produced in aquacultural facilities and are being transported for sale or distribution to another shall be accompanied by a bill of sale or bill of lading. Any aquatic organisms being transported by, or for, an aquaculturist and not for sale or distribution to another shall be accompanied by a copy of the valid aquacultural permit issued by DNREC.

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

10.0 Inspection of Premises

10.1 Upon the proper completion of the Department's Aquaculture Registration Application, and verification of approval of all, if any, requirements from the Department of Natural Resources and Environmental Control, an appointment will be made with the aquaculturist for an on-

site visitation by a representative of The Department. Department personnel may inspect any aquacultural facility for verification of registration.

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

10.3 Each registered Aquaculture facility will be issued a number by the DDA to be used as a reference to marketing and movement documents.

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

11.0 Enforcement

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

11.2 3 Del.C. §7101 states the Department of Agriculture shall protect the health of domestic animals of the state, and determine and employ the most efficient and practical means for the detection, prevention, suppression, control or eradication of a dangerous, contagious, or infectious disease. It may establish, maintain, enforce, and regulate such quarantine and other measures relating to the movement and care of animals and their products, the disinfection of suspected localities and articles and the destruction of animals, as it deems necessary, and may adopt from time to time all such regulations as are necessary. In the case of a contagious disease, the DDA or its authorized agents may put under quarantine the entire group containing the suspected or diseased individual or individuals.

11.3 A person affected by any of the above actions may request a hearing before the Department. The hearing shall be informal, and the technical rules of evidence shall not apply. A hearing shall be held within 30 days after the request. Within 30 days after the hearing, the Department shall affirm, withdraw, or modify its action by an order

based upon the record of the hearing. An appeal from that order may be taken to the Superior Court within 30 days. All fines and penalties for violations of this subsection shall be paid to the Department and deposited in the General Fund account of the State.

12.0 Future Considerations

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

13.0 Fee Fishing

13.1 The owner(s) of a fee fishing operation must apply to the Department to register that operation as an aquaculture facility. Within such a facility, registered as a fee fishing operation with the Department, it shall be lawful for any person to fish, without being licensed to fish in this State. The fee fishing operation shall meet with the following requirements, subject to inspection and approval by the Department of Natural Resources and Environmental Control, prior to the Department's approving the registration:

13.1.1 The fee fishing operation shall be a closed system.

13.1.2 The fee fishing operation shall not contain any wild Finfish.

13.2 Inspection

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

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

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

owner's agent of the fee fishing operation shall maintain a copy of each receipt for a period up to one year from the date of issuance.

14.0 Aquaculture Facility Protection

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

15.0 Civil Penalties

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

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

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

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

HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10027 (3 **Del.C.** §10027)

The **Harness Racing Commission** proposes to amend several rules. The proposed amendment to Rule 6.2.2.9 would prohibit trailing horses on half-mile tracks and limit the field to only one trailer on larger tracks. The proposed amendment to Rule 6.3.1.1 would strike the existing rule in its entirety and substitute U.S.T.A. rule 10, subsection (3)(b) requiring that the trainer warrant that he is authorized to

enter the horse in the claiming race. The proposed amendment to Rule 6.4.4.17 would provide that the maximum field shall be one trailer and the event shall be split if there would be more than one trailer. The proposed amendment to Rule 8.3 would detail additional factors for the State Steward to consider in assessing penalties for medication violations. The proposed amendment to Rule 8.3.2 would be amended to revise and increase the penalty schedule for medication violations involving class 1-5 drugs.

The Commission will accept written comments on the proposed rule amendments from December 1, 2001 until January 2, 2002. Written comments should be sent to the Delaware Harness Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901, att: John Wayne. Copies of the Commission's existing rules and the proposed rules can be obtained by contacting the Commission office at 302-698-4600. The Commission will conduct a public hearing on these proposed rules on January 3, 2002 at Dover Downs at 1:00 p.m.

6.0 Types of Races

6.1 Types of Races Permitted

In presenting a program of racing, the racing secretary shall use exclusively the following types of races:

6.1.1 Overnight events which include:

6.1.1.1 Conditioned races;

6.1.1.2 Claiming races;

6.1.1.3 Preferred, invitational, handicap, open or free-for-all races;

6.1.1.4 Schooling races; and

6.1.1.5 Matinee races

6.1.2 Added money events which include:

6.1.2.1 Stakes;

6.1.2.2 Futurities;

6.1.2.3 Early closing events; and

6.1.2.4 Late closing events

6.1.3 Match races

6.1.4 Qualifying Races (See Rule 7.0 --"Rules of the Race")

6.1.5 Delaware-owned or bred races as specified in 3 Del. C. §10032

6.2 Overnight Events

6.2.1 General Provisions

6.2.1.1 For the purpose of this rule, overnight events shall include conditioned, claiming, preferred, invitational, handicap, open, free-for-all, schooling or matinee races or a combination thereof.

6.2.1.2 At extended meetings, condition sheets must be available to participants at least 18 hours prior to closing declarations to any race program contained therein. At other meetings, conditions must be posted and available to participants at least 18 hours prior to closing declarations.

6.2.1.3 A fair and reasonable racing opportunity shall be afforded both trotters and pacers in

reasonable proportion from those available and qualified to race.

6.2.1.4 Substitute races may be provided for each race program and shall be so designated in condition books sheets. A substitute race may be used when a regularly scheduled race fails to fill.

6.2.1.5 Regularly scheduled races or substitute races may be divided where necessary to fill a program of racing, or may be divided and carried over to a subsequent racing program, subject to the following:

6.2.1.5.1 No such divisions shall be used in the place of regularly scheduled races which fill.

6.2.1.5.2 Where races are divided in order to fill a program, starters for each division must be determined by lot after preference has been applied, unless the conditions provide for divisions based upon age, performance, earnings or sex may be determined by the racing secretary.

6.2.1.5.3 However, where necessary to fill a card, not more than three races per day may be divided into not more than three divisions after preference has been applied. The divisions may be selected by the racing secretary. For all other overnight races that are divided, the division must be by lot unless the conditions provide for a division based on performance, earnings or sex.

6.2.2 Conditions

6.2.2.1 Conditions may be based only on:

6.2.2.1.1 horses' money winnings in a specified number of previous races or during a specified previous time;

6.2.2.1.2 horses' finishing positions in a specified number of previous races or during a specified period of time;

6.2.2.1.3 age, provided that no horse that is 15 years of age or older shall be eligible to perform in any race except in a matinee race;

6.2.2.1.4 sex;

6.2.2.1.5 number of starts during a specified period of time;

6.2.2.1.6 special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada;

6.2.2.1.7 the exclusion of schooling races; or

6.2.2.1.8 Delaware-owned or bred races as specified in 3 Del. C. §10032; or

6.2.2.1.9 any one or more combinations of the qualifications herein listed.

6.2.2.2 Conditions shall not be written in such a way that any horse is deprived of an opportunity to race in a normal preference cycle. Where the word preference is used in a condition, it shall not supersede date preference as provided in the rules. Not more than three also eligible conditions shall be used in writing the conditions for

overnight events.

6.2.2.3 The Commission may, upon application from the racing secretary, approve conditions other than those listed above for special events.

6.2.2.4 In the event there are conflicting published conditions and neither one nor the other is withdrawn by the association, the one more favorable to the declarer shall govern.

6.2.2.5 For the purpose of eligibility, a racing season or racing year shall be the calendar year. All races based on winnings will be programmed as Non-Winners of a multiple of \$100 plus \$1 or Winners over a multiple of \$100. Additional conditions may be added. When recording winnings, gross winnings shall be used and cents shall be disregarded. In the case of a bonus, the present value of the bonus shall be credited to the horse as earnings for the race or series of races for which it received the bonus. It shall be the responsibility of the organization offering the bonus to report the present value of the bonus to the United States Trotting Association in a timely manner.

6.2.2.6 Records, time bars shall not be used as a condition of eligibility.

6.2.2.7 Horses must be eligible when declarations close subject to the provision that:

6.2.2.7.1 Wins and winnings on or after the closing date of declarations shall not be considered;

6.2.2.7.2 Age allowances shall be given according to the age of the horse on the date the race is contested.

6.2.2.7.3 In mixed races, trotting and pacing, a horse must be eligible under the conditions for the gait at which it is stated in the declaration the horse will perform.

6.2.2.8 When conditions refer to previous performances, those performances shall only include those in a purse race. Each dash or heat shall be considered as a separate performance for the purpose of condition races.

6.2.2.9 ~~In overnight events, not more than one trailer shall be permitted, regardless of the size of the track except with the approval of the Commission.~~ In overnight events, on a half-mile racetrack, there shall be no trailing horses. On a track larger than a half-mile racetrack, there shall be no more than one trailing horse. At least eight feet per horse must be provided the starters in the front tier.

6.2.2.10 The racing secretary may reject the declaration to an overnight event of any horse whose past performance indicates that it would be below the competitive level of other horses declared to that particular event.

6.3 Claiming Races

6.3.1 General Provisions

6.3.1.1 ~~No horse will be eligible to start in a claiming race unless the owner has provided written authorization, which must include the minimum price for which the horse may be claimed, to the racing secretary at~~

~~least one hour prior to post time of its race. If the horse is owned by more than one party, all parties must sign the authorization. Any question relating to the validity of a claiming authorization shall be referred to the judges who shall have the authority to disallow a declaration or scratch the horse if they deem the authorization to be improper.~~
Claiming Procedure and Determination of Claiming Price. -- The trainer or authorized agent entering a horse in a claiming race warrants that he/she has authorization from the registered owner(s) to enter said horse in a claiming race for the designated amount. In the event of a claim, the owner(s) or authorized agent shall submit a signed registration to the State Steward or Presiding Judge prior to receiving proceeds from the claim and the registration shall be immediately forwarded to the U.S.T.A. registrar for transfer.

6.3.1.2 Except for the lowest claiming price offered at each meeting, conditions and allowances in claiming races may be based only on age and sex. Whenever possible, claiming races shall be written to separate horses five years old and up from young horses and to separate males from females. If sexes are mixed, mares shall be given a price allowance; provided, however, that there shall be no price allowance given to a spayed mare racing in a claiming race.

6.3.1.3 Registration certificate in current ownership, together with the application for transfer thereon duly endorsed by all registered owners, must be filed in the office of the racing secretary for all horses claimed within a reasonable time after the race from which the horse was claimed.

6.3.1.4 The price allowances that govern for claiming races must be approved by the Commission. Claiming prices recorded on past performance lines in the daily race program and on eligibility certificates shall not include allowances.

6.3.1.5 The claiming price, including any allowances, of each horse shall be printed on the official program adjacent to the horse's program number and claims shall be for the amount designated, subject to correction if printed in error.

6.3.1.6 In handicap claiming races, in the event of an also eligible horse moving into the race, the also eligible horse shall take the place of the horse that it replaces provided that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap, except when the horse that is scratched is a trailing horse, in which case the also eligible horse shall take the trailing position, regardless of its handicap. In handicap claiming races with one trailer, the trailer shall be determined as the fourth best post position.

6.3.1.7 To be eligible to be claimed a horse must start in the event in which it has been declared to race, except as provided in 6.3.1.8 of this subsection.

6.3.1.8 The successful claimant of a horse programmed to start may, at his option, acquire ownership of a claimed horse, even though such claimed horse was scratched and did not start in the claiming race from which it was scratched. The successful claimant must exercise his/her option by 9:00 a.m. of the next day following the claiming race to which the horse was programmed and scratched. Upon notification that the successful claimant has exercised his/her option, the owner shall present the horse for inspection, and the claim shall not be final until the successful claimant has had the opportunity to inspect the horse. No horse may be claimed from a claiming race unless the race is contested.

6.3.1.9 Any licensed owner or the authorized agent of such person who holds a current valid Commission license may claim any horse or any person who has properly applied for and been granted a claiming certificate shall be permitted to claim any horse. Any person or authorized agent eligible to claim a horse shall be allowed access to the grounds of the association, excluding the paddock, in order to effect a claim at the designated place of making claims and to take possession of the horse claimed.

6.3.1.10 Claiming certificates are valid on day of issue and expire at the end of the race meeting for which it was granted. These certificates may be applied for at the office designated by the association prior to post time on any day of racing.

6.3.1.11 There shall be no change of ownership or trainer once a horse is programmed.

6.3.2 Prohibitions on Claims

6.3.2.1 A person shall not claim directly or indirectly his/her own horse or a horse trained or driven by him/her or cause such horse to be claimed directly or indirectly for his/her own account.

6.3.2.2 A person shall not directly or indirectly offer, or directly or indirectly enter into an agreement, to claim or not to claim or directly or indirectly attempt to prevent another person from claiming any horse in a claiming race.

6.3.2.3 A person shall not have more than one claim on any one horse in any claiming race.

6.3.2.4 A person shall not directly or indirectly conspire to protect a horse from being claimed by arranging another person to lodge claims, a procedure known as protection claims.

6.3.2.5 No qualified owner or his agent shall claim a horse for another person.

6.3.2.6 No person shall enter in a claiming race a horse against which there is a mortgage, bill or sale, or lien of any kind, unless the written consent of the holder thereof shall be filed with the Clerk of the Course of the association conducting such claiming race.

6.3.2.7 Any mare which has been bred shall not be declared into a claiming race for at least 30 days

following the last breeding of the mare, and thereafter such a mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal. Any mare pronounced in foal shall not be declared into a claiming race. Where a mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding which occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the successful claimant provided the mare is subjected to a pregnancy examination within 18 days of the date of the claim, and is found pregnant as a result of that pregnancy examination. A successful claimant seeking to void the claim must file a petition to void said claim with the judges within 10 days after this pregnancy examination and shall thereafter be heard by the judges after due notice of the hearing to the parties concerned.

6.3.2.8 No person shall claim more than one horse in a race either alone, in a partnership, corporation or other legal entity.

6.3.2.9 If a horse is claimed, no right, title or interest therein shall be sold or transferred except in a claiming race for a period of thirty (30) days following the date of the claiming.

6.3.3 Claiming Procedure

6.3.3.1 A person desiring to claim a horse must have the required amount of money, in the form of cash or certified check, on deposit with the association at the time the completed claim form is deposited. Such deposit also may be made by wire transfer prior to 2:00 p.m. on the day of the claiming race.

6.3.3.2 The claimant shall provide all information required on the claim form provided by the association.

6.3.3.3 The claim form shall be completed and signed by the claimant prior to placing it in an envelope provided for this purpose by the association and approved by the Commission. The claimant shall seal the envelope and identify on the outside the date, time of day, race number and track name only.

6.3.3.4 The envelope shall be delivered to the designated area, or licensed delegate, at least fifteen (15) minutes before post time of the race from which the claim is being made. That person shall certify on the outside of the envelope the time it was received, the current license status of the claimant and whether credit in the required amount has been established.

6.3.3.5 It shall be the responsibility of the association to ensure that all such claim envelopes are delivered unopened or otherwise undisturbed to the judges prior to the race from which the claim is being made. The association shall provide for an agent who shall, immediately after closing, deliver the claim to the judges' stand.

6.3.3.6 The claim shall be opened and the

claims, if any, examined by the judges prior to the start of the race. The association's auditor, or his/her agent, shall be prepared to state whether the claimant has on deposit, the amount equivalent to the specified claiming price and any other required fees and taxes.

6.3.3.7 The judges shall disallow any claim made on a form or in a manner which fails to comply with all requirements of this rule.

6.3.3.8 Documentation supporting all claims for horses, whether successful or unsuccessful, shall include details of the method of payment either by way of a photostatic copy of the check presented, or written detailed information to include the name of the claimant, the bank, branch, account number and drawer of any checks or details of any other method of payment. This documentation is to be kept on file at race tracks for three (3) years and is to be produced to the Commission for inspection at any time during the period.

6.3.3.9 When a claim has been lodged it is irrevocable, unless otherwise provided for in these rules.

6.3.3.10 In the event more than one claim is submitted for the same horse, the successful claimant shall be determined by lot by the judges, and all unsuccessful claims involved in the decision by lot shall, at that time, become null and void, notwithstanding any future disposition of such claim.

6.3.3.11 Upon determining that a claim is valid, the judges shall notify the paddock judge of the name of the horse claimed, the name of the claimant and the name of the person to whom the horse is to be delivered. Also, the judges shall cause a public announcement to be made.

6.3.3.12 Every horse entered in a claiming race shall race for the account of the owner who declared it in the event, but title to a claimed horse shall be vested in the successful claimant from the time the horse is deemed to have started, and the successful claimant shall become the owner of the horse, whether it be alive or dead, or sound or unsound, or injured during or after the race. If a horse is claimed out of a heat or dash of an event having multiple heats or dashes, the judges shall scratch the horse from any subsequent heat or dash of the event.

6.3.3.13 A post-race urinalysis test may be taken from any horse claimed out of a claiming race. The trainer of the horse at the time of entry for the race from which the horse was claimed shall be responsible for the claimed horse until the post-race urine sample is collected. Any claimed horse not otherwise selected for testing by the State Steward or judges shall be tested if requested by the claimant at the time the claim form is submitted in accordance with these rules. The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance or an illegal level of a permitted medication. The horse's halter must accompany the horse. Altering or removing the horse's shoes will be

considered a violation, and, until the Commission chemist issues a report on his forensic analysis of the samples taken from the horse, the claimed horse shall not be permitted to be entered to race.

6.3.3.14 Any person who refuses to deliver a horse legally claimed out of a claiming race shall be suspended, together with the horse, until delivery is made.

6.3.3.15 A claimed horse shall not be eligible to start in any race in the name or interest of the owner of the horse at the time of entry for the race from which the horse was claimed for thirty (30) days, unless reclaimed out of another claiming race. Nor shall such horse remain in or be returned to the same stable or care or management of the first owner or out of another claiming race. Further, such horse shall be required to continue to race the track where claimed for a period of 60 days or the balance of the current racing meet, whichever comes first, unless released by the Racing Secretary.

6.3.3.16 The claiming price shall be paid to the owner of the horse at the time entry for the race from which the horse was claimed only when the judges are satisfied that the successful claim is valid and the registration and eligibility certificates have been received by the racing secretary for transfer to the new owner.

6.3.3.17 The judges shall rule a claim invalid:

6.3.3.17.1 at the option of the claimant if the official racing chemist reports a positive test on a horse that was claimed, provided such option is exercised within 48 hours following notification to the claimant of the positive test by the judges;

6.3.3.17.2 if the horse has been found ineligible to the event from which it was claimed, regardless of the position of the claimant.

6.3.3.18 Mares and fillies who are in foal are ineligible to claiming races. Upon receipt of the horse, if a claimant determines within 48 hours that a claimed filly or mare is in foal, he/she may, at their option, return the horse to the owner of the horse at the time of entry for the race from which the horse was claimed.

6.3.3.19 When the judges rule that a claim is invalid and the horse is returned to the owner of the horse at the time of entry for the race in which the invalid claim was made:

6.3.3.19.1 the amount of the claiming price and any other required fees and/or taxes shall be repaid to the claimant;

6.3.3.19.2 any purse monies earned subsequent to the date of the claim and before the date on which the claim is ruled invalid shall be the property of the claimant; and

6.3.3.19.3 the claimant shall be responsible for any reasonable costs incurred through the care, training or racing of the horse while it was in his/her possession.

6.4 Added Money Events

6.4.1 General Provisions

6.4.1.1 For the purpose of this rule, added money events include stakes, futurities, early closing events and late closing events.

6.4.1.2 All sponsors and presenters of added money events must comply with the rules and must submit to the Commission the conditions and other information pertaining to such events.

6.4.1.3 Any conditions contrary to the provisions of any of these rules are prohibited.

6.4.2 Conditions

Conditions for added money events must specify:

6.4.2.1 which horses are eligible to be nominated;

6.4.2.2 the amount to be added to the purse by the sponsor or presenter, should the amount be known at the time;

6.4.2.3 the dates and amounts of nomination, sustaining and starting payments;

6.4.2.4 whether the event will be raced in divisions or conducted in elimination heats, and;

6.4.2.5 the distribution of the purse, in percent, to the money winners in each heat or dash, and the distribution should the number of starters be less than the number of premiums advertised; and

6.4.2.6 whether also eligible horses may be carded prior to the running heats or legs of added money events.

6.4.3 Requirements of Sponsors/Presenters

6.4.3.1 Sponsors or presenters of stakes, futurities or early closing events shall provide a list of nominations to each nominator or owner and to the associations concerned within sixty (60) days after the date on which nominations close, other than for nominations payable prior to January 1st of a horse's two-year-old year.

6.4.3.2 In the case of nominations for futurities payable during the foaling year, such lists must be forwarded out prior to October 15th of that year and, in the case of nominations payable in the yearling year, such lists must be forwarded out not later than September 1 of that year.

6.4.3.3 Sponsors or presenters of stakes, futurities or early closing events shall also provide a list of horses remaining eligible to each owner of an eligible within 45 days after the date on which sustaining payments are payable. All lists shall include a resume of the current financial status of the event.

6.4.3.4 The Commission may require the sponsor or presenter to file with the Commission a surety bond in the amount of the fund to ensure faithful performance of the conditions, including a guarantee that the event will be raced as advertised and all funds will be segregated and all premiums paid. Commission consent

must be obtained to transfer or change the date of the event, or to alter the conditions. In any instance where a sponsor or presenter furnishes the Commission with substantial evidence of financial responsibility satisfactory to the Commission, such evidence may be accepted in lieu of a surety bond.

6.4.4 Nominations, Fees and Purses

6.4.4.1 All nominations to added money events must be made in accordance with the conditions.

6.4.4.2 Dates for added money event nominations payments are:

6.4.4.2.1 Stakes: The date for closing of nominations on yearlings shall be May 15th. The date foreclosing of nominations to all other stakes shall fall on the fifteenth day of a month.

6.4.4.2.2 Futurity: The date for closing of nominations shall be July 15th of the year of foaling.

6.4.4.2.3 Early Closing Events: The date for closing of nominations shall fall on the first or fifteenth day of a month. Nominations on two-year-olds shall not be taken prior to February 15th.

6.4.4.2.4 Late Closing Events: The date for closing of nominations shall be at the discretion of the sponsor or presenter.

6.4.4.3 Dates for added money event sustaining payments are:

6.4.4.3.1 Stakes and Futurities: Sustaining payments shall fall on the fifteenth day of a month. No stake or futurity sustaining fee shall become due prior to (Month) 15th of the year in which the horses nominated become two years of age.

6.4.4.3.2 Early and Late Closing Events: Sustaining payments shall fall on the first or fifteenth day of a month.

6.4.4.4 The starting fee shall become due when a horse is properly declared to start and shall be payable in accordance with the conditions of the added money event. Once a horse has been properly declared to start, the starting fee shall be forfeited, whether or not the horse starts. Should payment not be made thirty (30) minutes before the post time of the event, the horse may be scratched and the payment shall become a liability of the owner who shall, together with the horse or horses, be suspended until payment is made in full, providing the association notifies the Commission within thirty (30) days after the starting date.

6.4.4.5 Failure to make any payment required by the conditions constitutes an automatic withdrawal from the event.

6.4.4.6 Conditions that will eliminate horses nominated to an event, or add horses that have not been nominated to an event by reason of performance of such horses at an earlier meeting, are invalid. Early and late closing events shall have not more than two also eligible

conditions.

6.4.4.7 The date and place where early and late closing events will be raced must be announced before nominations are taken. The date and place where stakes and futurities will be raced must be announced as soon as determined but, in any event, such announcement must be made no later than March 30th of the year in which the event is to be raced.

6.4.4.8 Deductions may not be made from nomination, sustaining and starting payments or from the advertised purse for clerical or any other expenses.

6.4.4.9 Every nomination shall constitute an agreement by the person making the nomination and the horse shall be subject to these rules. All disputes and questions arising out of such nomination shall be submitted to the Commission, whose decision shall be final.

6.4.4.10 Nominations and sustaining payments must be received by the sponsor or presenter not later than the hour of closing, except those made by mail must bear a postmark placed thereon not later than the hour of closing. In the event the hour of closing falls on a Saturday, Sunday or legal holiday, the hour of closing shall be extended to the same hour of the next business day. The hour of closing shall be midnight of the due date.

6.4.4.11 If conditions require a minimum number of nominations and the event does not fill, the Commission and each nominator shall be notified within twenty (20) days of the closing of nominations and a refund of nomination fees shall accompany such notice to nominators.

6.4.4.12 If conditions for early or late closing events allow transfer for change of gait, such transfer shall be to the lowest class the horse is eligible to at the adopted gait, eligibility to be determined at the time of closing nominations. The race to which the transfer may be made must be the one nearest the date of the event originally nominated to. Two-year-olds, three-year-olds, or four-year-olds, nominated in classes for their age, may only transfer to classes for the same age group at the adopted gait to the race nearest the date of the event they were originally nominated to, and entry fees to be adjusted.

6.4.4.13 A nominator is required to guarantee the identity and eligibility of nominations, and if this information is given incorrectly he or she may be fined, suspended, or expelled and the horse declared ineligible. If any purse money was obtained by an ineligible horse, the monies shall be forfeited and redistributed among those justly entitled to the same.

6.4.4.14 Early or late closing events must be contested if six or more betting interests are declared to start. If less horses are declared to start than required, the race may be declared off, in which case the total of nominations, sustaining and starting payments received shall be divided equally to the horses declared to start. Such distribution shall not be credited as purse winnings.

6.4.4.15 Stakes or futurities must be contested if one or more horses are declared to start. In the event only one horse, or only horses in the same interest start, it constitutes a walk-over. In the event no declarations are made, the total of nomination and sustaining payments shall be divided equally to the horses remaining eligible after payment to the last sustaining payment, but such distribution shall not be credited as purse winnings.

6.4.4.16 Associations shall provide stable space for each horse declared on the day before, the day of and the day following the race.

6.4.4.17 The maximum size of fields permitted in any added money event shall be no more than one trailer, ~~unless otherwise approved by the Commission.~~ as the event must be split into two divisions if there would be more than one trailer.

6.4.4.18 An association may elect to go with less than the number of trailers specified in subdivision 17 above.

6.4.4.19 In the event more horses are declared to start than allowed in one field, the race will be conducted in divisions or eliminations, as specified in the conditions.

6.4.4.20 In early closing races, late closing races and overnight races requiring entry fees, all monies paid in by the nominators in excess of 85 percent of the advertised purse shall be added to the advertised purse and the total shall then be considered to be the minimum purse. If the race is split and raced in divisions, the provisions of subdivision 21 below shall apply. Provided further that where overnight races are split and raced in eliminations rather than divisions, all starting fees payable under the provisions of this rule shall be added to the advertised purse.

6.4.4.21 Where a race other than a stake or futurity is divided, each division must race for at least 75 percent of the advertised purse.

6.4.4.22 In added money events conducted in eliminations, starters shall be divided by lot. Unless conditions provide otherwise, sixty percent of the total purse will be divided equally among the elimination heats. The final heat will be contested for 40 percent of the total purse. Unless the conditions provide otherwise, all elimination heats and the final heat must be raced on the same day. If the conditions provide otherwise, elimination heats must be contested not more than six days, excluding Sundays, prior to the date of the final heat. The winner of the final heat shall be the winner of the race.

6.4.4.23 The number of horses allowed to qualify for the final heat of an event conducted in elimination heats shall not exceed the maximum number permitted to start in accordance with the rules. In any elimination dash where there are horses unable to finish due to an accident and there are fewer horses finishing than would normally qualify for the final, the additional horses qualifying for the final shall be drawn by lot from among

those unoffending horses not finishing.

6.4.4.24 The judges' decisions in arriving at the official order of finish of elimination heats on the same program shall be final and irrevocable and not subject to appeal or protest.

6.4.4.25 Unless the conditions for the added money event provide otherwise the judges shall draw by lot the post positions for the final heat in elimination events, i.e. they shall draw positions to determine which of the two elimination heat winners shall have the pole, and which the second position; which of the two horses that were second shall start in the third position, and which in the fourth, etc.

6.4.4.26 In a two-in-three race, a horse must win two heats to win a race and there shall be 10 percent set aside for the race winner. Unless conditions state otherwise, the purse shall be divided and awarded according to the finish in each of the first two or three heats, as the case may be. If the number of advertised premiums exceeds the number of finishers, the excess premiums shall go to the winner of the heat. The fourth heat, when required, shall be raced for 10 percent of the purse set aside for the race winner. In the event there are three separate heat or dash winners and they alone come back in order to determine the race winner, they will take post positions according to the order of their finish in the previous heat. In a two-year-old race, if there are two heat winners and they have made a dead heat in the third heat, the race shall be declared finished and the one standing best in the summary shall be awarded the 10 percent. If the two heat winners make a dead heat and stand the same in the summary, the 10 percent shall be divided equally among them.

6.5 Cancellation of a Race

In case of cancellation of races, see Rule 7.3 --"Postponement and Cancellation."

6.6 Delaware Owned or Bred Races

6.6.1 Persons licensed to conduct harness horse racing meets under title 3, chapter 100, may offer non-stakes races limited to horses wholly owned by Delaware residents or sired by Delaware stallions.

6.6.2 For purposes of this rule, a Delaware bred horse shall be defined as one sired by a Delaware stallion who stood in Delaware during the entire breeding season in which it sired a Delaware bred horse or a horse whose dam was a wholly-owned Delaware mare at the time of breeding as shown on the horse's United State Trotting Association registration or eligibility papers. The breeding season means that period of time beginning February 1 and ending August 1 of each year.

6.6.3 All horses to be entered in Delaware owned or bred races must first be registered and approved by the Commission or its designee. The Commission may establish a date upon which a horse must be wholly-owned by a Delaware resident(s) to be eligible to be nominated, entered, or raced as Delaware-owned. In the case of a

corporation seeking to enter a horse in a Delaware-owned or bred event as a Delaware-owned entry, all owners, officers, shareholders, and directors must meet the requirements for a Delaware resident specified below. In the case of an association or other entity seeking to enter a horse in a Delaware owned or bred event as a Delaware-owned entry, all owners must meet the requirements for a Delaware resident specified below. Leased horses are ineligible as Delaware owned entries unless both the lessor and the lessee are Delaware residents as set forth in this Rule and 3 Del.C. section 10032.

6.6.4 The following actions shall be prohibited for Delaware-owned races and such horses shall be deemed ineligible to be nominated, entered, or raced as Delaware-owned horses:

6.6.4.1 Payment of the purchase price over time beyond the date of registration;

6.6.4.2 Payment of the purchase price through earnings beyond the date of registration;

6.6.4.3 Payment of the purchase price with a loan, other than from a commercial lender regulated in Delaware and balance due beyond the date of registration;

6.6.4.4 Any management fees, agent fees, consulting fees, or any other form of compensation to non-residents of Delaware, except industry standard training and driving fees; or

6.6.4.5 Leasing a horse to a non-resident of Delaware.

6.6.5 The Commission or its designee shall determine all questions about a person's eligibility to participate in Delaware-owned races. In determining whether a person is a Delaware Resident, the term "resident" shall mean the place where an individual has his or her permanent home, at which that person remains when not called elsewhere for labor or other special or temporary purposes, and to which that person returns in seasons of repose. The term "residence" shall mean a place a person voluntarily fixed as a permanent habitation with an intent to remain in such place for the indefinite future.

6.6.6 The Commission or its designee may review and subpoena any information which is deemed relevant to determine a person's residence, including but not limited to, the following:

6.6.6.1 Where the person lives and has been living;

6.6.6.2 The location of the person's sources of income;

6.6.6.3 The address used by the person for payment of taxes, including federal, state and property taxes;

6.6.6.4 The state in which the person's personal automobiles are registered;

6.6.6.5 The state issuing the person's driver's license;

6.6.6.6 The state in which the person is

registered to vote;

6.6.6.7 Ownership of property in Delaware or outside of Delaware;

6.6.6.8 The residence used for U.S.T.A. membership and U.S.T.A. registration of a horse, whichever is applicable;

6.6.6.9 The residence claimed by a person on a loan application or other similar document;

6.6.6.10 Membership in civic, community, and other organizations in Delaware and elsewhere.

6.6.6.11 None of these factors when considered alone shall be dispositive, except that a person must have resided in the State of Delaware in the preceding calendar year for a minimum of one hundred and eighty three (183) days. Consideration of all of these factors together, as well as a person's expressed intention, shall be considered in arriving at a determination. The burden shall be on the applicant to prove Delaware residency and eligibility for Delaware-owned or bred races. The Commission may promulgate by regulation any other relevant requirements necessary to ensure that the licensee is a Delaware resident. In the event of disputes about a person's eligibility to enter a Delaware-owned or bred race, the Commission shall resolve all disputes and that decision shall be final.

6.6.7 Each owner and trainer, or the authorized agent of an owner or trainer, or the nominator (collectively, the "entrant"), is required to disclose the true and entire ownership of each horse with the Commission or its designee, and to disclose any changes in the owners of the registered horse to the Commission or its designee. All licensees and racing officials shall immediately report any questions concerning the ownership status of a horse to the Commission racing officials, and the Commission racing officials may place such a horse on the steward's or judge's list. A horse placed on the steward's or judge's list shall be ineligible to start in a race until questions concerning the ownership status of the horse are answered to the satisfaction of the Commission or the Commission's designee, and the horse is removed from the steward or judge's list.

6.6.8 If the Commission, or the Commission's designee, finds a lack of sufficient evidence of ownership status, residency, or other information required for eligibility, prior to a race, the Commission or the Commission's designee, may order the entrant's horse scratched from the race or ineligible to participate.

6.6.9 After a race, the Commission or the Commission's designee, may upon reasonable suspicion, withhold purse money pending an inquiry into ownership status, residency, or other information required to determine eligibility. If the purse money is ultimately forfeited because of a ruling by the Commission or the Commission's designee, the purse money shall be redistributed per order of the Commission or the Commission's designee.

6.6.10 If purse money has been paid prior to reasonable suspicion, the Commission or the Commission's designee may conduct an inquiry and make a determination as to eligibility. If the Commission or the Commission's designee determines there has been a violation of ownership status, residency, or other information required for eligibility, it shall order the purse money returned and redistributed per order of the Commission or the Commission's designee.

6.6.11 Anyone who willfully provides incorrect or untruthful information to the Commission or its designee pertaining to the ownership of a Delaware-owned or bred horse, or who attempts to enter a horse restricted to Delaware-owned entry who is determined not to be a Delaware resident, or who commits any other fraudulent act in connection with the entry or registration of a Delaware-owned or bred horse, in addition to other penalties imposed by law, shall be subject to mandatory revocation of licensing privileges in the State of Delaware for a period to be determined by the Commission in its discretion except that absent extraordinary circumstances, the Commission shall impose a minimum revocation period of two years and a minimum fine of \$5,000 from the date of the violation of these rules or the decision of the Commission, whichever occurs later.

6.6.12 Any person whose license is suspended or revoked under subsection (k) of this rule shall be required to apply for reinstatement of licensure and the burden shall be on the applicant to demonstrate that his or he licensure will not reflect adversely on the honesty and integrity of harness racing or interfere with the orderly conduct of a race meeting. Any person whose license is reinstated under this subsection shall be subject to a two year probationary period, and may not participate in any Delaware-owned or bred race during this probationary period. Any further violations of this section by the licensee during the period of probationary licensure shall, absent extraordinary circumstances, result in the Commission imposing revocation of all licensure privileges for a five year period along with any other penalty the Commission deems reasonable and just.

6.6.13 Any suspension imposed by the Commission under this rule shall not be subject to the stay provisions in 29 Del. C. §10144.

1 DE Reg. 503 (11/01/97)

2 DE Reg. 1240 (1/1/99)

2 DE Reg. 1764 (4/1/99)

3 DE Reg. 432 (9/1/99)

3 DE Reg 1520 (5/1/00)

4 DE Reg 336 (8/1/00)

4 DE Reg. 1123 (1/1/01)

4 DE Reg 1652 (4/1/01)

8.0 Veterinary Practices, Equine Health Medication

8.1 General Provisions

The purpose of this Rule is to protect the integrity of horse racing, to ensure the health and welfare of race horses and to safeguard the interests of the public and the participants in racing.

8.2 Veterinary Practices

8.2.1 Veterinarians Under Authority of Commission Veterinarian

Veterinarians licensed by the Commission and practicing at any location under the jurisdiction of the Commission are subject to these Rules, which shall be enforced under the authority of the Commission Veterinarian and the State Steward. Without limiting the authority of the State Steward to enforce these Rules, the Commission Veterinarian may recommend to the State Steward or the Commission the discipline which may be imposed upon a veterinarian who violates the rules.

3 DE Reg 1520 (5/1/00)

8.2.2 Treatment Restrictions

8.2.2.1 Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the Commission.

8.2.2.2 This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

8.2.2.2.1 a recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

8.2.2.2.2 a non-injectable substance on the direction or by prescription of a licensed veterinarian; or

8.2.2.2.3 a non-injectable non-prescription medication or substance.

8.2.2.3 No person shall possess a hypodermic needle, syringe or injectable of any kind on association premises, unless otherwise approved by the Commission. At any location under the jurisdiction of the Commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the Commission. If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the Commission, that person may request permission of the State Steward, judges and/or the Commission in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a syringe, and must comply with any conditions and restrictions set by the State Steward, judges and/or the Commission.

8.3 Medications and Foreign Substances

Foreign substances shall mean all substances, except

those, which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Upon a finding of a violation of these medication and prohibited substances rules, the State Steward shall consider the classification level of the violation as listed at the time of the violation by the Uniform Classification Guidelines of Foreign Substances, as promulgated by the Association of Racing Commissioners International, and shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The State Steward may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section. The State Steward may also consult with the official veterinarian to determine the nature and seriousness of the laboratory finding or the medication violation; provided, however, that in the event the State Steward determines that mitigating circumstances require imposition of a lesser penalty, he may impose the lesser penalty. In the event the State Steward wishes to impose a greater penalty or a penalty in excess of the authority granted him, then, and in such event, he may impose the maximum penalty authorized and refer the matter to the Commission with specific recommendations for further action. At the discretion of the State Steward, a horse alleged to have tested positive for a prohibited substance may be prohibited from racing pending a timely hearing; provided, however, that other horses registered under the care of the trainer of such a horse may, with the consent of the State Steward of the meeting, be released to the care of another licensed trainer, and may race.

8.3.1 Uniform Classification Guidelines

The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the Commission Veterinarian and the racing secretary.

8.3.1.1 Class 1

Opiates, opium derivatives, synthetic opiates, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the race horse and their pharmacological potential for altering the performance of a race is very high.

8.3.1.2 Class 2

Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the race horse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a race horse. The following groups of drugs are in this class:

8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;

8.3.1.2.2 Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;

8.3.1.2.3 Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);

8.3.1.2.4 Drugs with prominent CNS depressant action;

8.3.1.2.5 Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;

8.3.1.2.6 Muscle blocking drugs which have a direct neuromuscular blocking action;

8.3.1.2.7 Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and

8.3.1.2.8 Snake venoms and other biologic substances which may be used as nerve blocking agents.

8.3.1.3 Class 3

Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a race horse. The following groups of drugs are in this class:

8.3.1.3.1 Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);

8.3.1.3.2 A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);

8.3.1.3.3 Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;

8.3.1.3.4 Primary vasodilating/hypotensive agents; and

8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

8.3.1.4 Class 4

This category is comprised primarily of therapeutic medications routinely used in race horses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

8.3.1.4.1 Non-opiate drugs which have a mild central analgesic effect;

8.3.1.4.2 Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects

8.3.1.4.2.1 Drugs used solely as topical vasoconstrictors or decongestants

8.3.1.4.2.2 Drugs used as gastrointestinal antispasmodics

8.3.1.4.2.3 Drugs used to void the urinary bladder

8.3.1.4.2.4 Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.

8.3.1.4.3 Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);

8.3.1.4.4 Mineralocorticoid drugs;

8.3.1.4.5 Skeletal muscle relaxants;

8.3.1.4.6 Anti-inflammatory

drugs--those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

8.3.1.4.6.1 Non-Steroidal Anti-Inflammatory Drugs (NSAIDs)--aspirin-like drugs;

8.3.1.4.6.2 Corticosteroids (glucocorticoids); and

8.3.1.4.6.3 Miscellaneous anti-inflammatory agents.

8.3.1.4.7 Anabolic and/or androgenic steroids and other drugs;

8.3.1.4.8 Less potent diuretics;

8.3.1.4.9 Cardiac glycosides and antiarrhythmics including:

8.3.1.4.9.1 Cardiac glycosides;

8.3.1.4.9.2 Antiarrhythmic agents (exclusive of lidocaine, bretylium and propranolol); and

8.3.1.4.9.3 Miscellaneous cardiotonic

drugs.

8.3.1.4.10 Topical Anesthetics--agents not available in injectable formulations;

8.3.1.4.11 Antidiarrheal agents; and

8.3.1.4.12 Miscellaneous drugs including:

8.3.1.4.12.1 Expectorants with little or no other pharmacologic action;

8.3.1.4.12.2 Stomachics; and

8.3.1.4.12.3 Mucolytic agents.

8.3.1.5 Class 5

Drugs in this category are therapeutic medications for which concentration limits have been

established as well as certain miscellaneous agents. Included specifically are agents which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.

8.3.2 Penalty Recommendations

~~In the absence of aggravating or mitigating circumstances,~~ The following penalties and disciplinary measures may be imposed for violations of these medication and prohibited substances rules:

8.3.2.1 Class 1 – ~~One to five years suspension and at least \$5,000 fine and loss of purse.~~ in the absence of extraordinary circumstances, a minimum license revocation of eighteen months and a minimum fine of \$5,000, and a maximum fine up to the amount of the purse money for the race in which the infraction occurred, forfeiture of the purse money, and assessment for cost of the drug testing..

8.3.2.2 Class 2— ~~Six months to one year suspension and \$1,500 to \$2,500 fine and loss of purse.~~ in the absence of extraordinary circumstances, a minimum license revocation of nine months and a minimum fine of \$3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.3 Class 3— ~~Sixty days to six months suspension and up to \$1,500 fine and loss of purse.~~ in the absence of extraordinary circumstances, a minimum license revocation of ninety days, and a minimum fine of \$3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.4 Class 4— ~~Fifteen to 60 days suspension and up to \$1,000 fine and loss of purse.~~ in the absence of extraordinary circumstances, a minimum license revocation of thirty days, and a minimum fine of \$2,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for the cost of the drug testing.

8.3.2.4.1 ~~If the substance is detected in a blood sample, or if the substance is detected in any sample in which more than one prohibited substance is detected, or if the substance is detected in a urine sample at a level which, in the opinion of the official chemist, caused interference with testing procedures: Fifteen to 50 days suspension and up to \$1,000 fine and loss of purse.~~

8.3.2.4.2 ~~If the substance is detected in a urine sample but not in a blood sample:~~

8.3.2.4.2.1 ~~And if such detection is the first violation of this chapter within a 12-month period: Up to a \$250 fine and loss of purse.~~

8.3.2.4.2.2 ~~And if such detection is the second violation of this chapter within a 12-month period: Up to a \$1,000 fine and loss of purse.~~

8.3.2.4.2.3 ~~And if such detection is~~

~~the third violation of this chapter within a 12-month period: Up to a \$1,000 fine and up to a 50-day suspension and loss of purse.~~

8.3.2.5 Class 5—Zero to 15 days suspension with a possible loss of purse and/or fine and assessment for the cost of the drug testing.

~~8.3.2.5.1 If the substance is detected in a blood sample, or if the substance is detected in any sample in which more than one prohibited substance is detected in a urine sample at a level which, in the opinion of the official chemist, caused interference with the testing procedures: Zero to 15 days suspension and up to a \$250 fine and loss of purse.—~~

~~8.3.2.5.2 If the substance is detected in a urine sample but not in a blood sample:~~

~~8.3.2.5.2.1 And if such detection is the first violation of this chapter within a 12-month period: Up to a \$250 fine and loss of purse.~~

~~8.3.2.5.2.2 And if such detection is the second violation of this chapter within a 12-month period: Up to a \$1,000 fine and loss of purse.—~~

~~8.3.2.5.2.3 And if such detection is the third violation of this chapter within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.—~~

8.3.2.6 In determining the appropriate penalty with respect to a medication rule violation, the State Steward or other designee of the Commission may use his discretion in the application of the foregoing penalty recommendations, and shall consult with the State Veterinarian, the Commission veterinarian and/or the Commission chemist to determine the seriousness of the laboratory finding or the medication violation. ~~Where~~ Aggravating or mitigating circumstances exist, in any case should be considered and greater or lesser penalties and/or disciplinary measures may be imposed than those set forth above. Specifically, if the State Steward or other designee of the Commission determines that mitigating circumstances warrant imposition of a lesser penalty than the recommendations suggest, he may impose a lesser penalty. If the State Steward or other designee of the Commission determines that aggravating circumstances require imposition of a greater penalty, however, he may only impose up to the maximum recommended penalty and must refer the case to the Commission for its review, with a recommendation for specific action. Without limitation, the presence of the following aggravating circumstances may warrant imposition of greater penalties than those recommended, up to and including a lifetime suspension:

8.3.2.6.1 Repeated violations of these medication and prohibited substances rules by the same trainer or with respect to the same horse;

8.3.2.6.2 Prior violations of similar rules in other racing jurisdictions by the same trainer or with

respect to the same horse;

8.3.2.6.3 Violations, which endanger the life or health of the horse or endanger a driver in the race.

8.3.2.6.4 Violations that mislead the wagering public and those desiring to claim a horse as to the condition and ability of the horse;

8.3.2.6.5 Violations that undermine or corrupt the integrity of the sport of harness racing.

8.3.2.7 Any person whose license is reinstated after a prior violation involving class 1 or class 2 drugs and who commits a subsequent violation within five years of the prior violation, shall absent extraordinary circumstances, be subject to a minimum revocation of license for five years, and a minimum fine in the amount of the purse money of the race in which the infraction occurred, along with any other penalty just and reasonable under the circumstances.

8.3.2.7.1 With respect to Class 1, 2, and 3 drugs detected in a urine sample but not in a blood sample, and in addition to the foregoing factors, in determining the length of a suspension and/or the amount of a fine, or both, the State Steward or judges may take into consideration, without limitation, whether the drug has any equine therapeutic use, the time and method of administration, if determined, whether more than one foreign substance was detected in the sample, and any other appropriate aggravating or mitigating factors.

8.3.2.8 Whenever a trainer is suspended more than once within a two-year period for a violation of this chapter regarding medication rules, any suspension imposed on the trainer for any such subsequent violation also shall apply to the horse involved in such violation. The State Steward or judges may impose a shorter suspension on the horse than on the trainer.

8.3.2.9 At the discretion of the State Steward or other designee of the Commission, a horse as to which an initial finding of a prohibited substance has been made by the Commission chemist may be prohibited from racing pending a timely hearing; provided, however, that other horses registered under the care of the trainer of such horse may, with the consent of the State Steward or other designee of the Commission be released to the care of another trainer, and may race.

8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

8.3.3.1.1 the drug or medication is listed by the Association of Racing Commissioners International's Drug Testing and Quality Assurance Program; and

8.3.3.1.2 the maximum permissible urine or blood concentration of the drug or medication does not exceed the limit established in these Rules or otherwise approved and published by the Commission.

8.3.3.2 Except as otherwise provided by this

chapter, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this chapter during the 24-hour period before post time for the race in which the horse is entered. Such administration shall result in the horse being scratched from the race and may result in disciplinary actions being taken.

8.3.3.3 A finding by the official chemist of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

8.3.3.3.1 drugs or medications for which no acceptable levels have been established in these Rules or otherwise approved and published by the Commission.

8.3.3.3.2 therapeutic medications in excess of acceptable limits established in these rules or otherwise approved and published by the Commission.

8.3.3.3.3 substances present in the horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules, provided that a licensee has the right, pursuant to such procedures as may be established from time to time by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels; and provided, further, that an excess total carbon dioxide level shall be penalized in accordance with the penalty recommendation applicable to a Class 2 substance.

8.3.3.3.4 substances foreign to a horse at levels that cause interference with testing procedures. The detection of any such substance is a violation, regardless of the classification or definition of the substance or its properties under the Uniform Classification Guidelines for Foreign Substances.

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8.3.3.4 The tubing, dosing or jugging of any horse for any reason within 24 hours prior to its scheduled race is prohibited unless administered for medical emergency purposes by a licensed veterinarian, in which case the horse shall be scratched. The practice of administration of any substance via a naso-gastric tube or dose syringe into a horse's stomach within 24 hours prior to its scheduled race is considered a violation of these rules and subject to disciplinary action, which may include fine, suspension and revocation or license.

8.3.4 Medical Labeling

8.3.4.1 No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labelled in accordance with this subsection.

8.3.4.2 Any drug or medication which is used or kept on association grounds and which, by federal or Delaware law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable federal and state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

8.3.4.2.1 the name of the product;

8.3.4.2.2 the name, address and telephone number of the veterinarian prescribing or dispensing the product;

8.3.4.2.3 the name of each patient (horse) for whom the product is intended/prescribed;

8.3.4.2.4 the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

8.3.4.2.5 the name of the person (trainer) to whom the product was dispensed.

8.3.5 Furosemide (Lasix)

8.3.5.1 General

Furosemide (Lasix) may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. Except under the instructions of the Commission Veterinarian for the purpose of removing a horse from the Steward's List or to facilitate the collection of a post-race urine sample, furosemide (Lasix) shall be permitted only after the Commission Veterinarian has placed the horse on the Bleeder List.

8.3.5.2 Method of Administration

Lasix shall be administered intravenously by a licensed practicing veterinarian, unless the Commission Veterinarian determines that a horse cannot receive an intravenous administration of Lasix and gives permission for an intramuscular administration; provided, however, that once Lasix is administered intramuscularly, the horse shall remain in a detention area under the supervision of a Commission representative until it races.

8.3.5.3 Dosage

Lasix shall be administered to horses on the Bleeder List only by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

8.3.5.3.1 If less than 500 milligrams is administered, and subsequent laboratory findings are inconsistent with such dosage or with the time of administration, then the trainer shall be subject to a fine or other disciplinary action;

8.3.5.3.2 Not more than 750 milligrams may be administered if (1) the State veterinarian grants permission for a dosage greater than 500 milligrams, and (2) after the administration of such greater dosage, the horse remains in a detention area under the supervision of a Commission representative until it races; and

8.3.5.3.3 The dosage administered may not vary by more than 250 milligrams from race to race without the permission of the Commission Veterinarian.

8.3.5.4 Timing of Administration

Horses must be presented at the Lasix stall in the paddock, and the Lasix administered, not more than three hours and 30 minutes (3-1/2 hours) nor less than three hours (three hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined.

8.3.5.5 Veterinary Charges

It is the responsibility of the owner or trainer, prior to the administration of the medication, to pay the licensed practicing veterinarian at the rate approved by the Commission. No credit shall be given.

8.3.5.6 Restrictions

No one except a licensed practicing veterinarian shall possess equipment or any substance for injectable administration on the race track complex, and no horse is to receive furosemide (Lasix) in oral form.

8.3.5.7 Post-Race Quantification

8.3.5.7.1 As indicated by post-race quantification, a horse may not carry in its body at the time of the running of the race more than 100 nanograms of Lasix per milliliter of plasma in conjunction with a urine that has a specific gravity of less than 1.01, unless the dosage of Lasix:

8.3.5.7.1.1 Was administered intramuscularly as provided in 8.3.5.2; or

8.3.5.7.1.2 Exceeded 500 milligrams as provided in 8.3.5.3.2.

8.3.5.7.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower, and provided that the dosage of furosemide was not administered intramuscularly as provided in 8.3.5.3.2 or exceeded 500 milligrams as provided in 8.3.5.3.2, then a penalty shall be imposed as follows:

8.3.5.7.2.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.5.7.2.2 If such overage

is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.5.7.2.3 If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.5.7.2.4 If in the opinion of the official chemist any such overage caused interference with testing procedures, then for each such overage a penalty of up to a \$1,000 fine and a suspension of from 15 to 50 days may be imposed.

8.3.5.8 Reports

8.3.5.8.1 The licensed practicing veterinarian who administers Lasix to a horse scheduled to race shall prepare a written certification indicating the time, dosage and method of administration.

8.3.5.8.2 The written certification shall be delivered to a Commission representative designated by the State Steward at least one (1) hour before the horse is scheduled to race.

8.3.5.8.3 The State Steward or judges shall order a horse scratched if the written certification is not received in a timely manner.

8.3.5.9 Bleeder List

8.3.5.9.1 The Commission Veterinarian shall maintain a Bleeder List of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage (EIPH) or the existence of hemorrhage in the trachea post exercise upon:

8.3.5.9.1.1 visual examination wherein blood is noted in one or both nostrils either:

8.3.5.9.1.1.1 during a race;

8.3.5.9.1.1.2 immediately post-race or post-exercise on track; or

8.3.5.9.1.1.3 within one hour post-race or post-exercise in paddock and/or stable area, confirmed by endoscopic examination; or

8.3.5.9.1.2 endoscopic examination, which may be requested by the owner or trainer who feels his or her horse is a bleeder. Such endoscopic examination must be done by a practicing veterinarian, at the owner's or trainer's expense, and in the presence of the Commission Veterinarian or Lasix veterinarian. Such an examination shall take place within one hour post-race or post-exercise; or

8.3.5.9.1.3 presentation to the Commission Veterinarian, at least 48 hours prior to racing, of a current Bleeder Certificate from an official veterinarian from any other jurisdiction, which show the date, place and method -- visual or endoscopy -- by which the horse was determined to have bled, or which attests that the horse is a known bleeder and receives bleeder medication in that jurisdiction, provided that such jurisdiction's criteria for the identification of bleeders are satisfactory to the Commission

Veterinarian.

8.3.5.9.2 The confirmation of a bleeder horse must be certified in writing by the Commission Veterinarian or the Lasix veterinarian and entered on the Bleeder List. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's eligibility certificate.

8.3.5.9.3 Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List, and Lasix must be administered to the horse in accordance with these rules prior to every race, including qualifying races, in which the horse starts.

8.3.5.9.4 A horse which bleeds based on the criteria set forth in 8.3.5.9.1 above shall be restricted from racing at any facility under the jurisdiction of the Commission, as follows:

8.3.5.9.4.1 1st time - 10 days;

8.3.5.9.4.2 2nd time - 30 days, provided that the horse must be added to or remain on the Bleeder List, and must complete a satisfactory qualifying race before resuming racing;

8.3.5.9.4.3 3rd time - 30 days, and the horse shall be added to the Steward's List, to be removed at the discretion of the Commission Veterinarian following a satisfactory qualifying race after the mandatory 30-day rest period; and

8.3.5.9.4.4 4th time - barred for life.

8.3.5.9.5 An owner or trainer must notify the Commission Veterinarian immediately of evidence that a horse is bleeding following exercise or racing.

8.3.5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a 10-day rest period following such request, and then re-qualifies.

8.3.5.9.7 Any horse on the Bleeder List which races in a jurisdiction where it is not eligible for bleeder medication, whether such ineligibility is due to the fact that it does not qualify for bleeder medication in that jurisdiction or because bleeder medication is prohibited in that jurisdiction, shall automatically remain on the Bleeder List at the discretion of the owner or trainer, provided that such decision by the owner or trainer must be declared at the time of the first subsequent entry in Delaware, and the Lasix symbol in the program shall appropriately reflect that the horse did not receive Lasix its last time out. Such an election by the owner or trainer shall not preclude the Commission Veterinarian, State Steward or Presiding Judge from requiring re-qualification whenever a horse on the Bleeder List races in another jurisdiction without bleeder medication, and the integrity of the Bleeder List may be questioned.

8.3.5.9.8 Any horse on the Bleeder List which races without Lasix in any jurisdiction which permits the use of Lasix shall automatically be removed from the

Bleeder List. In order to be restored to the Bleeder List, the horse must demonstrate EIPH in accordance with the criteria set forth in subdivision 1 above. If the horse does demonstrate EIPH and is restored to the Bleeder List, the horse shall be suspended from racing in accordance with the provisions of 8.3.6.4 above.

8.3.5.9.9 The State Steward or Presiding Judge, in consultation with the State veterinarian, will rule on any questions relating to the Bleeder List.

8.3.5.10 Medication Program Entries

It is the responsibility of the trainer at the time of entry of a horse to provide the racing secretary with the bleeder medication status of the horse on the entry blank, and also to provide the Commission Veterinarian with a bleeder certificate, if the horse previously raced out-of-state on bleeder medication.

8.3.6 Phenylbutazone (Bute)

8.3.6.1 General

8.3.6.1.1 Phenylbutazone or oxyphenbutazone may be administered to horses three years of age and older in such dosage amount that the official test sample shall contain not more than 2.0 micrograms per milliliter of blood plasma.

8.3.6.1.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.0 but not more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then warnings shall be issued to the trainer.

8.3.6.1.3 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then a penalty shall be imposed as follows:

8.3.6.1.3.1 For an average between 2.6 and less than 5.0 micrograms per milliliter:

8.3.6.1.3.1.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.6.1.3.1.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.6.1.3.1.3 If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.6.1.3.1.4 For an overage of 5.0 micrograms or more per milliliter: Up to a \$1,000 fine and up to a 5-day suspension and loss of purse.

8.3.6.1.4 If post-race quantification indicates that a horse carried in its body at the time of the running of the race any quantity of phenylbutazone or oxyphenbutazone, and also carried in its

body at the time of the running of the race any quantity of any other non-steroidal anti-inflammatory drug, including but not limited to naproxen, flunixin and meclufenamic acid, then such presence of phenylbutazone or oxyphenbutazone, shall constitute a violation of this rule and shall be subject to a penalty of up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

8.4 Testing

8.4.1 Reporting to the Test Barn

8.4.1.1 Horses shall be selected for post-racing testing according to the following protocol:

8.4.1.1.1 At least one horse in each race, selected by the judges from among the horses finishing in the first four positions in each race, shall be tested.

8.4.1.1.3 Horses selected for testing shall be taken to the Test Barn or Test Stall to have a blood, urine and/or other specimen sample taken at the direction of the State veterinarian.

8.4.1.2 Random or extra testing, including pre-race testing, may be required by the State Steward or judges, or by the Commission, at any time on any horse on association grounds.

8.4.1.3 Unless otherwise directed by the State Steward, judges or the Commission Veterinarian, a horse that is selected for testing must be taken directly to the Test Barn.

8.4.2 Sample Collection

8.4.2.1 Sample collection shall be done in accordance with the RCI Drug Testing and Quality Assurance Program External Chain of Custody Guidelines, or other guidelines and instructions provided by the Commission Veterinarian.

8.4.2.2 The Commission veterinarian shall determine a minimum sample requirement for the primary testing laboratory. A primary testing laboratory must be approved by the Commission.

8.4.3 Procedure for Taking Specimens

8.4.3.1 Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the Commission Veterinarian. Only the owner, trainer, groom, or hot walker of horses to be tested shall be admitted to the detention area without permission of the Commission Veterinarian.

8.4.3.2 Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

8.4.3.2.1 Buckets and water shall be furnished by the Commission Veterinarian.

8.4.3.2.2 If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the Commission Veterinarian.

8.4.3.2.3 A licensed veterinarian shall attend a horse in the detention area only in the presence of

the Commission Veterinarian.

8.4.3.3 One of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

8.4.3.3.1 The owner;

8.4.3.3.2 The responsible trainer who, in the case of a claimed horse, shall be the person in whose name the horse raced; or

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4

8.4.3.4.1 All urine containers shall be supplied by the Commission laboratory and shall be sealed with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by (subsection (3)) subsection 8.4.3.3 of this section.

8.4.3.4.2 Blood vacutainers will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

8.4.3.5 Samples taken from a horse, by the Commission Veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

8.4.3.5.1 These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness.

8.4.3.5.2 The Commission Veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

8.4.3.5.2.2 Document the race and day, verified by the witness; and

8.4.3.5.2.3 Place the detached portions of the identification tags in a sealed envelope for delivery only to the stewards.

8.4.3.5.3 After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the official chemist designated by the Commission.

8.4.3.5.4 The "secondary" sample shall remain in the custody of the Commission Veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

8.4.3.5.5 The Commission Veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

8.4.3.5.6 When the Commission chemist has reported that the "primary" sample delivered

contains no prohibited drug, the "secondary" sample shall be properly disposed.

8.4.3.5.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission Veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission Veterinarian.

8.4.3.5.8 If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples.

8.4.3.5.9 Two (2) blood samples shall be collected in twenty (20) milliliters vacutainers, one for the "primary" and one for the "secondary" sample.

8.4.3.5.10 In the event of an initial finding of a prohibited substance or in violation of these Rules and Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral or written notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the "secondary" sample; provided, however, that with respect to a finding of a prohibited level of total carbon dioxide in a blood sample, there shall be no right to testing of the "secondary sample" unless such finding initially is made at the racetrack on the same day that the tested horse raced, and in every such circumstance a "secondary sample" shall be transported to the Commission laboratory on an anonymous basis for confirmatory testing.

8.4.3.5.10.1 If testing of the "secondary" sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

8.4.3.5.10.2 Testing of the "secondary" samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

8.4.3.5.11 The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

8.4.3.5.11.1 A Commission

representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules and Regulations may be present at the time of the opening, repackaging, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

8.4.3.5.11.2 The referee laboratory shall be informed of the initial findings of the Commission chemist prior to making the test.

8.4.3.5.11.3 If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

8.4.3.5.12 The Commission Veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

8.4.3.5.13 If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

8.5 Trainer Responsibility

The purpose of this subsection is to identify responsibilities of the trainer that pertain specifically to the health and well-being of horses in his/her care.

8.5.1 The trainer is responsible for the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible. Whenever a trainer of a horse names a substitute trainer for program purposes due to his or her inability to be in attendance with the horse on the day of the race, or for any other reason, both trainers shall be responsible for the condition of the horse should the horse test positive; provided further that, except as otherwise provided herein, the trainer of record (programmed trainer) shall be any individual who receives any compensation for training the horse.

8.5.2A trainer shall prevent the administration of any drug or medication or other foreign substance that may

cause a violation of these rules.

8.5.3A trainer whose horse has been claimed remains responsible for any violation of rules regarding that horse's participation in the race in which the horse is claimed.

8.5.4 The trainer is responsible for:

8.5.4.1 maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

8.5.4.2 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5 Additionally, with respect to horses in his/her care or custody, the trainer is responsible for:

8.5.5.1 the proper identity, custody, care, health, condition and safety of horses;

8.5.5.2 ensuring that at the time of arrival at locations under the jurisdiction of the Commission a valid health certificate and a valid negative Equine Infectious Anemia (EIA) test certificate accompany each horse and which, where applicable, shall be filed with the racing secretary;

8.5.5.3 having each horse in his/her care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the racing secretary;

8.5.5.4 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5.5 immediately reporting the alteration of the sex of a horse to the clerk of the course, the United States Trotting Association and the racing secretary;

8.5.5.6 promptly reporting to the racing secretary and the Commission Veterinarian when a posterior digital neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration;

8.5.5.7 promptly notifying the Commission Veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge;

8.5.5.8 promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the Commission to the State Stewards and judges, the Commission Veterinarian, and the United States Trotting Association;

8.5.5.9 maintaining a knowledge of the medication record and status;

8.5.5.10 immediately reporting to the State Steward, judges and the Commission Veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

8.5.5.11 ensuring the fitness to perform creditably at the distance entered;

8.5.5.12 ensuring that every horse he/she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed in this chapter;

8.5.5.13 ensuring proper bandages, equipment and shoes;

8.5.5.14 presence in the paddock at least one hour before post time or at a time otherwise appointed before the race in which the horse is entered;

8.5.5.15 personally attending in the paddock and supervising the harnessing thereof, unless excused by the Paddock Judge;

8.5.5.16 attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so; and

8.5.5.17 immediately reporting to the State Steward or other Commission designee, or to the State Veterinarian or Commission Veterinarian if the State Steward or other Commission designee is unavailable, the death of any horse drawn in to start in a race in this jurisdiction provided that the death occurred within 60 days of the date of the draw.

8.6 Physical Inspection of Horses

8.6.1 Veterinarian's List

8.6.1.1 The Commission Veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or medical condition.

8.6.1.2 A horse may be removed from the Veterinarian's List when, in the opinion of the Commission Veterinarian, the horse has satisfactorily recovered the capability of competing in a race.

8.6.2 Postmortem Examination

8.6.2.1 The Commission may conduct a postmortem examination of any horse that is injured in this jurisdiction while in training or in competition and that subsequently expires or is destroyed. In proceeding with a postmortem examination the Commission or its designee shall coordinate with the trainer and/or owner to determine and address any insurance requirements.

8.6.2.2 The Commission may conduct a postmortem examination of any horse that expires while housed on association grounds or at recognized training facilities within this jurisdiction. Trainers and owners shall be required to comply with such action as a condition of licensure.

8.6.2.3 The Commission may take possession of the horse upon death for postmortem examination. The Commission may submit blood, urine, other bodily fluid specimens or other tissue specimens collected during a postmortem examination for testing by the Commission-selected laboratory or its designee. Upon completion of the postmortem examination, the carcass may be returned to the owner or disposed of at the owner's option.

8.6.2.4 The presence of a prohibited substance

in a horse, found by the official laboratory or its designee in a bodily fluid specimen collected during the postmortem examination of a horse, which breaks down during a race constitutes a violation of these rules.

8.6.2.5 The cost of Commission-ordered postmortem examinations, testing and disposal shall be borne by the Commission.

1 DE Reg. 505 (11/01/97)

1 DE Reg. 923 (1/1/98)

3 DE Reg 1520 (5/1/00)

4 DE Reg 336 (8/1/00)

4 DE Reg. 6 (7/1/00)

THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10103 (3 **Del.C.** §10103)

The **Thoroughbred Racing Commission** proposes to amend the following rules. The proposed amendment to 13.05 would provide that a claimed horse shall not run for twenty days after being claimed in a race in which the eligibility price is less than twenty-five percent than the claiming price, and the amended rule will not apply to starter handicaps, allowance, and starter allowance races. The Commission also proposes to delete the current Rule 13.19 which currently provides that no horse claimed in a claiming race shall race in another race less than the original claiming price for a thirty day period.

The Commission will accept written comments on the proposed rule amendments from December 1, 2001 until January 3, 2002. Written comments should be sent to the Delaware Thoroughbred Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901, att: John Wayne. Copies of the Commission's existing rules and the proposed rules can be obtained by contacting the Commission office at 302-698-4600. The Commission will conduct a public hearing on these proposed rules on January 3, 2002 at 10:00 a.m. at the Department of Agriculture, 2320 S. DuPont Highway, Dover, DE.

PART 13 -- CLAIMING RACES

13.01 Owners Entitled:

In claiming races, any horse is subject to claim for its entered price by any Owner in good standing who possesses a valid/current Delaware license.

A new Owner, i.e., an individual, partnership, corporation or any other authorized racing interest who has not held an Owner's licenses in any racing jurisdiction during the prior year, is eligible to claim by obtaining an "Open Claiming License" from the Delaware Thoroughbred Racing

Commission.

In order to obtain an open claiming license and file an open claim, an individual must comply with the following procedures:

(a) Depositing an amount no less than the minimum claiming price of the intended claim at that meet with the Horsemen's Bookkeeper. Such amount shall remain on account until a claim is in fact made. In the event of withdrawal of such fund, any license issued hereunder shall be automatically revoked and terminated.

(b) Securing an Owner or authorized racing interest license by the Delaware Thoroughbred Racing Commission. Such license will be conditioned upon the making of a claim and shall be revoked if no such claim is, in fact, made within thirty (30) racing days after issuance or if the deposit above required is withdrawn prior to completion of a claim.

(c) Naming a Trainer licensed by the Delaware Thoroughbred Racing Commission who will represent him once said claim is made.

5 DE Reg. 849 (10/1/01)

13.02 Claim by Agent:

A claim may be made by an authorized agent, but an agent may claim only for the account of those for whom he is authorized and registered as agent and the name of the authorized agent, as well as the name of the Owner for whom the claim is being made, shall appear on the claim slip.

13.03 Claiming Own Horse Prohibited:

No person shall claim his own horse or cause his own horse to be claimed, directly or indirectly, for his own account. No claimed horse shall remain in the same stable or under the care or management of the Owner or Trainer from whom claimed.

13.04 Limits on claims:

No person shall claim more than one horse from any one race. No authorized agent, although representing several Owners, shall submit more than one claim for any race. When a stable consists of horses owned by more than one person, trained by the same Trainer, not more than one claim may be entered on behalf of such stable in any one race. An Owner who races in a partnership may not claim except in the interest of the partnership, unless he has also started a horse in his own individual interest. An owner who races in a partnership may claim in his or her individual interest if the individual has started a horse in the partnership. The individual must also have an account with the horsemen's bookkeeper that is separate from the partnership account.

2 DE Reg. 2043 (5/1/99)

13.05 Thirty Day Prohibition -- Racing Claimed Horse: ~~Repeated 8/95.~~

A claimed horse shall not run for twenty days after being claimed in a race in which the determining eligibility price is less than twenty-five percent more than the price for which the horse was claimed. The day claimed shall not count but the following calendar day shall be the first day, and the horse shall be entitled to enter whenever necessary so that it may start on the twenty-first day calendar following the claim. This provision shall not apply to starter handicaps, allowance and starter allowance races.

13.06 Thirty Day Prohibition -- Sale of Claimed Horse:

No horse claimed in a claiming race shall be sold or transferred, wholly or in part, to anyone within thirty (30) days after the day it was claimed, except in another claiming race. No claimed horse shall race elsewhere until sixty (60) calendar days after the date on which it was claimed or until after the close of the meeting at which it was claimed, whichever comes first. The day claimed shall not count, but the following calendar day shall be the first day and the horse shall be entitled to enter elsewhere whenever necessary so the horse may start on the 61st calendar day following the claim. The Stewards shall have the authority to waive this rule upon application, so as to allow a claimed horse to race in a stakes race. The Stewards may also permit a horse claimed in a steeplechase or hurdle race to race elsewhere in a steeplechase or hurdle race after the close of the steeplechase program, if such a program ends before the close of the meeting at which it is claimed.

Revised: 7/16/86

13.07 Form of Claim:

Each claim shall be made in writing on a form and in an envelope supplied by Licensee. Both form and envelope must be filled out completely and must be accurate in every detail.

13.08 Procedure for Claim:

Claims must be deposited in the claim box at least ten (10) minutes before post time of the race from which the claim is being made. No money or its equivalent shall be put in the claim box. For a claim to be valid, the claimant must have, at the time of filing the claim, a credit balance in his account with the Horsemen's Bookkeeper of not less than the amount of the claim.

Revised: 8/15/95

13.09 Stewards' Duties:

The Stewards, or their designated representatives, shall open the claim envelopes for each race as soon as the horses leave the paddock en route to the post. They shall thereafter check with the Horsemen's Bookkeeper to ascertain whether the proper credit balance has been established with the Licensee and with the Racing Secretary as to whether the claimant has claiming privileges at Licensee's meeting.

13.10 Conflicting claims:

If more than one valid claim is filed for the same horse, title to the horse shall be determined by lot under the supervision of the Stewards or their designated representative.

13.11 Delivery of Claimed Horse:

Any horse that has been claimed shall, after the race has been run, be taken to the paddock for delivery to the claimant, who must present written authorization for the claim from the Racing Secretary. No person shall refuse to deliver to the person legally entitled thereto a horse claimed out of a claiming race and, until delivery is made, the horse in question shall be disqualified from further racing.

13.12 Nature and Effect of a Claim:

Claims are irrevocable. Title to a claimed horse shall be vested in the successful claimant from the time the said horse is a starter and said claimant shall then become the Owner of the horse, whether it be alive or dead, sound or unsound, or injured, during the race or after it. A claimed horse shall run in the interest of and for the account of the Owner from whom claimed.

13.13 Prohibited Practices:

No person shall offer or enter into an agreement to claim or not to claim or to attempt to prevent another person from claiming any horse in a claiming race. No person shall attempt, by intimidation, to prevent anyone from running a horse in any claiming race. No Owner or Trainer shall make an agreement with another Owner or Trainer for the protection of each other's horses in a claiming race.
Rule 13.06 Rev. March 1976.

13.14 Invalidation of Claim:

Claims which are not made in keeping with the Rules shall be void. The Stewards may, at any time in their discretion, require any person filing a claim to furnish an affidavit in writing that he is claiming in accordance with these Rules. The Stewards shall be the judges of the validity of the claim and, if they feel that a "starter" was nominated for the purpose of making its Owner eligible to claim, they may invalidate the claim.

13.15 Necessity to Record Lien:

Any person holding a lien of any kind against a horse entered in a claiming race must record the same with the Racing Secretary and/or Horsemen's Bookkeeper at least thirty (30) minutes before post time for that race. If none is so recorded, it shall be conclusively assumed, for claiming purposes, that none exists.

13.16 Claiming Privileges -- Eliminated Stable:

If a person's stable shall be eliminated with thirty (30) racing days or less remaining in the current racing season,

and such person is unable to replace the horse(s) lost via a claim by the end of the racing season, such person may apply to the Stewards for an additional thirty (30) racing days of eligibility to claim in the new race meeting as long as the person owns no other horses at the start of the next race meeting.

1 DE Reg. 714 (12/1/97)

13.17 Claim Embraces Horse's Prior Engagements:

The engagements of a claimed horse pass automatically with the horse to the claimant.

13.18 Caveat Emptor:

Notwithstanding any designation of sex or age appearing on the racing program or in any racing publication, the claimant of a horse shall be solely responsible for determining the age or sex of the horse claimed.

13.19 Racing Claimed Horse:

~~No horse claimed in a claiming race shall be raced in another claiming race for an amount less than the original claiming price for a period of thirty (30) days after the date of the original claim.~~

2 DE Reg. 374 (9/1/98)

DEPARTMENT OF EDUCATION

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

**Educational Impact Analysis Pursuant
To 14 Del. C. §122(d)**

828 Assistance with Medications on Field Trips

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Secretary of Education seeks to amend regulation 828 Assistance with Medications on Field Trips. The amendment is necessary to delete the phrase "and a statement releasing the assistant from liability" from section 2.1. which requires a prior written request from the parent or guardian for the administration of medications on field trips. The use of that phrase raises issues relating to conditioning the receipt of services by special education students upon the granting of a release of liability.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses assistance with medications on field trips not achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the administration of medications on field trips which helps to provide access for all students to field trips.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the administration of medications on field trips, which helps to support the health and safety of all students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulations address the administration of medications on field trips, which helps to assure students' legal rights to participate in field trips.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated is 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 required by state statute.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There is no additional cost to the state or to the local school boards for compliance with the amended regulation.

828 Assistance With Medications on Field Trips**1.0 Definitions**

“Assist a student with medication” means assisting a student in the self-administration of a medication, provided that the medication is in a properly labeled container as hereinafter provided. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self-administering the medication. Lay assistants shall not assist with injections. The one exception is with emergency medications where standard emergency procedures prevail in lifesaving circumstances.

“Field trip” means any off-campus, school-sponsored activity.

“Medication” means a drug taken orally, by inhalation, or applied topically, and which is either prescribed for a student by a physician or is an over-the-counter drug which a parent or guardian has authorized a student to use.

“Paraprofessionals” mean teaching assistants or aides.

2.0 Teachers, administrators and paraprofessionals employed by a student’s local school district are authorized to assist a student with medication on a field trip subject to the following provisions:

2.1 Assistance with medication shall not be provided without the prior written request or consent of a parent or guardian. Said written request or consent shall contain clear instructions including: the student’s name; the name of the medication; the dose; the time of administration; and the method of administration; ~~and a statement releasing the assistant from liability.~~ At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a field trip.

2.2 The medication shall be in a container which is clearly labeled with the student’s name, the name of the medication, the dose, the time of administration, and the method of administration. If the medication has been prescribed by a physician, it shall be in a container which meets United States Pharmacopoeia/National Formulary standards and, in addition to the information otherwise required by this section, shall bear the name of the prescribing physician, and the name and telephone number of the dispensing pharmacy.

2.3 A registered nurse employed by the school district in which the student is enrolled shall determine which teachers, administrators and paraprofessionals are qualified to safely assist a student with medication. Each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 **Del.C.** 1921. Said nurse shall complete instructor training as designated by the Department of Education and shall submit a list of successful staff participants to the Department of Education. No person shall

assist a student with medication without written acknowledgement that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein.

2.4 Each school district shall maintain a record of all students receiving assistance with medication pursuant to this regulation. Said record shall contain the student’s name, the name of the medication, the dose, the time of administration, the method of administration, and the name of the person assisting.

2.5 Except for a school nurse, no employee of a school district shall be compelled to assist a student with medication. Nothing contained herein shall be interpreted to otherwise relieve a school district of its obligation to staff schools with certified school nurses.

See 5 DE Reg. 873 (10/1/01)

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES****DIVISION OF PUBLIC HEALTH****OFFICE OF EMERGENCY MEDICAL SERVICES**

Statutory Authority: 16 Delaware Code, Chapters
97, 98 (16 **Del.C.** Ch. 97, 98)

These regulations, “**Regulations for Air Medical Ambulance Services,**” replace by revision the current “Regulations for Air Medical Ambulance Service” previously adopted on July 1, 1993 and most recently amended May 11, 2001.

The Air Medical Ambulance Service Regulations were revised (May 2001) to allow air medical service providers based within Delaware the same opportunity for state-certification as those based outside of Delaware. Implementation efforts for these regulations have identified areas that conflict with implementation of the Advanced Life Support Interfacility Transport Regulations. Additionally, the need has become apparent for a limited category of service for those air medical services wishing to continue offering services at the level at which they have been functioning to date.

The revisions create a ‘limited certification’ category for those services wishing to continue transporting patients in or out of the state only, and add parameters to make the Air Medical regulations inclusive of all applicable stipulations. This eliminates the need for air services to comply with both the Air Medical and ALS Interfacility regulations.

Notice Of Public Hearing

The Office of Emergency Medical Services, Division of Public Health of the Department of Health and Social Services, will hold a public hearing to discuss the proposed changes to the Air Medical Ambulance Service Regulations. This public hearing will be held on Thursday, January 3, 2002 at 2:00 PM in the Conference Room, Delaware Office of Emergency Medical Services, Blue Hen Corporate Center, Suite 4-H, 655 S. Bay Road, Dover, Delaware.

Copies of the proposed revisions are available for review by contacting:

Office of Emergency Medical Services
Blue Hen Corporate Center, Suite 4-H
655 Bay Road
Dover, Delaware 19901
Telephone: (302) 739-4710

Anyone wishing to present his or her oral comments at this hearing should contact Debbie Vincent at (302) 739-4710 by close of business December 31, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by close of business January 3, 2002 to:

David Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, DE 19903-0637

Summary of Change - Air Medical Ambulance Regulations

Start Date: 8/22/01

Last Change: 11/5/2001

1. Definitions

Added terms: Base of Operations, EDIN, EMS Data Information Network, Out of State program, Paramedic, Point to point transport, Prehospital 911 service, State Certification full, State Certification limited

Made language changes to maintain consistency with definitions included in the body of the regulations.

2. II C, D, F Applicability of Regulation (p7)

Applicability of the regulation (as per the matrix) for out of state programs providing point to point, Prehospital 911, and one way transports.

3. IV Certification Process (p9)

Added 'Flight Program' to the title to clarify that it is the program that is getting certified.

4. IV A (p9)

Changed the language that required a site visit by DPH, replacing it with language so that such visit is discretionary.

5. IV D 1. Inspection (p10)

Changed language that required annual inspections by DPH, replacing it with language that states inspections are mandatory prior to prehospital 911 service.

6. V A 1.a)(1)(a) Staffing – Credentialing of the Medical Director (p17)

Added language to clarify the requirement for a physician to have a Delaware license only if the service were providing point to point transport services or Prehospital 911.

7. V A 2.a)(2)(a) Staffing – Direct care personnel (p20)

Added requirement for a PM to be DE certification if DE based, or if performing prehospital 911.

8. V A 2.a)(2)(b) Staffing – Direct care personnel (p21)

Require DE certification of providers performing point to point transfers.

9. V A 2.a)(2)(c) Staffing – Direct care personnel (p21)

Requires certification in own state if out of state and performing one way transfers.

10. V A 2.a)(4)(d)(ii - iii) - Staffing - Direct care personnel - Interfacility transports (p22)

Added language that requires point to point interfacility transfers to use Delaware Medical Control, or use Delaware-licensed Medical Control physicians and update the receiving facility prior to patient arrival.

11. V A 2.a)(4)(d)(ii) Staffing – Direct care personnel – Interfacility transports (p22)

Deleted requirement for a PM on an interfacility transport to be DE certified. Replaced with language that they perform under their standard treatment protocols and /or under direct medical control for their service.

12. V A 2.a)(5)(j) Staffing – Direct care personnel – Prehospital scene responses (p23)

Deleted the requirement for a ground service to provide a report for using an air ambulance service other than DSP. The reason for this is that the ground service is going to request air support not a provider. The information regarding DSP usage and reasons for commercial provider usage would be better evaluated as part of a Quality Management initiative rather than a regulation.

13. V A 2.a)(5)(f) – Data Documentation – Prehospital scene responses (p23)

Added statement clarifying how the collected data will be used.

14. IX E Communications (p36)

Added a section requiring air services to contact AVCOM and included a phone number.

15. X EMS System Integration D (p37)

Added language that requires all 911 missions to utilize the Delaware Paramedic Standing Orders and in-state Delaware Certified Medical Control physicians for online Medical Control.

16. Appendix A – I A (p45-47)

Replaced asterisks referring to footnotes with numbers to avoid confusion.

17. Appendix D – Air Service Use Report (p60)

Deleted the form. Refer to Change #12

18. Changed “nurse” to “RN” for clarification throughout the document.

Regulations for Air Medical Ambulance Services

Definitions

ABEM American Board of Emergency Medicine

ABOEM American Board of Osteopathic Emergency Medicine

ACLS (Advanced Cardiac Life Support) A syllabus and certification of the American Heart Association (AHA).

AIRCRAFT TYPE Particular make and model of helicopter or airplane.

AIR MEDICAL SERVICE A company or entity of a hospital or public service which provides air transportation to patients requiring medical care. This term may be used interchangeably with the term "air medical program" throughout the document.

AIR MEDICAL PERSONNEL Refers only to the patient care personnel involved in an air medical transport.

AIR MEDICAL TEAM Refers to the pilot(s) and patient care personnel who are involved in an air medical transport.

ALS MISSION The transport of a patient who receives care during an interfacility or scene response commensurate with the scope of practice of an EMT-Paramedic.

ALS PROVIDER A certified provider of skills required for advanced life support.

ATLS (Advanced Trauma Life Support) A syllabus and certification offered to physicians by the American College of Surgeons.

BASE OF OPERATIONS A location from which an aircraft responds to answer a call and to which it returns

while awaiting assignment on another call.

BLS MISSION The transport of a patient who receives care during an interfacility or scene response that is commensurate with the scope of practice of an EMT-B. In the state of Delaware, all interfacility air transports must be staffed at a minimum with an EMT-P.

BLS PROVIDER A certified provider of skills required for basic life support.

BTLS (Basic Trauma Life Support) A syllabus offered by the American College of Emergency Physicians to provide a standard of care for the prehospital trauma victim.

CERTIFICATE Signifies a pilot level of competency, i.e., student, private, commercial. It can also refer to the type of service a company is qualified to provide under Federal Aviation Regulations.

CONSORTIUM PROGRAM An air medical service sponsored by more than one health care facility or entity.

CONTINUOUS QUALITY IMPROVEMENT (CQI) CQI is a management strategy that integrates dedication to a quality product into every aspect of the service; it brings together a variety of personnel and management tools to examine the sources of problems within the system. CQI seeks to establish and remedy the root cause of problems by identifying and correcting the system's errors, rather than ascribing fault to individuals.

CONTROLLED AIR SPACE Air space designated as continental control area, terminal control area, or transition area within which some or all aircraft may be subject to air traffic control.

CRITICAL CARE MISSION The transport of a patient from an emergency department or critical care unit (or scene, RW) who receives care commensurate with the scope of practice of a physician or registered nurse.

CROSS COUNTRY (CC) Generally when the destination is greater than 25 nautical miles from the departure point or as designated by a geographic boundary. The DSP cross country is 25 nautical miles outside of the state of Delaware.

DSP Delaware State Police

EDIN See ‘EMS Data Information Network’

ELECTIVE TRANSPORTS Air medical transports that may not be medically necessary but are done for patient or physician preference; these often are fixed wing, prepaid scheduled transports.

ELT (Emergency locator transmitter) A radio transmitter attached to the aircraft structure which is designed to locate a downed aircraft without human action after an accident.

EMS DATA INFORMATION NETWORK The Internet-based data collection program of the State EMS System.

FAA Federal Aviation Administration

FAR Federal Aviation Regulation.

HEAD-STRIKE ENVELOPE The volume of air space which a person's head would potentially move through during any abrupt aircraft motion.

HELIPAD A small, designated area usually with a prepared surface, on an airport, landing/take-off area, or apron/ramp used for take-off, landing or parking helicopters.

HOT LOAD/UNLOAD The loading or unloading of patient(s) or equipment with rotors turning.

IABP (Intra aortic balloon pump) A cardiac assist machine which can be retrofitted into some types of aircraft.

IFR Instrument Flight Rules

INSTALLED EQUIPMENT Includes all items or systems on the aircraft at the time of certification and any items or systems subsequently added to the aircraft with FAA approval through a Supplemental Type Certificate (STC), FAA Form 8110 or Form 337 action.

IMC Instrument meteorological conditions.

INDEPENDENT PROGRAM Referring to an air medical service not sponsored by a hospital and operating under its own FAA certificate.

INFECTION CONTROL An approach to reducing the risk of disease transmission to care takers, patients and others

LOCAL Day-local: Less than 25 nautical miles from departure point to destination point with generally the same terrain elevation.

Night-Local: The urban area of the helicopter base with enough illumination to maintain ground reference.

The DSP local is within the State of Delaware and less than 25 nautical miles outside the State of Delaware.

MODALITIES Treatment plans and equipment used in the delivery of patient care.

OUT-OF-STATE PROGRAM A flight program that does not have a base of operations within the borders of the State of Delaware.

PARAMEDIC A Nationally Registered or state-certified EMT-P

PERSONNEL, SCHEDULED Staff employed by the air medical service with scheduled working hours during which air medical transport is their primary responsibility. This includes those who take call for the primary purpose of being available for air medical transport.

PERSONNEL, NON-SCHEDULED Staff employed in patient care roles by another department or facility who have received the helicopter orientation and may be utilized as a second crew member, particularly during a specialty transport

PHTLS Prehospital Trauma Life Support: A course offered by the American College of Surgeons to provide a standard of care for the prehospital victim.

PIC Pilot in command.

POINT TO POINT TRANSPORT Transports that have both an origination and destination point within the State of Delaware.

PREHOSPITAL 911 SERVICE A service which acts as a supplemental resource to the Delaware State Police in carrying out prehospital scene missions.

QUALITY ASSURANCE (QA) QA is a process of reviewing the quality of care delivered through the examination of known or potential problems. It measures the degree of compliance of the service's personnel with established standards.

SPECIALTY CARE MISSION The transport of a patient who requires care by professionals who can be added to the regularly scheduled personnel.

SPECIALTY CARE PROVIDER A provider of specialty care, such as neonatal, pediatric, etc.

STATE CERTIFICATION, FULL Approval granted, following satisfactory completion of the application process, to an air medical service wishing to provide point to point transport or prehospital 911 service within the state of Delaware. The certification period is three years.

STATE CERTIFICATION, LIMITED Approval granted, following satisfactory completion of the air medical program certification process, to an air medical service wishing to provide only one way transport to or from Delaware. The certification period is three years.

VFR Visual Flight Rules.

See 4 DE Reg. 1827 (5/1/01)

I. Purpose

The purpose of these regulations is to provide minimum standards for the operation of Air Medical Ambulance Services in the State of Delaware. It is the further intent of these regulations to ensure that patients are quickly and safely served with a high standard of care and in a cost-effective manner.

II. General Provisions

A. No person or agency (governmental or private) may operate, conduct, maintain, advertise, engage in or profess to engage in air ambulance services in Delaware unless the agency or person holds a current valid certificate issued by the Division of Public Health (the Division).

B. Air ambulance services will provide access to its services without discrimination due to race, creed, sex, color, age, religion, national origin, ancestry, or disability. Requests for service for those patients with a potentially life threatening illness or injury, who require rapid transportation, will be honored without prior inquiry as to the patient's ability to pay.

C. Out of state Air ambulance services that provide 'point to point' transport services within the state of Delaware, or interstate transport services that originate in Delaware, shall be subject to all parts of these regulations (full certification) unless covered by mutual aid agreements entered into with the Division of Public Health, in conjunction with other applicable state laws.

D. All air ambulance services ~~operated by hospitals licensed by the Department of Health and Social Services (the Department)~~ with a base of operations located within the State of Delaware, or that engage in providing 'prehospital 911 service' regardless of the location of their base of operations, will be subject to all parts of these regulations. ~~(full certification) A permit will be issued to approve air ambulance services operated by hospitals.~~

E. Pre-hospital scene ~~works~~ work shall be conducted only by air ambulance services owned and operated by the State of Delaware, or private air ambulance services which have entered into appropriate agreements with the Division of Public Health and Delaware State Police to provide such ~~pre-hospital scene work services, with the Division of Public Health.~~

F. All out-of-state flight programs that only provide services consisting of 'one-way' transports either into or out of the State of Delaware, are subject to all requirements of these regulations for certification of the Flight Program. Personnel may maintain appropriate licensure or certification in their home state, in lieu of seeking Delaware licensure/certification. (limited certification)

See 4 DE Reg. 1827 (5/1/01)

III. Application Process

A. An application for a certificate to operate an air ambulance service may be obtained from the Division of Public Health (the Division), Office of Emergency Medical Services (the Office). An application for an original or renewal certificate shall be submitted to the Office and shall include the following:

1. Name and address of the vendor of the ambulance service or proposed air ambulance service and the name and address under which the service will operate.
2. Name, address and FAA (Federal Aviation Administration) certification number of the aircraft operator.
3. Submission of the air medical service's mission statement and scope of service to be provided.
4. Experience and qualifications of the applicant to operate an air ambulance service.
5. Description of each aircraft to be used as an air ambulance, including the make, model, year of manufacture, registration number, name, monogram or other distinguishing designation and FAA air worthiness certification.
6. The geographical service area and the location and description of the places from which the air ambulance services is to operate.
7. Name, training, and qualifications of the air ambulance medical director who is responsible for medical care provided by the service.
8. Roster of medical personnel which includes level of certification or licensure.
9. Roster of pilots including training and

qualifications.

10. Statement in which the applicant agrees to provide patient specific data to the Division for EMS system quality management program purposes.

11. Other information the Division deems necessary and prescribes as part of the application.

B. Change of ownership of the air ambulance service requires re-application for certification. An air ambulance certificate holder shall file with the Division an application for renewal of the air ambulance service certificate within 10 business days of acquisition of the service by the new owner.

See 4 DE Reg. 1827 (5/1/01)

IV. Flight Program Certification Process

Within 30 days of receipt of an appropriately completed application from the proposed air ambulance service, the Office will notify the applicant in writing of the approval or disapproval of the application.

A. Certification Approval

1. The Division will issue a certificate to operate an air ambulance service, ~~after~~ The OEMS may conduct an on-site inspection review conducted by the Office indicates to confirm that the applicant's service is in compliance with these regulations and other applicable laws.

2. No certificate to operate an air ambulance service shall be issued unless the applicant satisfies the Division that the certification requirements for the air ambulance, medical supplies and equipment, as well as the qualifications of medical and operating personnel, as discussed herein, have been satisfied.

3. Certification will be granted only to services that meet all Federal Aviation Regulations (FAR's) specific to the operations of the air medical service.

4. A certificate will be issued for three years from the date of issue and will remain valid for that time period unless revoked or suspended by the Division.

5. The current certificate shall be posted in a conspicuous place in the air ambulance operations center and on, or in, the aircraft where it is clearly visible.

B. Denial of Certification

1. If the Division determines that deficiencies exist which warrant denial of the application, the air medical service shall be provided a list of these deficiencies in writing.

2. The applicant shall have 30 days from receipt of the ~~denial~~ disapproval notice in which to:

a) Respond to the Division with plans to correct the deficiencies.

(1) After review of an acceptable plan, the Division will conduct a re-inspection consistent with an agreed upon time frame.

(2) If the Division is satisfied with the results of the re-inspection, The Division will promptly issue a certificate of approval. If the Division determines that

deficiencies still exist, the Division will give the applicant written notice of disapproval, which shall identify deficiencies. The applicant shall have 30 days from receipt of the second refusal notice in which to request a review of their application and accompanying documents by the Director of the Division of Public Health or their designee.

(a) If the result is a denial of application, the applicant may not reapply for a period of six (6) months.

C. Renewal

1. The service shall submit to the Division the renewal application postmarked at least 60 days prior to the expiration date of the certificate.

2. The criteria for certification renewal ~~is~~ are the same as the current requirements for original certification.

D. Inspections

1. The Division reserves the right to enter and make inspections, ~~at least quarterly and shall conduct, at a minimum, an annual inspection to ensure compliance with these regulations. Additional inspections may be conducted upon receipt of a complaint to the Division of Public Health or if there is a reasonable belief that violations may exist. All services applying to provide prehospital 911 service will, at a minimum, have an initial inspection prior to execution of the required Memorandum of Agreement allowing them to commence prehospital operations.~~

2. Upon request of an agent of the Division during regular business hours, or at other times when a reasonable belief that violations of these regulations may exist, a certificate holder shall produce for inspection, the air ambulance, equipment, personnel and other such items as is determined by the Division's agent.

3. All records pertaining to the operation of the air medical service must be retained for a minimum of two (2) years.

E. Investigatory Procedures

1. Upon receipt of a written complaint describing specific violations of these regulations the Division will:

a) Initiate an investigation of the specific ~~changes~~ charges.

b) Notify the air ambulance service of the charges and investigation procedures.

c) Conduct and develop a written report of the investigation.

d) Notify the air ambulance service in writing of the results of the investigation with a request for a written response.

e) The Division will conduct an appropriate follow-up investigation.

F. Grounds for Suspension, Revocation or Refusal of an Air Ambulance Certification

1. The Division may, in compliance with proper administrative procedure as provided by law, suspend, revoke or refuse to issue certificates for the following

reasons:

a) A serious violation of these regulations. A serious violation is one that poses a significant threat to the health and safety of the public.

b) Failure of the certified party or applicant to submit a plan to the Division to correct deficiencies and violations cited by the Division by the deadline specified ~~requested~~ by the Division.

(1) The plan must correct the deficiencies within the timeframe specified by the Division.

c) The existence of a pattern of deficiencies or violations over a period of three (3) or more years.

d) Fraud or deceit in obtaining or attempting to obtain certification.

e) Lending a certificate or borrowing or using the certificate of another, or knowingly aiding or abetting the improper granting of a certificate.

f) Incompetence, negligence or misconduct in operating the air ambulance service or in providing emergency medical services (EMS) to patients.

g) Failure to employ or contract for a medical director responsible for the care provided by the air ambulance service.

h) Failure to have appropriate medical equipment and supplies required for certification.

i) Failure of the air ambulance service to have an aircraft equipped in compliance with these regulations.

j) Failure of the aircraft operator to maintain required FAA certifications.

k) Failure to employ a sufficient number of certified or licensed personnel to provide services during the time frames identified in the application and approved certification.

l) Failure of the air ambulance service to be available during time periods specified upon in the approved certification. Exceptions to this requirement include unsafe weather conditions, commitment to another flight, grounding due to maintenance or other reasons that would prevent commitment to another flight, grounding due to maintenance or other reasons that would prevent response. The air medical service shall maintain a record of each failure to respond to a request for service, and make the record available upon request to the Division. Financial inability to pay does not constitute sufficient grounds to deny response for emergency air service.

m) Failure of an air ambulance service to notify the Division of the change of ownership or aircraft operation.

n) Abuse or abandonment of a patient.

o) Unauthorized disclosure of medical or other confidential information.

p) Willful preparation or filing of false medical reports or records, or the inducement of another to do so.

q) Destruction of medical records.

r) Refusal to render ~~EMS~~ emergency medical services because of a patient's race, sex, creed, national origin, sexual preference, age, ~~handicap~~ disability, medical problem or financial inability to pay.

s) Misuse or misappropriation of drugs/medications.

t) Failure to produce requested records for inspection or to permit examination of equipment and facilities shall be grounds for suspension, revocation or denial of certification provided, however, that not certificate shall be suspended, revoked or denied for a period not to exceed sixty days in the event that a dispute regarding the production of such records exists and remains unresolved, except that such suspension or revocation may occur within the sixty day period if the Division determines that such action is necessary to prevent a clear and immediate danger to public health.

u) Other reasons as determined by the Division which pose a significant threat to the health and safety of the public.

2. If the Division determines that these regulations have been violated, the Division may:

a) Place the service on probation until the deficiency is remedied and accepted by the Division.

(1) This will include a timeframe and method by which the service must demonstrate the deficiency or violation rectified.

(2) If an air medical service is unable to demonstrate that the deficiency or violation has been rectified within the specified timeframe it must submit a written progress report to the Director of Public Health requesting a deadline extension.

(a) Failure to comply will result in the 'Probation' status being changed to 'Suspension'.

(b) Failure to correct the deficiencies or violations within the extension period will result in suspension of the certificate.

b) Suspend certification for a period of up to 30 days.

(1) In circumstances where an alleged violation poses an immediate threat to public health is being investigated, the certification may be suspended during the investigation.

(2) The Division must investigate the violation and issue a written report containing the findings of the investigation

(a) The report must describe the deficiencies or violations that must be corrected in order to reinstate certification.

(b) A hearing must be scheduled within thirty (30) days of the date of suspension.

(3) Upon suspension or revocation of an air ambulance certificate, the service shall cease operations

and no person may permit or cause the service to continue.

(4) The air medical service must correct any deficiencies identified to be an immediate danger to public health within the suspension period.

(a) All other deficiencies or violations may be addressed in a correction plan submitted to the Division.

(b) The status of the air medical service certificate will be changed to 'Provisional' for implementation of the corrective plan.

c) Revoke certification.

(1) Violations or deficiencies that resulted in a 'Suspension' status and have not been rectified pursuant to the requirements of those sections will result in the revocation of the air medical service's certificate.

(2) A hearing will be scheduled within thirty (30) days of the date of revocation.

d) Continue current certificate status.

e) The Division will provide public notification of their decisions involving probation, suspension-including the length of suspension period, or revocation of an air ambulance service certificate.

G. Reinstatement Process

1. When an air medical service has corrected a problem that has resulted in suspension or revocation of their certificate, it shall notify the Division of Public Health in writing, requesting reinstatement.

2. Based on the recommendations of the Division, a review will be arranged to verify resolution of the problem.

3. Outcomes of the review will be:

a) Reinstatement of certification

b) Continuation of suspension or revocation.

H. Right of Appeal

1. Any air medical ambulance service that has had their ~~application or~~ reapplication for certification denied or their certification revoked or suspended may appeal the decision.

2. Written notification of the intent to appeal must be received by the Director of Public Health within thirty (30) days of receipt of notice of such denial, suspension or revocation.

3. The Director or their designee will conduct a hearing on the Division's action.

4. Information pertinent to the case will be presented by a member of the Division's investigation committee (or the Office of EMS) and a representative of the air medical service.

5. The hearing panel will make a recommendation to the Director that the decision stand, be reversed, or modified.

a) Specific recommendation for modification shall be outlined.

6. The Director of Public Health will make a decision based on the hearing panel's recommendations and

will provide written notification of the action to the air medical service.

7. The Division's action shall not be automatically stayed during the pendency of the appeal.

I. Voluntary Discontinuation of Service

1. Certified Air Ambulance Services may not voluntarily discontinue service until ninety (90) days after the certificate holder notifies the Division in writing that the service is to be discontinued.

2. The Air Ambulance Service shall notify the Division in advance of anticipated temporary discontinuation of service expected to last at least seven (7) consecutive days.

See 4 DE Reg. 1827 (5/1/01)

V. Staffing

A. Air Medical Personnel Classifications

The aircraft, by virtue of medical staffing and retrofitting of medical equipment, becomes a patient care unit specific to the needs of the patient. Staffing shall be commensurate with the mission statement and scope of care of the air medical service.

1. Administrative Air Medical Staff

a) Medical Director

The Medical Director of the program is a physician who is responsible for supervising and evaluating the quality of medical care provided by the air medical personnel.

(1) Credentials/Experience

(a) The Medical Director shall be licensed and authorized to practice medicine in the state in which the air medical service is based unless the flight program is providing primary 911 or 'point to point' transfer services in the State of Delaware. If either of these services is provided, the physician must be licensed in Delaware. The medical director must have educational and clinical experiences in Emergency Medicine as well as other areas of medicine that are commensurate with the mission statement of the air medical service (e.g., adult trauma, pediatrics, neonatal transport, etc.). When specific missions fall outside the scope of expertise of the medical director, specialty care physicians must serve as consultants.

(b) The medical director shall be experienced in both air and ground emergency medical services (as appropriate to the mission statement) and be familiar with the general concepts of appropriate utilization of air medical services.

(c) Additionally, the medical director shall have the following educational experiences as appropriate to the mission statement and scope of care of the air medical service:

(d) The Medical Director shall also have education in the following areas:

(i) Specialty education consistent

with the mission statement of the air medical service (e.g., Neonatal Resuscitation Certification Program, Pediatric Advanced Life Support, etc. or equivalent education in these areas). Alternately, the medical directors must have immediate access to specialty physicians as consultants.

(ii) In-flight patient care capabilities and limitations (e.g., assessment and invasive procedures).

(iii) Infection control as it relates to prehospital, aircraft and hospital environment.

(iv) Stress recognition and management.

(v) Altitude physiology/stressors of flight.

(2) General Areas of Responsibility

(a) The medical director must be actively involved in the quality assurance/continuous quality improvement (QA/CQI) program for the service.

(b) The medical director must be involved in administrative decisions affecting medical care for the service.

(c) The medical director must be involved in training and continuing education of all air medical personnel for the service.

(d) The medical director ~~is~~ must be actively involved in the care of critically ill and/or injured patients.

(e) The medical director must be actively involved in orienting physicians providing on line (in-flight) medical direction to the policies, procedures and patient care protocols of the air medical service.

(f) When applicable, the medical director or his designee sets cabin air pressure altitude limits, for specific disease processes of the patient(s) (through policies and procedures) and maximum altitudes, for specific disease processes of the patient(s) for rotor wing transports.

b) Clinical Care Supervisor

The responsibility for supervision of patient care provided by the various clinical care providers (e.g., EMT-B, EMT-P, RN, etc.) will be the responsibility of the medical director, unless the responsibilities are assigned to another professional (flight nurse, flight physician, or flight paramedic) who possesses the knowledge, experience and is legally qualified to provide clinical supervision.

(1) Credentials/Experience

The clinical care supervisor must possess the following qualifications:

(a) If the clinical care supervisor is a Physician:

(i) ABEM, or ABOEM certified or currency in CPR, ACLS, and Advanced Trauma Life Support (ATLS).

(b) If the clinical care supervisor is a Registered Nurse:

(i) Currency in CPR, ACLS and the Flight Nurse Advanced Trauma Course (FNATC).

(a) ATLS may be audited in lieu of FNATC.

(c) If the clinical care supervisor is a Paramedic:

(i) Currency in CPR, ACLS, and PHTLS or BTLS (Advanced).

(d) General Requirements regardless of provider level:

(i) Current specialty education consistent with the mission statement of the air medical service (i.e., Neonatal Resuscitation Certification Program, Pediatric Advanced Life Support, etc.). Alternatively, the clinical care supervisor must have immediate access to specialty personnel as consultants.

(ii) In-flight patient care limitations, e.g., assessment and invasive procedures.

(iii) Infection control.

(iv) Stress recognition and management.

(v) Altitude physiology/stressors of flight.

(vi) Appropriate utilization of air medical services.

(vii) Delaware Emergency Medical Services system.

(viii) Hazardous materials scene recognition and response (helicopter services).

(2) General Areas of Responsibility

(a) Active involvement in the flight program's QA/ CQI program process.

(b) Active involvement in all administrative decisions affecting patient care for the service.

(c) Active involvement in hiring, training, and continuing education of all non-physician air medical personnel for the service.

(d) Active involvement in the care of the critically ill and/or injured patients.

(e) Ensuring adequate mechanisms are in place for evaluating the clinical practice of the patient care providers.

2. Direct Care Providers

a) General

(1) The type of medical care providers staffing each mission shall be directly related to the mission type: advanced life support, specialty care or basic life support.

(2) All medical care providers must have current appropriate state licensure or certification which legally allows them to function in their respective professions.

(a) Delaware based programs and out

of state programs providing prehospital 911 service must be staffed with Delaware licensed RN's and Delaware-certified paramedics.

(b) Out of state programs providing 'point to point' services must be staffed with Delaware licensed RN's. Paramedics must be certified in their state of origin.

(c) Out of state programs providing 'one way' or mutual aid services must be staffed with providers licensed or certified to practice by their state of origin.

(3) Initial and continuing education requirements for all levels of medical care providers are specified in Appendix A.

(4) Interhospital/Interfacility Transports

(a) A minimum of two (2) air medical team members are required to staff interhospital/ interfacility ALS missions. One of the air medical ALS providers must be a member of the regular ALS staff of the air medical ambulance service.

(b) All air medical team members must be licensed, certified, or permitted according to the appropriate state regulations with current re-licensing, recertification, or re-permitting status.

(c) A qualified flight physician or flight nurse must be designated as the primary care provider during interfacility or interhospital transports.

(d) A flight paramedic or an approved flight specialty care provider may serve as the second ALS air medical team during an interfacility or interhospital ALS mission.

(i) The specialty care provider must have expertise relative to the needs of the patient.

~~(ii) The paramedic, on such missions, must:~~

~~(a) Be a State of Delaware certified paramedic, functioning in accordance with the Board of Medical Practice Regulations.~~

~~(b) Function according to the statewide standard treatment protocol or under the direction of an authorized medical control physician for that service.~~

(ii) Point to point interfacility transfers within Delaware must utilize the Delaware receiving facility for Online Medical Control.

(iii) In lieu of compliance with paragraph (ii) of this section, this, all physicians providing centralized Medical Control must be Delaware licensed and a status update must be provided to the receiving facility prior to arrival of the patient.

(iv) The paramedic on such missions must be certified and function according to their standard treatment protocols.

(e) One ALS air medical care

provider may be considered sufficient staff for ALS missions, where the patient has been categorized and documented as being stable, by the sending physician, and requires 'limited ALS care'.

(i) 'Limited ALS care' shall mean patient assessment, monitoring and interventions common to, and within the scope of practice of the paramedic. Patients may require cardiac monitoring and/or intravenous therapy (without medication additives).

(ii) A flight paramedic or RN may serve as the single care provider for the transport of stable ALS patients who meet the criteria as established by the operation or agency medical director.

(5) Prehospital Scene Responses

(a) Except as provided below, the Delaware State Police (DSP) paramedic service is the ~~only~~ primary air medical service authorized to engage in prehospital scene responses and transports in the State of Delaware.

(b) A flight paramedic must be a crew member on all prehospital missions.

(i) The Aeromedical crew assumes patient care responsibility at the time the patient is secured on the aircraft.

(c) Non-scheduled personnel may be added as the second medical team member according to the protocols of the air medical services as long as an orientation has been conducted which includes in-flight treatment protocols, general aircraft safety, emergency procedures, operational policies, and infection control.

(d) Air medical ambulance services, other than DSP, may engage in prehospital scene responses and transports under certain unusual conditions that will be defined in a service agreement with the Division and DSP to perform prehospital scene responses and transports, an air medical ambulance service must have previously entered into a service agreement with the Division and the Delaware State Police.

(e) All requests for air medical services, other than the DSP, must be initiated by the emergency communications center responsible for managing or coordinating Emergency Medical Services resources in the county where the need for assistance exists.

~~(f) The request and use of an air medical ambulance service other than the DSP for prehospital services, requires the submission of a written or electronic report by the ground EMS service that utilized the air ambulance to the Office of Emergency Medical Services, within seven (7) days of the request and/or response. The report must identify the conditions and circumstances precipitating the request.~~

(i) The "Air Medical Ambulance Service Use Report" (See Appendix D) shall be used to communicate this information.

~~(g)~~ (f) All patient care services provided by the air medical ambulance crew during a prehospital scene response shall be documented using the Delaware Emergency Data Information Network (EDIN). Data provided will be used for descriptive and quality management purposes, including air service utilization review.

(i) This shall be provided in addition to any documentation that the service generates internally.

(ii) The EDIN system is a secure Internet based data management system.

(a) Access to an Internet connection is necessary to provide the documentation required by these regulations.

b) Advanced Life Support (ALS) Mission Providers

An Advanced Life Support (ALS) mission is defined as the transport of a patient who receives care during a prehospital or interfacility/ interhospital transport that is commensurate with the scope of practice of a flight physician, flight nurse or flight paramedic.]

c) Specialty Care Mission Providers

(1) A specialty care mission is defined as the transport of a patient requiring special patient care by one or more professionals who must be added to the regularly scheduled air medical team. Dedicated teams providing specialty-oriented care (e.g., neonatal transport teams, IABP transport teams) must follow the specific mission standards.

(2) The air medical team must, ~~at a minimum~~ minimally consist of a specially trained physician or registered nurse as the primary caregiver whose expertise must be consistent with the needs of the patient.

(3) Specialty care missions require at least two air medical team members while a patient(s) is on board. Personnel shall be available for each transport within a reasonable time determined by the service.

(4) All specialty team members must have received a basic minimum orientation to the air medical service which includes in-flight treatment protocols, general aircraft safety and emergency procedures, operational policies and infection control.

(5) Specialty care mission personnel must be accompanied by at least one regularly scheduled air medical staff member, of the air medical service, except when independent, dedicated flight specialty teams are used.

(6) Specialty care personnel must be educated in in-flight treatment modalities, altitude physiology, general aircraft safety, and emergency procedures.

d) Basic Life Support Mission Providers

A Basic Life Support (BLS) mission is generally defined as the transport of a patient who receives care during an interfacility/interhospital transport that is

commensurate with the scope of practice of an Emergency Medical Technician-Basic (EMT-B). In the State of Delaware, when such care is provided in the air medical environment, it must be assumed, at a minimum, by a flight Emergency Medical Technician-Paramedic (EMT-P).

B. Pilot Personnel

1. There shall be a sufficient number of pilots permanently assigned to the air medical service to provide services approved by the Division of Public Health, and which assures adequate crew rest as per FAA regulations.

2. All pilots must possess a commercial rotorcraft-helicopter airman's certificate.

3. Pilot in Command (PIC) must possess 2000 rotorcraft flight hours as PIC prior to assignment with an air medical service or be currently employed by the Delaware State Police (DSP) and have completed a DSP pilot training program.

4. A planned structure program must be provided for relief pilots, which at a minimum includes specific roles and responsibilities, and familiarization with the region served.

5. A lead pilot and designated safety officer must be appointed by the FAR 135 certificate holder to insure adherence to operational safety regulations for the program. Adequate training and experience in air medical missions management and evaluation skills must be possessed to carry out these duties.

6. The pilot has the right to decline or abort any portion of a mission if there is doubt as to the safety of the mission.

7. The pilot shall meet education and experience requirements as listed in Appendix A.

a) Pilots employed by DSP must comply with the requirements set by that agency.

C. General Staff Policies - Operational policies must be present to address the following areas:

1. Medical Flight Personnel

a) Minimize duty-related fatigue

b) Hearing protection

c) Crash survivability

(1) Flame retardant clothing

(2) Seat belts/shoulder harnesses

(3) Head-strike protection

(4) Securement of on-board and carry-on

medical equipment

d) Protective clothing and dress codes relative

to:

(1) Mission type

(2) Infection control

e) Universal infection control

f) Flight status during pregnancy

g) Flight status during acute illnesses

(especially respiratory ailments)

h) Flight status while taking medications that

may cause dizziness

i) Weight/height and/or lifting abilities if appropriate

2. Pilot Personnel

a) Minimize duty-related fatigue

b) A policy of the certificate holder that specifies higher weather minimums for new pilots for a time frame based on the pilot's experience, flight time, local environment and personal adaptation. An evaluation tool applied individually to each new pilot by the flight program shall define the time frame.

See 4 DE Reg. 1827 (5/1/01)

VI. AIRCRAFT REQUIREMENTS

A. Medical Considerations

1. The aircraft shall have an interior medical configuration that is installed according to FAA criteria. Minimum specifications are listed in APPENDIX B.

2. The aircraft must be configured in such a way that the air medical personnel have access to the patient for the initiation and/or maintenance of basic advanced life support treatments.

3. The aircraft must be equipped with medical equipment and supplies consistent with the mission statement and scope of care. Minimum equipment and supplies required are identified in APPENDIX B.

4. The aircraft design and configuration must not compromise patient stability in during loading, unloading or in-flight operations.

a) The aircraft must have an entry that allows loading and unloading without excessive movement of the patient or compromise to monitoring systems, without interfering with the pilot's vision. The cockpit should be capable of being shielded from light in the patient care area during night operations.

b) The cockpit must be sufficiently isolated, by protective barrier, to minimize distractions from the patient care compartment.

c) The interior of the aircraft must be climate controlled to prevent adverse effects upon the patient from temperature extremes.

d) The avionics shall not interfere with the functioning of medical equipment, nor shall the intravenous lines, manual or mechanical ventilation.

e) Adequate interior lighting shall be available to allow for patient care monitoring. Medical equipment shall not interfere with the avionics.

B. Aircraft Equipment

1. The aircraft must be equipped with a 180 degree controllable searchlight of at least 400,000 candle power for rotor-wing aircraft.

2. Radio capabilities

a) Radios (as range permits) shall be capable of transmitting and receiving communications from:

- (1) Medical control
- (2) Flight operations center
- (3) Air traffic control
- (4) EMS and law enforcement agencies

The pilot must be able to control and override radio transmissions from the cockpit in the event of an emergency situation.

The flight crew must be able to communicate internally.

3. The aircraft must be equipped with a functioning emergency locator transmitter (ELT) in compliance with the applicable Federal Aviation Regulations (FARs).

4. A fire extinguisher must be accessible to air medical personnel and pilot(s) in compliance with applicable FARs.

C. Maintenance

Maintenance may be provided by an outside vendor who is FAA and manufacturer certified. If an in-house maintenance department is utilized, the following criteria must be met:

1. Credentials/Experience

a) Lead mechanic must possess 2 years of rotorcraft experience as a certified airframe and power plant mechanic prior to assignment with an air medical service.

b) The mechanic must be factory schooled or equivalent in an approved program, and FAR 135 qualified to maintain the aircraft designated by the air medical service.

2. Training related to the interior modification of the aircraft:

a) Shall prepare the mechanic for inspection of the installation as well as the removal and reinstallation of special medical equipment.

b) Supplemental training on service and maintenance of medical oxygen systems and a policy as to who maintains responsibility for refilling the medical oxygen system.

3. Staffing of Mechanics

a) A single mechanic on duty or on call 24 hours a day shall be relieved from duty for a period of at least 24 hours during any seven (7) consecutive days, or the equivalent thereof, within any 1 calendar month.

b) Back-up personnel shall be provided to the mechanic during periods of extensive scheduled or unscheduled maintenance or inspection. Complexity of the aircraft and an increased number of flight hours may be considerations for increased mechanic staffing.

c) A policy of the certificate holder shall be in place that documents the disciplinary process for a mechanic.

4. Maintenance Facilities

a) There must be a mechanism/procedure for alerting flight and air medical personnel when the aircraft is not air worthy.

b) A hangar or similar-type facility shall be

available for the mechanic to perform heavy maintenance.

See 4 DE Reg. 1827 (5/1/01)

VII. Visual Flight Rules (VFR) Weather Issues

A. VFR weather minimums shall be specified for day and night local, and day and night cross country (CC).

B. The "local flying area" shall be determined by the operator based upon the operating environment.

C. There is a system of obtaining pertinent weather information.

1. The pilot in command (PIC) is responsible for obtaining weather information according to policy which shall address at a minimum:

- a) Routine weather checks
- b) Weather checks during marginal conditions
- c) Weather trending

2. Communication between pilots, medical personnel, and communication specialists at shift change regarding the most current and forecasted weather is part of a formal briefing.

D. VFR "response" weather minimums:

Recommended minimums to begin a transport shall be no less than:

CONDITIONS	CEILING	VISIBILITY
DAY/LOCAL	500 ft.	1 mile
DAY/CC	1000 ft.	1 mile
NIGHT/ LOCAL	800 ft.	2 miles
NIGHT/CC	1000 ft.	3 miles

E. Policies include provisions for patient care and transport alternatives in the event that the aircraft must use alternate landing facilities due to deteriorating weather.

F. Instrument flight rules, (IFR) Weather Issues – When transitioning to an off-airport site after an instrument approach, the following shall apply:

1. Local VFR weather minimums shall be followed if within a defined local area and if the route and off-airport site are familiar.

2. Cross-country VFR weather minimums shall be followed if not in defined local area or if not familiar with route and off-airport site.

See 4 DE Reg. 1827 (5/1/01)

VIII. Helipad

A. Primary, receiving hospital(s) helipad(s) must be marked (with a painted H or similar landing designation), lighted for night operations, and be equipped with a device to identify wind direction. In addition, there shall be:

1. Unobstructed approach according to the FAA Advisory circular entitled Heliport Design Advisory Circular, AC 150/5390-2.

2. Evidence of compliance with local, state, or federal regulations including appropriate and adequate fire retardant chemicals.

3. Documented on-going safety programs for those responsible for loading and unloading patients or working around the helicopter on the helipad.

4. Evidence of adequate security-A minimum of one person to prevent bystanders from approaching the helicopter as it lands or lifts off, or perimeter security such as fencing, rooftop etc. A means must exist to monitor the primary helipad if accessible to the public (e.g., through direct visual monitoring or closed circuit TV).

5. There is limited distance from the helipad, (a limited distance is defined as not requiring intermediary transport of any type from the helipad to the receiving facility³), to the hospital in order to minimize the ~~affects~~ effects to the patient.

a) Patient monitoring shall continue without interruption between the helipad and the hospital.

b) Emergent patient interventions can be performed as needed between helipad and hearing protection is provided for all personnel who assist with patient hot loading and unloading.

6. Hearing protection is provided for ~~provided for~~ worn by all personnel who assist with patient hot loading and unloading.

B. Occasional or episodic use of helipad

Helipads used occasionally (at referring or receiving hospitals) shall be reviewed annually by the air medical service for:

1. Identification and removal of obstructions

2. Appropriate lighting (permanent or temporary for night operations)

3. Helicopter ingress/egress limitations

4. Adequate security - a minimum of one person to prevent bystanders from approaching the helicopter as it lands or lifts off.

5. Evidence of safety programs (through review of training program records) offered to personnel responsible for operations at the landing site and availability of appropriate fire retardant chemicals.

C. Temporary scene landings shall be secured

1. Perimeter lighting with handheld floodlights, emergency vehicles or other lighting source to clearly illuminate the designated landing area at night.

2. Free of overhead obstruction and ground debris.

3. Appropriate in size to the type of the aircraft.

4. Safety programs must be provided to public safety/law enforcement agencies to include:

a) Identifying and designating an appropriate

landing zone (LZ).

b) Helicopter safety.

5. Two-way communications between helicopter and ground personnel.

See 4 DE Reg. 1827 (5/1/01)

IX. COMMUNICATIONS

A. The flight crew or a communication specialist must assume the responsibility of receiving and coordinating all requests for the air medical service.

1. Should a communication specialist be employed, training shall be commensurate with the scope of responsibility of the communications center personnel and include:

a) EMT-B certification or equivalent knowledge and experience.

b) Knowledge of Federal Aviation Regulations and Federal Communications Commission regulations pertinent to the air medical service.

c) General safety rules and emergency procedures pertinent to air medical transportation and flight following procedures.

d) Navigation techniques/terminology and understanding weather interpretation.

e) Types of radio frequency bands used in air medical EMS.

f) Assistance with the materials response and recognition procedure using appropriate reference materials.

B. Communication policies of the air medical service must reflect:

1. Aircraft must communicate, when possible, with ground units securing unprepared landing sites prior to landing.

2. A readily accessible post incident/accident plan must be part of the flight following protocol so that appropriate search and rescue efforts may be initiated in the event the aircraft is overdue, radio communication can not be established nor location verified

a) Written post incident/accident plans are easily identified and readily available.

b) Current phone numbers are easily accessed.

c) An annual drill is conducted to exercise the post incident/accident plan.

C. Continuous flight following must be monitored and documented and shall consist of the following:

1. Initial coordination to include communication and documentation of:

a) Time call received

b) Name and phone number of requesting agency

c) Time aircraft departed

d) Pertinent LZ information

e) Number of persons on board

f) Amount of fuel on board

g) Estimated time of arrival (ETA)
 h) Diagnosis or mechanism of injury
 i) Referring and receiving physician and facilities (for inter facility transports) as per policy of the air medical service

j) Verification of acceptance of patient

2. Communications during mission shall also be documented accordingly:

a) Direct or relayed communications to communications center (while in flight) specifying locations and ETAs, and deviations, if necessary.

b) Direct or relayed communications to communications center specifying all take-off and landing information.

c) Time between each communication:

(1) Time between each communication shall not exceed 15 minutes while in flight (If an IFR or VFR flight plan has been filed, may only be able to communicate with air traffic control, (ATC).

(2) Time between communications shall not exceed 45 minutes while on the ground.

(3) Alternate agencies are used to relay communications when direct contact is not possible.

D. The Communications Center must contain the following:

1. At least one dedicated phone line for the air medical service.

2. A system for recording all incoming and outgoing telephone and radio transmissions with time recording and playback capabilities. Recordings are to be kept for 30 days.

3. Capability to immediately notify air medical team and on-line medical direction (through radio, pager, telephone, etc.).

4. Back-up emergency power source for communications equipment, or a policy delineating methods for maintaining communications during power outages and in disaster situations.

5. Communications policy and procedures manual.

See 4 DE Reg. 1827 (5/1/01)

E. All services that will be landing at a healthcare facility helipad within the State must contact AVCOM (302-739-5964) to advise them of their destination and the estimated length of time that they will occupy the helipad. AVCOM must be advised again when the aircraft departs the helipad.

X. EMS SYSTEM INTEGRATION

A. The air medical service shall be integrated with and communicate with other public safety agencies, including ground emergency service providers. This must include participation in regional quality assurance reviews, regional disaster planning and mass casualty incident drills.

B. The air medical service must interface (through

telephone calls and outreach programs) with existing communications centers, public safety and law enforcement agencies, as well as with local off-line medical directors, as appropriate for prehospital ALS missions.

C. The air medical service must ensure continuity of care and expeditious treatment of patients by utilizing state EMS medical protocols and procedures, whenever applicable.

D. All 911 missions must utilize the Delaware paramedic standing orders and (in-state) Delaware Certified Medical Control physicians for on-line Medical Control.

~~E. D.~~ The air medical service shall facilitate integration of all emergency services and transport modalities by supporting joint continuing education programs and operational procedures for:

1. Disaster response/triage.

2. Interface of the air medical team with other regional resources.

3. Safety program consisting of patient preparation and personal safety around the aircraft to include landing zone (LZ) designation for rotary wing services.

4. Patients considered appropriate for transport by the air medical service.

~~E. E.~~ The service shall promote a timely feedback to referring agency, facility or physician about patient outcome and treatment rendered before, during, and after transport where appropriate.

~~G. F.~~ The flight service shall provide a planned, structured safety program to public safety/ law enforcement agencies and hospital personnel who interface with the air medical service which includes:

1. Landing zone designation and preparation.

2. Personal safety in and around the helicopter for all ground personnel.

3. Procedures for day/night operations, conducted by the air medical team, specific to the aircraft:

a) High and low reconnaissance.

b) Communication and coordination with ground personnel.

c) Approach and departure path selection.

d) Procedures for the pilot to ensure safety during ground operations in the landing zone with or without engines running.

e) Procedure for the pilot to have ground control during engine start and departure from a landing site.

~~H. G.~~ The service shall maintain records of initial and recurrent training provided by the air medical service to prehospital, referring and receiving ground support personnel.

See 4 DE Reg. 1827 (5/1/01)

XI. POST INCIDENT/ACCIDENT PLAN

A Post Incident/Accident Plan shall be written and understood by all program personnel and shall include at a

minimum:

A. List of personnel to notify in order of priority (for communication specialist to activate) in the event of a program incident/accident. Two major goals in activating a notification list include:

1. Provide rapid rescue response.
2. Insure accurate information dissemination.

B. Preplanned time frame to activate the post incident/accident plan for overdue aircraft.

C. Procedure to secure all documents and tape recordings related to the particular incident/accident.

D. Procedure to deal with releasing information to the press.

XII. PROFESSIONAL AND COMMUNITY EDUCATION

A professional and community education program and/or printed information with the target audience to be defined by the air medical service shall include but not be limited to:

A. Hours of operation, phone number, and procedure to access.

B. Capabilities of air medical personnel.

C. Type of aircraft and operational protocols specific to type.

D. Service area for the aircraft.

E. Preparation and stabilization of the patient.

F. Safety program consisting of patient preparation and personal safety around the aircraft to include landing zone (LZ) designation for rotor wing services.

G. Patients considered appropriate for transport by the air medical service, (Generally, an appropriate transport is one which enhances patient outcome, safety or cost effectiveness over other modes of transport).

XIII. INFECTION CONTROL

A. Policies and procedures addressing patient transport issues involving communicable diseases, infectious processes and health precautions for emergency personnel as well as for patients must be current with the local standard of practice, standards of OSHA and as published by the center for Disease Control (CDC).

B. Policies and procedures must be written and readily available to all personnel of the air medical service.

C. Additional medical and agency resources pertinent to infection control must be identified and made available in the policy manual to all air medical personnel.

D. Education programs will include the institution's/service's infection control resources, programs, policies and CDC recommendations. Policies and procedures will be reviewed on an annual basis.

E. Air medical personnel transporting patients must practice preventative measures lessening the likelihood of transmission of pathogens. Policies and procedures address:

1. Personnel health concerns including record of:

a) Physical exams.

b) Immunization history – air medical personnel are encouraged to have tetanus and hepatitis B immunization.

c) Verification of post-vaccination antibody status, if immunized against hepatitis B.

d) Annual tuberculosis testing (purified protein derivative).

e) Measles, mumps, rubella (MMR) immunization.

2. Management of communicable diseases and infection control in the transport environment is outlined in policies:

a) Use of gloves, eye and mouth protection.

b) Sharps disposal container for contaminated needles and collection container for soiled disposable items on the aircraft.

c) Cleaning and disinfecting with appropriate disinfectant of the patient cabin area, equipment, and personnel's soiled uniforms.

d) Mechanism for identifying those at risk for exposure to an infectious disease.

e) A plan for communication between the air medical service personnel, EMS providers, and hospital when exposure is suspected/confirmed to include what follow-up is necessary.

(1) Written notification shall go out in an expedient manner.

(2) Follow-up is documented.

f) A policy for special provisions for transporting infected or possibly infected victims.

g) Proper cleaning or sterilization of all appropriate instruments or equipment.

h) Hand washing before and after each patient.

XIV. QUALITY ASSURANCE/CONTINUOUS QUALITY IMPROVEMENT

A. There is an established Quality Assurance/Continuous Quality Improvement Program which provides on-going monitoring and evaluation of the quality and effectiveness of the air medical ambulance service.

B. The QA/CQI program shall be comprehensively integrated, including activities related to patient care, communications, aviation, operations and equipment maintenance. The required elements and considerations of the written QA/CQI plan are listed in APPENDIX C.

C. The Medical Director has the primary responsibility for ensuring timely review of patient care activities and issues, utilizing the medical record and pre-established criteria. A committee consisting of the medical director along with representatives of management, medical and non-medical personnel should be considered as a mechanism for ensuring initiation and continuation of QA/CQI program.

D. The air medical service has a policy and procedure

manual available to all personnel which is reviewed, at least, annually for accuracy, completeness and currency.

E. The air medical service has established patient care guidelines/standing orders which must be reviewed annually (for content accuracy) by management, QA/CQI committee members and the Medical Director.

F. The QA/CQI program must be closely linked with risk management, so that concerns related through the risk management program can be followed up through the continuous quality improvement program.

XV. GENERAL POLICIES

A. There are well-defined lines of authority with a clear reporting mechanism to upper level management.

B. Air medical personnel understand the organizational structure and the chain of command.

C. A policy shall be in place that clearly explains the air medical service's disciplinary process for all levels of staff.

D. Management policies encourage ongoing communications between all levels and types of air medical service personnel.

E. There are formal, periodic staff meetings for which minutes are kept on file. There are defined methods for disseminating information between meetings.

F. For public or private institutions and agencies that contract with an aviation firm to provide air medical services, there shall be a policy that specifies the lines of authority between the medical management team and the aviation management team.

G. Management sets guidelines for press related issues and marketing activities.

1. Policies Relating to Patient Management

a) Management ensures, through policy, that all transfers of patient care occur from a lower level of care to an equal or higher level of care except for elective transfers for patient convenience or returning a patient to a referring facility.

b) A patient record shall be maintained on all patients utilizing the services of an air medical ambulance. The record shall be used to document care given during transport, as well as all other relevant patient related factors, such as status prior to, during at the end of transport.

c) A copy of the patient record will be left at the receiving hospital to facilitate continuity of care. A copy will be kept on file by the air medical ambulance service for a period of time to include that of the statute of limitations.

d) The air medical ambulance services has written policies and procedures which indicate what therapies can be performed without on-line medical direction.

e) Inter facility transports require physician referral/acceptance to ensure continuity of care and establish patient care parameters during the transport. Patient transfer protocols must comply with existing Federal requirements.

f) Management ensures an appropriate utilization review process based on:

(1) Medical benefits to the patient:

(a) Timeliness of the transport as it relates to the patient's clinical status.

(b) Transport to an appropriate receiving facility; an appropriate receiving facility may include:

(i) A hospital or facility where the patient has previously undergone specialized treatment and where the patient's previous medical records are located.

(ii) A facility at too great a distance for ground transport.

(iii) A facility with a specialized level of care not available in the referring hospital.

(c) Specialized air medical personnel expertise available during transport that would otherwise not be available.

(d) Safety of the transport environment.

2. Cost of the transport:

a) A structured, periodic review of flights (to determine transport appropriateness or that the mode of transport enhances medical outcome, safety or cost effectiveness over other modes of transport) performed at least semi-annually and resulting in a written report.

b) Hospital or non-hospital based program director/administrator is oriented to FARs that are pertinent to the air medical service.

3. Policies Pertaining to Safety

a) A Safety Committee shall meet at least quarterly with written reports sent to management and kept on file as dictated by policy. The responsibilities of the safety committee may be assumed by the QA/CQI committee.

b) Written variances relating to "safety" issues will be addressed in Safety Committee meetings. The committee will promote communications between air medical personnel and pilots addressing safety practice, concerns, issues and questions.

c) Recommendations for operational and safety issues will be reviewed by management.

See 4 DE Reg. 1827 (5/1/01)

APPENDIX A - EDUCATIONAL REQUIREMENTS

Initial education preparation and requirements will be guided by each air medical ambulance service's mission statement, scope of care provided, levels of care providers, state requirements and medical direction.

I. ALS, RN, MD and SPECIALTY CARE PROVIDERS: Scheduled Crew

Prior to functioning as a provider in an air medical service, all ALS and Specialty care personnel must present documentation of having successfully completed an

education program that validates minimum knowledge levels and skill competencies in the following identified areas:

A. Didactic Component that includes:

1. Advanced airway management
2. Altitude physiology; gas laws; stressors of flight
3. Anatomy, physiology and assessment of the adult, pediatric and neonatal patients
4. Oxygen therapy in the air medical environment
5. Mechanical ventilation and respiratory physiology for adults, pediatric and neonatal patients as appropriate to the mission statement and scope of care provided by the air medical service.
6. Respiratory emergencies
7. Recognition and management of cardiac emergencies including lethal dysrhythmias
8. Hemodynamic monitoring, pacemaker and automatic implantable cardiac defibrillator (AICD) management
9. Intra-aortic balloon pump, central lines, Swan Ganz and arterial catheters, left and right ventricular devices and extra corporeal membrane oxygenation (ECMO) when applicable
10. Environmental emergencies
11. High risk obstetric emergencies (bleeding, trauma, medical)
12. Neonatal emergencies (respiratory distress, cardiac, surgical)
13. Pediatric emergencies (medical, trauma)
14. Infection control practices and procedures
15. Metabolic/endocrine emergencies
16. Adult trauma and burns
17. Stress recognition and management
18. Toxicology
19. Pharmacology
20. Disaster and triage management**2
21. Survival training, if applicable
22. Hazardous materials scene recognition and response**2
23. Scene management/rescue/extrication**2

B. Clinical Component that includes experiences in providing:

1. Critical intensive care
 2. Emergency care
 3. Neonatal Intensive care
 4. Obstetrics
 5. Pediatric critical care
 6. Prehospital care**2
 7. Invasive procedures (or mannequin equivalent) for refreshing specific skills, i.e. endotracheal intubation
- 1*Refers to Inter hospital/inter facility providers only
- 2** Refers to Prehospital providers only.

NOTE: Specialty Care Providers must have included in their educational programs, additional content

material and skills specific for their specialty area.

C. Continuing Education

1. Documentation of each scheduled crew ALS, RN, MD or Specialty care provider completion of a minimum of 48 hours of air medical refresher/continuing education every two years must be kept on file by the air medical ambulance service and submitted to the Office biennially.

2. Continuing education/staff development programs, specific and appropriate to the mission statement and scope of care of the air medical ambulance service, must be provided.

3. Continuing education/staff development programs must include reviews and/or updates of the following areas:

- a) Aviation-safety issues
- b) Altitude physiology
- c) Management of emergency/critical care adults, pediatric and neonatal patients (medical and trauma)
- d) Obstetrical emergencies
- e) Invasive procedures labs
- f) Stress Management
- g) Infection control
- h) Hazardous materials scene recognition and response
- i) Survival training, if applicable
- j) Current certification must be maintained in the following areas:

(1) CPR (Cardio-pulmonary Resuscitation per guidelines of the American Heart Association)

(2) ACLS*3

(3) ATLS*3/Flight Nurse Advanced Trauma Course**4/PHTLS***5 (specific certification depends on level of care provider)

(4) PALS

(5) Neonatal Resuscitation Course (neonatal specialty care providers, only)

3* Physicians must be either ABEM /ABOEM or ACLS & ATLS certified

4** Nurses may elect to audit ATLS

5*** Paramedics may elect to be certified in Basic Trauma Life Support (BTLS)

See 4 DE Reg. 1827 (5/1/01)

II. Educational Requirements specific to the air medical in-flight environment for all air medical providers.

A. Air medical patient transport considerations (assessment, treatment, preparation, handling, equipment)

1. Day and night flying protocols
2. EMS communications
3. EMS systems
4. General aircraft safety annually to include:
 - a) aircraft evacuation procedures
 - b) communications during an emergency

situation and knowledge of emergency communication frequencies

c) in-flight and ground fire suppression procedures

d) in-flight emergency and emergency landing procedures (e.g., position, oxygen, securing equipment)

e) safety in and around aircraft including FAA rules and regulations pertinent to safety for air medical team members, patients, and lay individuals

f) specific capabilities, limitations and safety measures for each aircraft used

g) use of emergency locator transmitter (ELT)

5. Ground operations

III. Pilot Training Requirements

A. Initial training shall, at a minimum, consist of:

1. Training in specific type of aircraft as follows:

a) Less than 100 hours in aircraft type

(1) Factory school or equivalent (ground and flight)

(2) Twenty-five (25) hours as pilot in command in aircraft type prior to EMS missions

(3) Five (5) hours as pilot in command or at the controls prior to EMS missions

(4) Ten (10) hours as pilot in command or at the controls prior to EMS missions if transitioning from a single to a twin engine aircraft

b) Over 100 hours in aircraft type

(1) Part 135 check ride (for Part 135 certificate holders)

(2) Five (5) hours local area orientation

2. Minimum requirements for area orientation

a) Five (5) hours area orientation of which two hours must be at night as pilot in command or at the controls prior to EMS missions

b) Training hours in aircraft type and area orientation may be combined depending on the experience and background of the pilot

3. Terrain and weather considerations specific to the program's geographic area

4. Instrument Meteorological conditions (IMC) recovery procedures by reference to instruments

5. A structured orientation must be conducted for relief pilots which at a minimum must include: roles, responsibilities, and familiarization with the region served

6. Orientation to the hospital or health care system associated with the air medical service

7. Orientation to infection control, medical systems installed on the aircraft and patient loading and unloading procedures

8. Orientation to the EMS and public service agencies unique to the specific coverage area

B. Quality assurance and competency must be ensured through methodologies including monthly operational

reviews, ensuring pilot proficiency in both standard and emergency procedures. Remediation must be implemented as deficiencies are identified.

C. Annual recurrent training will minimally include:

1. Factory or equivalent refresher course

2. FAR Part 135 training requirements

3. IMC recovery procedures

4. Flight by reference to instruments

See 4 DE Reg. 1827 (5/1/01)

APPENDIX B - Aircraft and equipment

The certificate holder must meet all Federal Aviation Regulations specific to the operations of the air medical ambulance service.

A. AIRCRAFT MEDICAL CONFIGURATION STANDARDS

1. Air medical personnel assure that all medical equipment is in working order through checklists.

2. All equipment (including specialized equipment) and supplies must be secured according to FAR's.

3. Personnel must be in seatbelts (and shoulder harnesses if installed) for all take-offs and landings according to FAA regulations.

4. Patients are restrained with straps that must comply with FAA regulations.

5. A policy must be in place to address refusal to transport patients who may be considered a threat to the safety of the flight and/or air medical personnel.

6. Patients under 60 pounds (27 kg), excluding transport isolette patients, shall be provided with an appropriately sized restraining device (for patient's height and weight) which is further secured by a locking device.

7. The pilot(s), flight controls, throttles (RW) and radios are physically protected from an intended or accidental interference by the patient, air medical personnel or equipment and supplies.

8. A minimum of one stretcher shall be provided that can be carried to the patient:

a) The stretcher and the means of securing it for flight must be consistent with FARs.

b) The stretcher shall be large enough to carry the 95th percentile adult American patient, full length in the supine position (the 95th percentile adult American male is 6 ft. and 212 lbs.).

c) The stretcher shall be sturdy and rigid enough that it can support cardiopulmonary resuscitation. If a backboard or equivalent device is required to achieve this, such device will be readily available.

d) The head of the stretcher is capable of being elevated at least 30 degrees for patient care and comfort.

9. Medical oxygen system - oxygen is installed according to FAA regulation and is capable of being shut off from inside the aircraft. Medical personnel can determine oxygen status using in-line pressure gauges mounted in the

patient care area.

10. Each gas outlet is clearly marked for identification.

11. Supplemental lighting system will be installed in the aircraft for use in situations in which standard lighting is insufficient for patient care.

a) A self-contained lighting system powered by a battery pack or a portable light with a battery source must be available.

b) A means of protecting the cockpit from light in the patient care area shall be provided for night operations or use of red lighting (if not able to isolate the patient care area) to restrict light intensity.

12. Electric power outlet (with a minimum of 750 voltage amperage capacity) is provided, 28 volt DC and/or 115 volt AC, with sufficient output to meet the requirements of the complete specialized equipment package without compromising the operation of any electrical aircraft equipment.

13. No smoking signs are prominently displayed inside the cabin.

14. The air medical personnel "head-strike envelope" is clear of all obstructions.

B. ADDITIONAL OPERATIONAL POLICIES

There shall be specific policies and procedures regarding aircraft operations and evidence of training in the following areas:

1. Written patient loading and unloading procedures.

2. Specific policies concerning circumstances for hot loading or unloading if practiced.

3. Refueling policies for normal and emergency situations: Refueling with the engine running, rotor turning, and/or passengers on board is not recommended. However, emergency situations of this type can arise. Specific and rigid procedures should be developed by the operator to handle these occurrences. Refueling policies will address:

a) Refueling with engine(s) running or shut down.

b) Refueling with air medical personnel or patient(s) on board.

4. Specific policy to address the combative patient. Additional physical and/or chemical restraints should be available and used for combative patients who potentially endanger himself, the staff or the aircraft.

C. MEDICAL MANAGEMENT and EQUIPMENT REQUIREMENTS

1. Airway Maintenance and Oxygen Delivery

a) Objectives:

(1) The ability to initiate and maintain an airway with adequate ventilatory support for both adult and pediatric patients must be present.

(2) Adequate amounts of oxygen must be available for every mission.

(3) Oxygen flow can be stopped at or near the oxygen source from within the aircraft.

(4) A variety of oxygen delivery devices which are consistent with the scope of care must be present.

(5) The following indicators ~~are~~ must be available to personnel while in flight:

(a) quantity of oxygen remaining in the onboard oxygen supply system.

(b) measurement of oxygen liter flow

(6) There must be a back-up source of oxygen (of sufficient quantity to get safely to the ground for replacement) in the event the main system fails.

(7) Oxygen flow meters and outlets must be padded, flush mounted, or so located to prevent injury to personnel.

b) Required Equipment:

(1) Oral and nasopharyngeal airway adjuncts

(2) Oxygen supplies, including PEEP valves, appropriate for age and potential needs of patients

(3) Bag-Valve-Masks with oxygen reservoirs (assorted sizes appropriate to age of patients)

(4) Suction equipment (installed and portable) with appropriate suction tubes (sizes and types)

(5) Laryngoscope and tracheal intubation equipment

(6) Chest decompression and cricothyroidotomy equipment

(7) Pulse Oximeter

(8) Capnography (wave form)

(9) And all other equipment required to comply with the Delaware Standard Treatment Protocols.

2. Intravenous Fluids

a) Objectives:

(1) Fluids and supplies must be readily available.

(2) Hangers/hooks are available that secure the IV solutions in place.

(3) All hooks are padded and/or flush mounted to prevent injury to personnel.

(4) Glass IV containers are prohibited unless explicitly required by medication administration specifications.

b) Equipment:

A variety of IV solutions, tubing and catheters which potentially may be needed must be carried.

3. Medications

a) Objectives:

(1) Medications must be easily accessible.

(2) Controlled substances are to be secured in a manner consistent with state laws.

(3) Medications are stored in such a manner as to protect them from temperature extremes.

b) Equipment and Supplies:

(1) All services whose scope of service include ALS and specialty care missions will carry the drugs required to comply with current Delaware Standard Treatment Protocols.

(2) Medications required by a specific specialty care mission must be carried on board during the mission.

(3) Appropriate medication administration equipment must be present.

4. Cardiac Monitoring, Defibrillation and External Pacing

a) Objectives:

(1) External cardiac pacing must be available.

(2) Equipment must be secured and positioned so that displays are clearly visible and usable to the attending personnel.

(3) The aircraft must allow for in-flight, 'effective' CPR.

(a) 'Effective' is defined as CPR that produces a compression pulse.

b) Equipment Required:

(1) Cardiac monitor/Defibrillator and External Cardiac Pacemaker:

(2) Pediatrics paddles must be present if appropriate to the scope of service.

(3) Extra power sources are available for cardiac monitor, defibrillator and external ~~pacemaker~~ cardiac pacemaker.

(4) Automatic blood pressure device

See 4 DE Reg. 1827 (5/1/01)

APPENDIX C – Quality Management

1. The service or organization shall have a written QA/CQI plan which includes the following components:

- a) Responsibility/assignment of accountability
- b) Scope of care
- c) Important aspects of care
- d) Indicators
- e) Thresholds for evaluation which are appropriate to the individual service
- f) Methodology

2. The service or organization shall regularly hold QA/CQI meetings.

3. The service or organization's monitoring and evaluation process shall have the following characteristics:

- a) Driven by important aspects of care identified by the air medical service's QA/CQI plan
- b) Indicators and control thresholds are used to objectively monitor the important aspects of care
- c) Evidence of QA/CQI studies and evaluation in compliance with written QA/CQI plan
- d) Evidence of reporting QA/CQI activities through established QA/CQI organizational structure

e) Evidence of on-going re-evaluation of action plans until problem resolution occurs

4. Quarterly review shall monitor, at a minimum, the following:

- a) Reason for transport
- b) Mechanism of injury or illness
- c) Medical interventions performed or maintained
 - (1) Time of intervention consistently documented
 - (2) Patient's response to intervention documented
 - (3) Appropriateness of interventions performed or omission of needed interventions
- d) Patient's outcome (morbidity and mortality) at the time of arrival at destination (including any change in condition during flight)
- e) Timeliness of the transport
- f) Safety practices

(1) Safety issues may be handled through the Safety Committee when a problem is identified.

(2) QA/CQI personnel may collect data and refer to the Safety Committee for action and resolution.

g) Operational criteria to include at a minimum the following indicators:

- (1) Number of aborted and canceled flights due to weather
- (2) Number of aborted and canceled flights due to maintenance
- (3) Number of aborted and canceled flights resulting in the use of alternative modes of transport due to patient condition.

5. Utilization appropriateness - the following indicators may trigger a review of the EDIN record by the Office of Emergency Medical Services, or their designate, to determine the medical appropriateness of the transport, based upon patients who are:

- a) Discharged home directly from the Emergency Department, or discharged within 24 hours of admission
- b) Transported without an IV line or oxygen
- c) In cardiopulmonary arrest where CPR is in progress at the referring location
- d) Not transferred from a critical care unit, emergency department, or other specialty care unit.
- e) "Scheduled transports"
- f) Air transported more than once for the same illness or injury within 24 hours
- g) Transported from the scene of an injury and fails to meet the criteria outlined in the "Prehospital Trauma Triage Scheme" in Section VI of the State Trauma System Regulations.
- h) Transported interfacility, and the receiving facility is not a higher level of care than the referring facility

6. For both QA/CQI and utilization review programs, there shall be evidence of actions taken in problem areas and

the evaluation of the effectiveness of that action.

See 4 DE Reg. 1827 (5/1/01)

APPENDIX D Air Medical Ambulance Service Use Report

Agency: _____ County (circle): ~~New Castle Kent Sussex~~
Incident #: _____ Incident Date: _____
Incident Location: _____
Incident Type: ~~Medical Trauma Medical/Trauma Peds OB~~
Patient Priority: ~~1 2 3~~
Air Medical Service: _____
Radio Designation: _____
Responded From: _____
DSP Available? ~~Y N Reason not utilized or not available:~~

ALS 10-8: _____ ALS 10-2: _____
Helo Request: _____ Helo 10-8: _____ Helo 10-2: _____

Circumstances
(Briefly describe the factors or circumstances that contributed to the use of this Air Medical Service)

Submitted by (print): _____
Signature: _____
Date: _____

See 4 DE Reg. 1827 (5/1/01)

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 122(3)(c) (16 Del.C. §122(3)(c))

These proposed regulations, "**Regulations Governing Public Drinking Water Systems**," will replace by revision the current "Regulations Governing Public Drinking Water Systems," previously adopted May 14, 1971 and most recently amended September 10, 2001

The Department is proposing to adopt new U.S. Environmental Protection Agency (EPA) requirements for public notification, consumer confidence reports, the interim enhanced surface water treatment rule, and the stage 1 disinfection/disinfection byproducts rule. In addition, DHSS is proposing a primary maximum contaminant level for MTBE of 0.01 mg/L and moving the compliance date for the new arsenic standard from September 2006 to January 2006.

Notice of Public Hearing

The Office of Drinking Water, Division of Public

Health of the Department of Health and Social Services (DHSS), will hold a public hearing to discuss proposed revisions to the "State of Delaware Regulations Governing Public Drinking Water Systems." DHSS is proposing to adopt new US EPA requirements for public notification, consumer confidence reports, the interim enhanced surface water treatment rule, and the stage 1 disinfection/disinfection byproducts rule. In addition the DHSS is proposing a primary maximum contaminant level for MTBE of 0.01 mg/L and moving the compliance date for the new arsenic standard from September 2006 to January 2006.

The public hearing will be held January 8, 2002 at 4:00 PM in the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway Dover, Delaware.

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

Office of Drinking Water
Blue Hen Corporate Center, Suite 203
655 Bay Road
Dover, DE 19901
Telephone: (302) 739-5410

Anyone wishing to present his or her oral comments at this hearing should contact Mr. Edward Hallock at (302) 739-5410 by January 4, 2002. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by January 11, 2002:

Dave Walton, Hearing Officer
Division of Public Health
PO Box 637
Dover, DE 19903

Summary of changes to the "State of Delaware Regulations Governing Public Drinking Water Systems" – Fall 2001

Attached are the revisions to the "State of Delaware Regulations Governing Public Drinking Water systems". Deletions are identified by a strike through and additions are underlined. A summary of the changes follows:

Formatting changes:

The Table of Contents is being modified to reflect that the definitions Section, 22.1, will not contain a separate subsection number for each definition.

Section 22.1 Definitions has the following definitions added:

- Comprehensive Performance Evaluation.
- Disinfection Profile
- Enhanced Coagulation

Enhanced Softening
 Filter Profile
 GAC 10
 Haloacetic Acids (Five)(HAA5)
 Maximum Residual Disinfection Level (MRDL)
 Maximum Residual Disinfection Level Goal (MRDLG)
 Subpart H System
 SUVA
 Total Organic Carbon (TOC)
 Uncovered Finished Water Facility

These definitions are needed for the new sections that have been added.

Section 22.217 has been changed from “Effective Date” to “Use of Bottled Water”. This reflects EPA’s change to allow the use of Point-of-Use and Point-of-Entry treatment devices for small water systems, but maintains the prohibition of bottled water as a permanent solution for maximum contaminant level violations.

Section 22.218 has become the “Effective Date” section.

Section 22.4 Reporting, Public Notification, Consumer Confidence Reports and Record Maintenance has been expanded to include the Consumer Confidence Report (CCR) rule requirements and the revised public notice rule requirements. The changes to the public notice section include timelines for issuing public notices that comply with SB 192 passed in the 2001 legislative session. These changes are more stringent than the EPA rule.

Section 22.412(E) Mandatory Health Effects Language has been modified to meet CCR and public notice rule requirements.

Analytical Requirements, located in various sections throughout the regulations, will be adopted by reference to the Code of Federal Regulations. This will eliminate the need to adopt new analytical requirements each time that EPA adopts a new method.

Section 22.61 Organic Chemical Requirements has added new contaminants including Disinfection Byproducts (DBPs), Disinfection Residuals and Disinfection Precursors. New DBPs include Haloacetic acids, bromate and chlorite. This is the Stage 1 Disinfection Byproducts Rule package now required under the Safe Drinking Water Act.

Section 22.8 Public Water system Classification and Treatment Requirements has new sections added for establishing maximum residual disinfection levels and treatment requirements for disinfection byproducts and disinfection precursors.

Section 22.62 Unregulated Contaminants has been deleted. The EPA has adopted a new Unregulated Contaminant Monitoring Rule that no longer requires states to have a rule for monitoring unregulated contaminants.

Section 22.10 Surface Water Treatment Rule has been modified to incorporate the IESWTR (Interim Enhanced Surface Water Treatment Rule) requirements.

Section 22.6 Inorganic and Organic Chemical Requirements has added MTBE (Methyl Tertiary Butyl Ether) to the list of regulated VOCs. A MCL of 0.01 mg/L is being proposed.

It is our intention to have these revisions forwarded to the Register of Regulations by November 15, 2001 for a December 1, 2001 publication. Following is our anticipated timeline:

November 15, 2001 – submitted to Register of Regulations

December 1, 2001 – publication in the Register of Regulations

January 2002 – hold public hearing

February 15, 2002 – submit final rules to Register of Regulations

March 1, 2002 – publication of final rules in Register of Regulations

March 11, 2002 – regulations become final.

[Click to view the document.](#)

*** PLEASE NOTE THAT DUE TO THE LENGTH OF THE REGULATIONS GOVERNING PUBLIC DRINKING WATER SYSTEMS, THE PROPOSED FULL-TEXT VERSION IS NOT BEING RE-PRINTED HERE. THE FULL TEXT OF THE REGULATION IS AVAILABLE BY CONTACTING THE REGISTRAR OF REGULATIONS OR ON-LINE, IN ADOBE PDF FORMAT, AT THE GENERAL ASSEMBLY WEBSITE.**

DEPARTMENT OF INSURANCE

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

Notice of Public Hearing

Insurance Commissioner Donna Lee H. Williams hereby gives notice that a **PUBLIC HEARING** will be held on Monday, January 14, 2002, at 10:00 a.m. in the Executive Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider **amendments to Regulation 10** relating to the the arbitration of certain claims for benefits available under automobile, health, or homeowners' policies or agreements and the of **implementation of Regulation**

No. 11 (Proposed) entitled "Arbitration Of Health Insurance Claims And Internal Review Processes Of Medical Insurance Carriers"

The purpose for amending Regulation 10 is to remove the arbitration of health claims completely from the existing regulation while leaving the arbitration of claims relating to automobile or homeowners' policies intact. The purpose for implementing Regulation 11 is to establish the procedures for the arbitration of certain claims for benefits available under health insurance policies or agreements, and/or the explicit provisions of 73 *Del. Laws* Chapter 96, known as the "Patient's Bill of Rights" Act.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 *Del. C.* Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than Friday, January 11, 2002, and should be addressed to Deputy Attorney General Michael J. Rich, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or give an oral statement must notify Michael J. Rich at (302) 739-4251, Ext. 171 no later than Friday, January 11, 2002.

Regulation 10

Arbitration of Automobile, ~~Health~~ and Homeowners' Insurance Claims

Sections

1. Purpose and Statutory Authority
2. Insurer's Duty to Arbitrate
3. Exemption from Arbitration
4. Exclusion from Arbitration
5. General
6. Notice and Manner of Service
7. When Arbitration May be Commenced
8. Commencement of Arbitration
9. Arbitration Panels
10. Arbitration Hearings
11. Subrogation Arbitration
12. Arbitration Fees
13. Appeals
14. Effective Date

Section 1. Purpose and Statutory Authority

The purpose of this Regulation is to implement 18 Del. C. §331, ~~332~~, Chapter 23, and 21 Del. C. §2118 and 2118B by establishing the procedures for the arbitration of certain claims for benefits available under automobile, ~~health~~, or homeowners' policies or agreements, and/or those statutes. This Regulation is promulgated pursuant to 18 Del. C. §311, 2312, and 29 Del. C., Ch. 101. This Regulation should not be construed to create any cause of action not otherwise

existing at law.

Section 2. Insurer's Duty to Arbitrate

Every insurer providing coverage or benefits in this State for automobile; or homeowners' insurance policies or health shall submit to arbitration of covered claims (as defined by 18 Del. C. §331, ~~332~~, and 21 Del. C. §2118 and 2118B) by their insureds unless it is exempted from arbitration by the Insurance Commissioner. ~~For the purposes of this Regulation the term "insurer," in addition to its ordinary meaning, includes health plans, health service corporations and health maintenance organizations. In a similar manner, the term "insured" shall, in addition to its ordinary meaning, include the participants, subscribers or members of such health plans, health service corporations or health maintenance organizations.~~

Section 3. Exemption from Arbitration

(1) Insurers requesting exemption from the duty to arbitrate under a homeowners' ~~or a health~~ insurance policy shall submit to the Insurance Commissioner the following:

- (1) A request for exemption from arbitration;
- (2) Copies or description of policies or plans for which exemption is requested;
- (3) A detailed description of its internal review or appraisal procedures;
- (4) Copies of documents to be provided to the insured describing its internal procedures including a statement that the insurer will be bound by a decision favorable to the insured;
- (5) A certification by an officer of the insurer with binding authority that the procedures described will be followed in all cases, that the insurer will be bound by a decision favorable to the insured and that all documents submitted are true and accurate; and
- (6) Payment of a non-refundable fee of \$275.00.

(2) The Commissioner shall exempt a homeowner insurer from arbitration under this Regulation and continue such exemption as long as the internal appraisal or review procedures submitted under subsection (a) contain the following minimum requirements:

(1) The internal appraisal or arbitration procedure is performed by a panel of at least three individuals with both insured and insurer to select an equal number. Those selected by the parties shall select another member who shall preside over the panel. However, neither the insurer's assigned adjuster nor his or her supervisor may participate on the panel nor anyone under that supervisor's control;

(2) The insured or his attorney is permitted to submit evidence and examine the adverse evidence and to appear before the panel prior to the time the matter is to be decided;

(3) The insured is permitted to be represented by counsel;

(4) The insured is informed as to the right to appeal, if any, an adverse decision;

(5) The insured will be provided with at least 10 business days notice of all steps in the procedure. The decision will be made by a majority of the panel and must be provided to the parties, in writing, signed by the majority with a brief explanation of the reasons for the decision; and

(6) The insurer will maintain complete records of the above for a period of three years for inspection at any time during business hours by the Commissioner or the Insurance Department.

(3) The Commissioner shall exempt a health insurer from arbitration under this Regulation and continue such exemption as long as the internal review procedures submitted under subsection (a) satisfy the requirements for approval set forth below as either "standard" or "optional".

(1) Standard Approval:

(1) The internal appraisal or arbitration procedure is performed by an individual(s) who is qualified and impartial. However, neither the individual who originally denied the claim nor his or her supervisor, nor anyone under that supervisor's control may participate in the review. If the claim involves the denial or refusal to certify either medical treatment or procedure, the reviewing individual(s) shall be a qualified health care professional in the appropriate health care discipline;

(2) The insured may be represented by counsel;

(3) The insured is informed in writing that the review is not binding and they may have additional legal rights that could be enforced in a court;

(4) The insured will be provided with at least 10 business days notice of all steps in the procedure. The decision will be provided to the parties, in writing, signed by the reviewer(s) with a brief explanation of the reasons for the decision;

(5) The insurer will maintain complete records of the above for a period of three years for inspection at any time during business hours by the Commissioner or the Insurance Department; and

(6) Review procedures approved as standard shall enjoy no presumption that the proceedings conducted thereunder are in compliance with Chapter 23 of Title 18 of the Delaware Code.

(2) Optional Approval:

(1) The internal appraisal or arbitration procedure is performed by a panel of at least three individuals with both insured and insurer to select an equal number. Those selected by the parties shall select another member who shall preside over the panel. However, neither the insurer's assigned adjuster nor his or her supervisor, nor anyone under that supervisor's control may participate on the panel. Moreover, if the claim involves the denial or refusal to certify either medical treatment or procedure, the presiding member or one other member of the panel shall be a

qualified health care professional in the appropriate health care discipline;

(2) The insured is permitted to be represented by counsel;

(3) The insured or his attorney is permitted to submit evidence and examine the adverse evidence and to appear before the panel prior to the time the matter is to be decided;

(4) The insured is informed as to the right to appeal, if any, an adverse decision or is informed of the binding nature of the review procedures, if so provided in the policy or plan;

(5) The insured will be provided with at least 10 business days notice of all steps in the procedure. The decision will be made by a majority of the panel and must be provided to the parties, in writing, signed by the majority with a brief explanation of the reasons for the decision;

(6) The insurer will maintain complete records of the above for a period of three years for inspection at any time during business hours by the Commissioner or the Insurance Department; and

(7) Proceedings conducted in accordance with optionally approved review procedures shall be presumed to be in compliance with Chapter 23 of Title 18 of the Delaware Code.

(4) The Commissioner may suspend, revoke or refuse to continue any exemption after notice and a hearing establishing violation of the above. The exemption provided above is not effective until the application has been filed, reviewed and approved by the Commissioner. The Commissioner may request reports from insurers from time to time on the above reviews.

Section 4. Exclusion from Arbitration

(1) The following claims shall not be subject to arbitration under this Regulation:

(1) Claims for which there is no jurisdiction under 18 Del. C. §331, ~~332~~, and 21 Del. C. §2118 and 2118B;

(2) Claims for which there is no policy coverage in force;

(3) Claims that are already pending before any court; or

(4) Claims that arise under an insurance policy from a jurisdiction other than Delaware.; ~~or~~

(5) Claims which arise under a homeowners' or health insurance policy or plan which has been exempted by the Commissioner under §3.

(2) The Arbitration Secretary or Panel are authorized to dismiss a matter upon receipt of information sufficient to establish that the claim is excluded under subsection (a) and after notice and an opportunity to respond is provided the petitioner.

Section 5. General

(1) These Arbitration Rules shall be considered applicable to accidents, insured events, or losses occurring within the limits of the State of Delaware regarding first and third party property and PIP claims and to first party claims in other states or territories of the United States or to foreign countries as set forth in the insurance policy.

(2) In arbitration proceedings and practice, the claimant who initiates the proceeding by filing a request for arbitration of a controverted claim or issue with the Insurance Commissioner shall be known as the "claimant," and the company or companies against which claim or claims is asserted shall be known as "respondent(s)."

(3) Requests for arbitration with respect to health insurance coverage shall be in writing and mailed to the Insurance Commissioner within 90 days from the date of receipt of the written adverse determination or denial.

(4) Requests for arbitration with respect to homeowners' insurance coverage shall be in writing and mailed to the Insurance Commissioner within 90 days from the date an offer of settlement or denial of coverage or liability has been made by an insurer.

Section 6. Notice and Manner of Service

(1) Notice and manner of service, except service of the original petition, is sufficient and complete if properly addressed, upon mailing the same with prepaid first class U.S. Postage.

(2) Service of an original Petition shall be by Certified U.S. Postage and return receipt requested or hand delivery to the respondent and is complete upon receipt by addressee or an employee in respondent's place of business.

(3) The parties must provide a brief statement verifying the service of all filed papers with the manner, date and address of service.

Section 7. When Arbitration May Be Commenced

(1) Arbitration may be commenced after the parties have attempted to resolve the matter informally and the Petitioner has provided the opposing party with all reasonably requested information in Petitioner's possession or provided the opposing party with an opportunity to obtain such information.

(2) The Panel may dismiss without prejudice the matter if it finds that the Petitioner has not attempted to resolve the matter informally or has failed to provide the opposing party with reasonably requested information.

Section 8. Commencement of Arbitration

(1) An arbitration will commence upon the filing of a Petition and three copies, in acceptable form with the Commissioner's Arbitration Secretary with the supporting documents or other evidence attached thereto and payment of the proper fee. The petitioner shall at the same time send a

copy of the same Petition and supporting documents to the insurer or insurer's representative and a statement verifying service under §5. The Arbitration Secretary may return any non-conforming Petition.

(2) Within 20 business days of receipt of the Petition, the responding insurer ("Respondent") shall file a Response with three copies, in acceptable form, with the Arbitration Secretary with supporting documents or other evidence attached and payment of the proper fee. The Respondent shall at the same time send a copy of the same Response and supporting documents to the Petitioner or Petitioner's representative and a statement verifying service under §5. The Arbitration Secretary may return any non-conforming Response.

(3) If the Respondent fails to file a Response in a timely fashion, the Arbitration Secretary after verifying proper service and notice to the parties may assign the matter to the next scheduled Arbitration Panel for summary disposition. The Panel may determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on Respondent. The Arbitration Secretary or Panel may allow the re-opening of the matter to prevent a manifest injustice. A request for re-opening must be made no later than 5 business days after notice of the default judgment.

(4) Upon the filing of a proper Response, the Arbitration Secretary shall assign and schedule the matter for a hearing before an Arbitration Panel.

(5) The Insurance Department will provide the approved form of Petition or Response as they may be amended from time to time. The Parties are free to produce and use their own copies of those forms.

Section 9. Arbitration Panels

(1) The Commissioner shall establish ~~three~~ two types of Arbitration Panels. There shall be Panels established for automobile insurance claims; and homeowners' insurance claims; ~~and health insurance claims.~~

(2) Each Panel shall consist of three members of suitable backgrounds or experience or as may be specified by statute, to be selected by the Commissioner. No member may serve on a Panel in which his employer or client is a party. Each Panel shall have a presiding member who shall be appointed by the Commissioner.

(1) In the case of automobile claims, each Panel shall consist of at least one Delaware attorney as a member and the balance of the members shall be Delaware licensed insurance adjusters.

(2) In the case of homeowners' claim, the Panel shall consist of individuals of suitable expertise in evaluating such claims and may include Delaware licensed property appraisers or adjusters.

(3) In the case of health insurance claims involving the certification of treatment or procedure, one member of

the panel must be a licensed health care professional in the relevant area of dispute.

(3) A decision by the Panel requires concurrence by at least two of the Panel members who shall sign the written decision.

Section 10. Arbitration Hearings

(4) The arbitration hearing shall be scheduled and notice of the hearing shall be given the parties at least 10 business days prior to the hearing. Neither party is required to appear and may rely on the filed papers.

(5) The purpose of Arbitration is an attempt to effect a prompt and inexpensive resolution of claims after reasonable attempts by the parties to resolve the matter informally. Arbitration hearings shall be conducted in keeping with that goal. The arbitration hearing is not a substitute for a civil trial. In accord, the Delaware Rules of Evidence do not apply and hearings are to be limited, to the maximum extent possible, to each party being given the opportunity to explain their view of the previously submitted evidence in support of the pleading and to answer questions by the Panel. If the Panel allows any brief testimony, the Panel shall allow brief cross examination or other response by the opposing party.

(6) The Arbitration Panel may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside the parties' presence for information to resolve the matter.

(7) The Panel is to consider the matter based on the submissions of the parties and information otherwise obtained by the Panel. The Panel shall not consider any matter not contained in the original or supplemental submissions of the parties which has not been provided the opposing party with at least 5 business days notice, except claims of a continuing nature which are set out in the filed papers.

(8) Claims for attorney fees under 21 Del. C., §2118B, shall only be granted upon the petitioner proving that the insurer acted in "bad faith." Bad faith is an intentional, reckless or malicious indifference to the duties owed an insured, not negligence, carelessness or inadvertence of any degree.

Section 11. Subrogation Arbitration

Subrogation arbitration between or among insurers pursuant to 21 Del. C., §2118 is not subject to this Regulation and shall continue to be conducted through Arbitration Forums, Inc., or its successor.

Section 12. Arbitration Fees

(A) Each party to an arbitration shall tender and pay the following filing fees for arbitration.

- (1) \$30.00 for Automobile Insurance Claims; and
- (2) \$30.00 for Health Insurance Claims;
- (2) \$30.00 for Homeowners' Insurance Claims.

(B) The filing fees are non-refundable and shall only be returned when a claim is determined to be excluded from arbitration. The prevailing party at arbitration is normally entitled to recover their paid filing fees as costs. However, the Panel may, for cause, award the filing fee as costs as may be equitable.

Section 13. Appeals

(A) Appeals from an adverse decision of the Arbitration panel shall be taken to the Superior Court of the State of Delaware by filing a Notice of Appeal with the Arbitration Secretary.

(B) The Notice of Appeal must be filed within 90 days in the case of claims for homeowners' insurance or health insurance claims and within 30 days in the case of automobile insurance claims.

(C) All further filings and proceedings shall be in accordance with the Superior Court Rules of Civil Procedure.

Section 14. Effective Date

~~This amended Regulation shall be effective 30 days after promulgation.~~ This regulation, as amended, shall replace existing Regulations 10 and 10A in their entirety. This regulation shall become effective thirty days after the effective date of Regulation 11 relating to the arbitration of health claims. Any health claims commenced under this regulation prior to the effective date of Regulation 11 shall be resolved in accordance with the provisions of 73 Del. Laws Chapter 96.

Adopted And Signed By The Commissioner, _____, 2002

Regulation 11

Arbitration of Health Insurance Claims and Internal Review Processes of Medical Insurance Carriers

Sections

1. Purpose and Statutory Authority
2. Definitions
3. Insurer's Duty to Arbitrate
4. Exemption from Arbitration
5. Exclusion from Arbitration
6. Minimum Requirements for an Internal Review Process (IRP)
7. Mediation Services
8. Payments for Emergencies Based on Date of Service
9. General Procedures Applicable to Arbitrations
10. Commencement of Arbitration
11. Arbitration
12. Arbitration Hearings
13. Appeals
14. Confidentiality of Health Information

15. Effective Date
Appendix Forms

Section 1. Purpose and Statutory Authority

The purpose of this Regulation is to implement 16 Del. C., §9119, 18 Del. C., §§332, 3348, 3359E, and 18 Del. C., Chapter 23 by establishing the procedures for the arbitration of certain claims for benefits available under health insurance policies or agreements, and/or the explicit provisions of the statutes under which this regulation is promulgated. This Regulation is promulgated pursuant to 18 Del. C. §§311, 2312, and 29 Del. C., Ch. 101 and 73 Del. Laws Chapter 96. This Regulation should not be construed to create any cause of action not otherwise existing at law.

Section 2. Definitions

Except as otherwise noted, the following definitions shall apply:

a. "Commissioner" shall mean the Insurance Commissioner of Delaware.

b. "Department" shall mean the Delaware Insurance Department.

c. "Emergency care service" shall mean:

(1) any medical screening examination or other evaluation medically required to determine whether an emergency medical condition exists;

(2) any necessary medical service to treat and stabilize an emergency medical condition;

(3) any medical service that originates in a hospital emergency facility or comparable facility following treatment or stabilization of an emergency medical condition;

(4) any covered service providing for the transportation of a patient to a hospital emergency facility for an emergency medical condition; and

(5) any covered service providing for paramedic services for an emergency medical condition.

d. "Emergency medical condition" shall have the meaning assigned to it by 18 Del.C., §§3348(d) and 3359E(d).

e. "Health insurance policy" shall have the meaning assigned to it by 18 Del. C., §332(a)8.

f. "Insured" shall, in addition to its ordinary meaning, include the participants, subscribers or members of such health plans, health service corporations, medical care organizations or health maintenance organizations.

g. "Insurer" or "carrier," in addition to its ordinary meaning under 18 Del. C., §3343(a)(1), includes health plans, health service corporations, medical care organizations and health maintenance organizations subject to state insurance regulation.

h. "IRP" shall mean an internal review process established by an insurer under 18 Del. C., §332.

i. "Network provider" is a provider who has a written

participation agreement with the insurer to provide emergency care services in Delaware on and after January 1, 2002. All other providers of emergency care services shall be considered non-network providers.

j. "Provider" means an individual or entity, including without limitation, a licensed physician, a licensed nurse, a licensed physician assistant and a licensed nurse practitioner, a licensed diagnostic facility, a licensed clinical facility, and a licensed hospital, who or which provides an emergency care service in this State after January 1, 2002.

Section 3. Insurer's Duty to Arbitrate

Except for claims exempt from arbitration by law or regulation, every insurer, carrier, provider, network provider and non-network provider giving or providing health and/or emergency medical services, and/or health insurance coverage or benefits in this State shall be subject to arbitration as follows:

a. For covered claims arising from the provision of emergency services under 18 Del. C., §§3348 and 3359E; and

b. For appeals from decisions of an IRP under 18 Del. C., §332 by the insured's participants.

Section 4. Exemption from Arbitration

a. Health claims or appeals which involve issues of medical necessity and/or the appropriateness of services, as defined in 16 Del. C., §9119, shall be exempt from arbitration by the Department. Any claims or appeals arising under 16 Del. C., §9119 and filed with the Department shall be deemed properly filed if actually received by the Department within in the allotted statutory time and such appeals shall, within five (5) business days from the date the Department determines that such appeals are exempt or excluded from arbitration, be forwarded by the Department through normal state channels to the Department of Health and Social Services, or its appropriate successor agency, for arbitration under 16 Del. C., §9119 and such other laws and regulations as are applicable to said claims or appeals.

b. 18 Del. C., §§3348 and 3359E shall not apply to health insurance policies exempt from state regulation under federal law or regulation. On or before April 1, 2002, and quarterly thereafter, each insurer shall provide a list of non-exempt plan numbers, as defined in 18 Del. C., §§3348 and 3359E to the Department. The Department shall maintain a public register of such non-exempt plan numbers. The placement of a non-exempt plan number on the register shall constitute a rebuttable presumption that such non-exempt plan number is subject to the provisions of this regulation.

Section 5. Exclusion from Arbitration

a. The following claims shall not be subject to arbitration under this regulation:

(1) Claims for which there is no jurisdiction under 18 Del. C. §332.

(2) Claims that are already pending before any court or other administrative agency; or

(3) Claims that have been exempted by the Commissioner under Section 4 of this regulation.

b. The Arbitration Secretary or Arbitrator is authorized to dismiss a matter upon receipt of information sufficient to establish that the claim is excluded under subsection (a) and after notice and an opportunity to respond is provided the claimant.

Section 6. Minimum Requirements for an Internal Review Process (IRP)

In addition to the requirements set forth in 18 Del. C. §332, the following provisions shall govern the internal review process of all insurers subject to state jurisdiction offering health coverage in Delaware:

a. All written procedures and forms utilized by a insurer shall be readable and understandable by a person of average intelligence and education. All such documents shall meet the following criteria:

(1) The type size shall not be smaller than 11 point;

(2) The type style selection shall be at the discretion of the insurer but shall be of a type that is clear and legible;

(3) Captions or headings shall be designed to stand out clearly;

(4) White space separating subjects or sections should be distinct;

(5) There must be included a table of contents sufficient to guide and assist the insured;

(6) Where appropriate definitions shall be included and shall be sufficient to clearly apply to the usage intended.

(7) The policy shall be written in everyday, conversational language to the extent possible to preserve the legal meaning.

(8) Short familiar words shall be used and sentences shall be kept as short and simple as possible.

b. All forms relating to grievances, appeals, or other procedures relating to the IRP shall be provided as examples along with the written IRP provided to the insured by the insurer.

c. The first notice of an IRP shall be given to all participants of an insurer within thirty (30) days of approval by the Commissioner. The annual notice thereafter shall either be upon the policy renewal date, open enrollment date, or a set date for all insureds or participants of the insurer, at the insurer's discretion. For every new policy issued after the approval of the IRP by the Commissioner, the insurer shall provide a copy of the IRP at the same time identification cards and similar materials are provided to

newly insured participants.

d. Under circumstances where an oral or written grievance may not contain sufficient information and the insurer requests additional information, such request shall not be burdensome or require such information as the insurer might reasonably be expected to obtain through its normal claims process.

Section 7. Mediation Services

At the time the insurer provides a written notice of disposition of a claim or grievance to an insured, the insurer shall provide the insured with a written notice of mediation services offered by the Delaware Insurance Department. Such notice may be separate from or a part of the written notice of disposition of a claim or grievance. Such form will be satisfactory if it contains the following information:

Claims Denied For Medical Reasons: As explained in this notice, your claim has been denied in whole or in part. You have the right to appeal that decision to the Department of Health and Social Services as explained in this notice. If you do not file your appeal within sixty (60) days from the date you receive this notice, you will be bound by the decision contained in this notice. The Delaware Insurance Department provides mediation services which are in addition to, but do not replace, your right to appeal the decision of your claim to the Department of Health and Social Services if the decision was based on whether the care you received was either necessary or appropriate. The purpose of mediation is to informally determine if your claim can be resolved between you and the insurance company even though your claim may be on formal appeal. These mediation services are provided without charge to you. If you wish to use the mediation services provided by the Delaware Department of Insurance, please contact the Consumer Services Division by calling 800-282-8611 or 302-739-4251. You may go to the Delaware Insurance Department at The Rodney Building, 841 Silver Lake Blvd., Dover, DE 19904 between the hours of 8:30 a.m. and 4:00 p.m. if you wish to personally discuss the mediation process. Delaware law governs your rights of appeal. If you fail to file a written appeal of this disposition within sixty (60) days of the date you received this document, the disposition will stand even if you seek mediation services from the Delaware Insurance Department.

Claims Denied For Non-medical Reasons: As explained in this notice, your claim has been denied in whole or in part. You have the right to appeal that decision to the Department of Insurance as

explained in this notice. If you do not file your appeal within sixty (60) days from the date you receive this notice, you will be bound by the decision contained in this notice. The Delaware Insurance Department will provide the necessary forms you need to start an appeal and will also provide mediation services which are in addition to, but do not replace, your right to appeal the decision. You can contact the Delaware Insurance Department for information about an appeal or mediation by calling the Consumer Services Division at 800-282-8611 or 302-739-4251. You may go to the Delaware Insurance Department at The Rodney Building, 841 Silver Lake Blvd., Dover, DE 19904 between the hours of 8:30 a.m. and 4:00 p.m. Delaware law governs your rights of appeal. If you fail to file a written appeal of this disposition within sixty (60) days of the date you received this document, the disposition of your claim will stand.

Section 8. Payments for Emergencies Based on Date of Service

a. Effective on the date this regulation becomes effective, under circumstances where the contract between the provider and insurer was terminated after July 3, 2001, insurers will pay such provider the highest negotiated rate for the services provided during the term of the contract for services identified in 18 Del. C. §§3348 or 3359E, adjusted annually to reflect changes in payments by that insurer to its network providers and subject to such rate adjustments as may be published in bulletins by the Commissioner from time to time. Effective on the date this regulation becomes effective, insurers will pay non-network providers who were not network providers on or after July 3, 2001 the higher of either (1) the highest payment rate paid by the non-network insurer to the provider for performance of the same or similar service in a comparable medical facility; or (2) the highest undisputed amount regularly paid by any network insurer to the provider for performance of the same or similar service in a comparable medical facility. All payments pursuant to this section are subject to reduction based the insured's obligations for co-payments or deductibles.

b. After the the date this regulation becomes effective, each insurer shall pay non-network providers for each emergency medical care service that has been assigned a new CPT Code after the date this regulation becomes effective, an amount equal to the lesser of the non-network provider billed fee for such new service or the highest negotiated rate between the insurer and any network provider for the service based on the appropriate CPT code until such time as the provider becomes a network provider pursuant to a written participation agreement. Thereafter

payments will be based on the new negotiated rates.

c. Differences between the provider and the insurer which cannot be resolved by the parties pursuant to the foregoing subsections shall be subject to arbitration at the request of either party and the rate for said service shall be established by the Arbitrator pursuant to this regulation.

Section 9. General Procedures Applicable to Arbitrations

a. In arbitration proceedings and practice, the person(s), firm(s) or entity(ies) who initiates the proceeding by filing a petition for arbitration of a disputed claim or issue with the Commissioner shall be known as the "claimant(s)," and the person(s), firm(s) or entity(ies) against whom such claim or claims is asserted shall be known as "respondent(s)."

b. A petition for arbitration shall be in writing and filed in the office of the Commissioner on or before the sixtieth day following the claimant's receipt of the written adverse determination or denial.

c. The parties must provide a brief statement certifying the service of all filed papers with the manner, date and address of service. A certification of service using Form C in the appendix to this Regulation shall be satisfactory if mailed to the opposing party as required by this Regulation.

d. Notice and Manner of Service.

(1) Notice and manner of service, except service of the original petition, is sufficient and complete if properly addressed, upon mailing the same with prepaid first class U.S. Postage.

(2) Service of an original petition shall be by Certified U.S. Postage and Return receipt requested or hand delivery to the respondent and is complete upon receipt by addressee or an employee in respondent's place of business.

e. In any arbitration pursuant to 18 Del. C. §§3348 or 3359E, the Arbitrator shall, at a minimum, receive evidence relating to the following items:

(1) The highest amount of money paid by the insurer to a provider for the particular service in a comparable medical facility where the service was provided during the preceding twelve months;

(2) The lowest amount of money paid by the insurer to a provider for the particular service in a comparable medical facility where the service was provided during the preceding twelve months;

(3) The highest amount of money received by a provider from the insurer for the particular service in a comparable medical facility where the service was provided during the preceding twelve months;

(4) The lowest amount of money received by a provider from the insurer for the particular service in a comparable medical facility where the service was provided during the preceding twelve months;

(5) The number of times during the preceding twelve months that the insurer experienced a dispute or

disagreement with respect to the payment for the particular service in a comparable medical facility where the service was provided and the outcome of such disputes or disagreements.

(6) Such information as may be provided to the Arbitrator pursuant to an arbitration shall presumptively be considered trade secret or confidential financial information and shall be protected accordingly.

f. In arbitrations commenced under 18 Del. C. §332, the insurer shall pay the costs and fees of arbitration which exceed the non-refundable filing fee of \$75.00 required to commence arbitration.

g. In arbitrations commenced under 18 Del. C. §§3348 or 3359E, the non-prevailing party(ies) shall pay the costs and fees of arbitration which exceed the non-refundable filing fee of \$75.00 required to commence arbitration.

Section 10. Commencement of Arbitration

a. An arbitration will commence upon the filing of an original and three copies of a petition, in acceptable form with the Commissioner's Arbitration Secretary with the supporting documents or other evidence attached thereto and payment of the non-refundable filing fee of \$75.00. The claimant shall, at the same time, send a copy of the petition and supporting documents to the respondent as required in Section 9. The Arbitration Secretary may refuse to accept any petition which fails to meet the jurisdictional requirements for arbitration. The failure to file a petition which meets the jurisdictional requirements for arbitration shall not toll the time allowed to file for arbitration.

b. Within 20 business days of receipt of the petition, the respondent shall file an original and three copies of a response, in acceptable form, with the Arbitration Secretary with supporting documents or other evidence attached. The respondent shall, at the same time, send a copy of the response and supporting documents to the claimant as required in Section 9. The Arbitration Secretary may return any non-conforming response. If the Arbitration Secretary or Arbitrator determines at any time that the petition fails to meet the jurisdictional requirements of the statute or this regulation or is meritless on its face, the petition may be summarily dismissed by the Arbitration Secretary or Arbitrator and notice of such dismissal shall be provided to the parties. The non-prevailing party may seek to have the petition re-opened under the provisions of subsection "c" of this section.

c. If the respondent fails to file a response in a timely fashion, the Arbitration Secretary after verifying proper service and notice to the parties may assign the matter to the next scheduled Arbitrator for summary disposition. The Arbitrator may determine the matter in the nature of a default judgment after establishing that the petition is properly supported and was properly served on respondent. The Arbitration Secretary or Arbitrator may allow the re-opening

of the matter to prevent a manifest injustice. A request for re-opening must be made no later than 5 business days after notice of the default judgment.

d. Upon the filing of a proper response, the Arbitration Secretary shall assign and schedule the matter for a hearing before an Arbitrator.

Section 11. Arbitration

a. The Commissioner shall appoint a single arbitrator of suitable background or experience to hear any case presented for arbitration under this regulation. No arbitrator may be selected where the arbitrator's employer or client is a party. The Arbitrator shall act as the Commissioner's designee and shall issue a written opinion as required by 29 Del. C. §10126.

Section 12. Arbitration Hearings

a. The arbitration hearing shall be scheduled and notice of the hearing shall be given the parties at least 10 business days prior to the hearing. Neither party is required to appear and may rely on the filed papers.

b. The purpose of Arbitration is an attempt to effect a prompt and inexpensive resolution of claims after reasonable attempts by the parties to resolve the matter. In keeping with that goal arbitration hearings shall be conducted in accordance with the provisions of the 29 Del. C. Chapter 101. The arbitration hearing is not a substitute for a civil trial. Accordingly, The Delaware Rules of Evidence will be used for general guidance but will not be strictly applied. Hearings are to be limited, to the maximum extent possible, to each party being given the opportunity to explain their view of the previously submitted evidence in support of the pleading and to answer questions by the Arbitrator. If the Arbitrator allows any brief testimony, the Arbitrator shall allow brief cross examination or other response by the opposing party.

c. The Arbitrator may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside of the parties' presence for information to resolve the matter.

d. The Arbitrator is to consider the matter based on the submissions of the parties and information otherwise obtained by the Arbitrator in accordance with this regulation. The Arbitrator shall not consider any matter not contained in the original or supplemental submissions of the parties that has not been provided to the opposing party with at least 5 business days notice, except claims of a continuing nature which are set out in the filed papers.

e. The Arbitrator shall render his/her decision and mail a copy of the decision to the parties within 45 days of the filing of the petition. Upon mailing said decision, the time limits imposed by 29 Del. C. §10126 shall apply for the parties' review and execution of the order by the Commissioner.

Section 13. Appeals

a. Appeals from the decision of the Commissioner shall be taken to the Superior Court of the State of Delaware by filing a copy of the Notice of Appeal, as filed in the Superior Court, with the Arbitration Secretary.

b. The Rules of Civil Procedure of the Superior Court shall govern all appeal procedures.

c. Any appeal which, as a matter of law, has to be filed in a court other than the Superior Court, shall be subject to the rules of such court and the appellant shall file a copy of the Notice of Appeal to such court with the Arbitration Secretary.

Section 14. Confidentiality of Health Information

Nothing in this Regulation shall supercede any federal or state law or regulation governing the privacy of health information.

Section 15. Effective Date

This regulation shall become effective on the _____ day of _____, 2002.

Adopted And Signed By The Commissioner, _____, 2002

Appendix

Regulation 11-form A

Request For Health Insurance Arbitration

Your Name _____

Your Address _____

Your Telephone Number _____

Were You: Patient Spouse Parent or Guardian Power of Attorney Other _____

Name Of The Insurance Co. Against Which You Are Making A Claim _____

Case Number _____

Address _____

Telephone Number _____

Name Of The Policyholder If Other Than You _____

Address, If Different From Above _____

Date Of Determination Of Independent Review Process _____

Amount Of Your Claim _____

Dates Of Service (From) _____
(To) _____

Briefly Describe The Basis For Your Claim _____

Prior To The Hearing, It Is Necessary That You Submit The Appropriate Documents To Support Your Petition To The Delaware Insurance Department And To The Opposing Party.

Parties May Present Witnesses In Their Behalf At The Hearing Provided That Due Notice Is Given. Please List The Name, Address And Telephone Number Of All Witnesses You Expect To Appear On Your Behalf On A Separate Sheet And Attach It To This Form.

If A settlement Has Been Offered To You, How Much Was It: _____

Who Will Represent You At The Hearing, If Applicable Name _____

Address _____

Telephone _____

Under Delaware Law. Any Person Who Knowingly, And With Intent To Injure, Defraud, Or Deceive Any Insurer Who Files A Statement Or Claim Containing Any False, Incomplete, Or Misleading Information Is Guilty Of A Felony

Your Signature _____

date _____

Return The Original And Three Copies To: Delaware

PROPOSED REGULATIONS

Insurance Department, 841 Silver Lake Boulevard, Dover,
Delaware 19904

Regulation 11-form B
Response To Petition For Health Insurance Arbitration

Case Number

Claimant's Name

Policyholder's Name (If Different From Claimant)

Address (If Different From Claimant)

Respondent's Name

Address

Telephone

If The Petition Relates To The Services Of An Individual
Physician, Include The Following Information:

Physician's Name And Practice

Group

Address

Telephone

Policy

Number

Claim Number Assigned By Respondent

Date Of Determination Of Independent Review Process

Amount Of Claim Admitted By Respondent

Dates Of Service

(From) (To)

Briefly Describe The Basis For Your Response/objection To
The Petition

Prior To The Hearing, It Is Necessary That You Submit The
Appropriate Documents To Support Your Petition To The
Delaware Insurance Department And To The Opposing
Party.

Parties May Present Witnesses In Their Behalf At The
Hearing Provided That Due Notice Is Given. Please List The
Name, Address And Telephone Number Of All Witnesses
You Expect To Appear On Your Behalf On A Separate
Sheet And Attach It To This Form.

If A Settlement Has Been Offered To You, How Much Was
It:

Who Will Represent You At The Hearing

Name

Address

Telephone

Under Delaware Law. Any Person Who Knowingly, And
With Intent To Injure, Defraud, Or Deceive Any Insurer
Who Files A Statement Or Claim Containing Any False,
Incomplete, Or Misleading Information Is Guilty Of A
Felony

Your

Signature date

Return The Original And Three Copies To: Delaware
Insurance Department, 841 Silver Lake Boulevard, Dover,
Delaware 19904

Regulation 11-form C

Proof Of Service Of Papers Required For Arbitration

I Certify That On The day Of
, 20, In Addition To The
Filing Provided To The Insurance Commissioner, I Sent A
Copy Of The Complaint For Arbitration With
Required Attachments Response To The Complaint
For Arbitration With Required Attachments

Other

(Please Describe)

To The Following Person(S) By Certified Mail, Return
Receipt Requested:

Name _____

Address _____

Name _____

Address _____

The Following Is Required By The Person Making This Certification

Name Of Party _____

Signature Of Party _____

Address Of Party _____

Note: Save All Proofs Of Mailing And Return Receipt(S) For Verification By The Arbitrator.

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

Statutory Authority: 7 Delaware Code, Chapter 91
(7 Del.C. Ch. 91)

1. Title of the Regulations:

Delaware Regulations Governing Hazardous Substance Cleanup

2. Brief Synopsis of the Subject, Substance and Issues:

The proposed amendment clarifies and places the definition of a "Brownfield" under 7 Delaware Code, Chapter 91, the Hazardous Substance Cleanup Act (HSCA). The amendment to the Regulations Governing Hazardous Substance Cleanup delineates criteria for determining when all or part of a parcel of real property may be certified as a Brownfield.

3. Possible Terms of the Agency Action:

None

4. Statutory Basis or Legal Authority to Act:

7 Delaware Code, Chapter 91

5. Other Regulations that May Be Affected by the Proposal:

This regulation will act as a triggering event for several incentives that are attached to a Brownfield certification. Specifically:

a. 30 Del. C. Chapter 20, Subchapter II, §§2010-2014, *Tax Credit and License Fee Reduction for Creation of Employment and Qualified Investment in Business Facilities*;

b. 30 Del. C. Chapter 20, Subchapter III, §§2020-2024, *Tax Credit and License Fee Reduction for Creation of Employment and Qualified Investment in Targeted Areas*; and

c. 29 Del. C. §§5027-5029, Regulation No. 5, Procedures Governing the Delaware Strategic Fund, Section 19.0, Brownfield Assistance.

6. Notice of Public Comment:

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by U.S. Mail by writing or calling Mr. James M. Poling, Department of Natural Resources and Environmental Control (DNREC), Division of Air & Waste Management (DAWM), Site Investigation and Restoration Branch (SIRB), 391 Lukens Drive, New Castle, DE, 19720, phone (302) 395-2600.

The Secretary of Department of Natural Resources and Environmental Control, or an employee of the DNREC designated by the Secretary, will hold a public hearing at which members of the public may present comments on the proposed regulation on January 8, 2002 in the conference facilities of the Lukens Drive building from 6:00 to 8:00 PM. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. James M. Poling at the address of the DNREC-SIRB office set forth above. Written comments must be received on or before January 8, 2002.

7. Prepared By:

James M. Poling, Brownfields Coordinator/302.395.2636
Nov. 14, 2001

**Text of Proposed Amended Regulation Governing the
Delaware Hazrdous Substance Cleanup Act**

Subsection 14.5: Brownfields Determination Criteria

(1) Criteria for Certification. The Department may certify all or part of a parcel of real property as a Brownfield based on the following criteria:

(a) The property must meet the following use criteria:

(i) All or that part of the property must be abandoned, vacant or underutilized; and

(ii) All or that part of the property must be subject to either a current or prospective development or redevelopment plan; and

PROPOSED REGULATIONS

(iii) The property must satisfy one of the following conditions:

(A) The party seeking the Brownfield certification must have sufficient information or environmental data to show that the development or redevelopment may be hindered by the reasonably held belief that the property may be contaminated;

(B) The property is one of the following classes of uses, which are deemed to fulfill the requirement for information or environmental data concerning contamination, which may hinder development or redevelopment:

(I) Salvage yards;

(II) Permitted or non-permitted landfills;

(III) Lands that have been subject to historical filling with material other than clean soil;

(IV) Known hazardous substance release sites that have not been remediated, including those previously identified by DNREC-SIRB and which are within its inventory of hazardous substance release sites;

(V) Gas stations; and

(VI) Dry cleaners.

The activities listed in (3)(B) (I) – (VI) apply to current or former sites that have not been remediated under HSCA; if the parcel has undergone a previous remediation under HSCA, the applicant must not have caused or contributed to the new release of hazardous substance(s).

(b) The property must not be subject to any enforcement action from any State or Federal environmental agency unless such enforcement action is, in the opinion of the Secretary, adequately resolved with the applicable agency.

(c) The applicant, including the employees or agents thereof, must not, in the opinion of the Secretary, have intentionally caused the contamination of the property in violation of applicable laws, or be a chronic violator of state or federal environmental laws.

(d) Any Brownfield certification decision is at the sole discretion of the Secretary, or his designee.

(2) Application for Certification.

(a) Brownfield certification shall be provided only to those persons who apply for a certification from the DNREC-SIRB. Such application shall contain the following information:

(i) Name and address of the person seeking the certification, and their relationship to the property;

(ii) Address of the property including tax parcel designation;

(iii) Current use of the property and its zoning classification;

(iv) Intended or proposed development or redevelopment plan; and

(v) Reason(s) to believe that the property may be contaminated, and why such contamination may hinder development or redevelopment.

(vi) Upon request by the Secretary, or his designee, the applicant shall provide any and all documentation regarding all environmental investigations of the property, or chronic violator status of the applicant pursuant to 7 Del. C. Section 7904.

(b) Brownfield certification shall be provided only to those persons who are willing to enter into the Voluntary Cleanup Program (VCP), or who agree to any other settlement agreement approved by the Department pursuant to HSCA.

(3) Effect of Brownfield Certification.

(a) Certification of all or part of a parcel of real property as a Brownfield places it in the inventory of hazardous substance release sites.

(b) Properties certified as being a Brownfield may be considered in the preparation of funding recommendations under Section 14.1 through 14.4.

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 DENTAL EXAMINERS
24 DE Admin. Code 1100
Statutory Authority: 24 Delaware Code,
Section 1105 (1) and (9)
(24 Del.C. §§1105 (1) and (9))**

ORDER**BACKGROUND**

Pursuant to 24 *Del.C.* § 1105(1) and (9) and 29 *Del.C.* *chapter 101* the Board of Dental Examiners (the "Board") proposed to adopt amendments to its rules and regulations, as more specifically set forth in the Notice appearing in Volume 4, issue 11 of the Delaware *Register of Regulations* published May 1, 2001.

Pursuant to 29 *Del.C.* § 10115, notice was given to the public that a hearing would be held on June 21, 2001 at 6:00 p.m. in the Second Floor Conference Room A, 861 Silver Lake Boulevard, Dover, Delaware to consider the proposed amendments and the notice invited the public to submit comments orally or in writing regarding the proposed amendments. The hearing was held as scheduled on June 21, 2001.

SUMMARY OF THE EVIDENCE

Board member Martin W. Scanlon D.D.S., in sworn testimony explained the proposed changes to the Rules and Regulations governing the standards for Continuing Professional Education which is required for license renewal by dentist and dental hygienist.

Dr. Scanlon explained that the changes and modifications were developed and recommended by a subcommittee of the Board of Dental Examiners consisting of both dental members of the Board and members of the Board's Dental Hygiene Advisory Committee. The changes are designed to implement appropriate consistency between the continuing education requirements for dentist and for dental hygienist. The changes are also designed to clarify and simplify the requirements and to recognize the increased availability of high quality courses provided by various electronic media including those available over the Internet. The revised Regulations provide that in addition to the maximum of ten (10) hours of the continuing education requirement which may be satisfied by self-study without testing and certification for dentist, a maximum of twenty (20) hours may be fulfilled by self-study with testing and certification. This results in the remaining thirty (30) hours of the total fifty (50) hour biennial requirement having to be met from non self-study approved continuing professional education.

Dr. Scanlon also noted that the requirements for dental hygienist had also been modified to provide that five (5)

hours of the twenty-four (24) biennial continuing education requirement could be met by self-study without testing from Board approved sources and, in addition, ten (10) hours of the requirement could be met by self-study with testing and certification from approved sources however, practice management or personal self-improvement courses are limited to five (5) hours of the required twenty-four (24) hours.

Elizabeth Garey, R.D.H., a member of the Hygiene Advisory Board of the Board of Dental Examiners, amplified the comments of Dr. Scanlon and noted that the proposed changes properly placed a limit on the non-hygiene matters eligible for credit and served to make the regulations as they pertain to dental hygienist more properly consistent with the requirements for dentists.

There were no written comments filed with the Board concerning this proposed change to the Rules and Regulations. The only public comment was made by Linda Vincent, the Corresponding Secretary of the Dental Hygienist Society who supported the proposed changes.

FINDINGS AND CONCLUSIONS

Based upon the Board's authority to adopt and revise rules and regulations pursuant to 24 *Del.C.* § 1105(1) and (9), the Board finds that the adoption of the proposed revisions to the Rules and Regulations is reasonable and appropriate and serves to clarify the requirements for completing the requirements for continuing professional education by both dentist and dental hygienist. Therefore, it is the unanimous decision of the Board to adopt the proposed amendments to its Rules and Regulations, a copy of which are attached hereto as Exhibit "A" and incorporated herein. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 *Del. C.* § 10118(e).

IT IS SO ORDERED this 18th day of October, 2001.

BOARD OF DENTAL EXAMINERS

(As authenticated by a quorum of the Board):

- 1.0 Supervision
- 2.0 Auxiliary Personnel
- 3.0 Prescriptions to Dental Technicians
- 4.0 Acupuncture
- 5.0 Supervision
- 6.0 Continuing Professional Education -
Dentists/Dental Hygienists
- 7.0 Anesthesia Regulations
- 8.0 National Board Examination Score
- 9.0 Voluntary Treatment Option for Chemically Dependent
or Impaired Professionals

1.0 Supervision: Definitions - There are 3 recognized levels of supervision:

1.1 Direct Supervision - The dentist is present in the office, personally examines the patient and specifically authorized the work to be performed. The dentist checks the work before the patient leaves the office.

1.2 Indirect Supervision - A dentist is present in the office and generally authorizes the work to be performed. The dentist may examine the patient, either before or after work is performed. The dentist is available for consultation during the patient visit.

1.3 General Supervision - A dentist may or may not be present in the office while the work is performed. The dentist authorizes the work to be performed. Emergency care and consultant services are provided by an "on-call" dentist not present in the treatment facility, if the primary dentist is not present.

1.4 Dental Technician - Any person not licensed to practice dentistry in this State, engaged in the business of constructing, altering, repairing or duplicating full dentures ("plates"), partial dentures, splints, orthodontic appliances, fixed bridges or any other prosthetic appliances.

2.0 Auxiliary Personnel

2.1 Expanded Duties: A legally licensed and registered dentist may delegate to competent dental auxiliary personnel, those procedures for which the dentist exercises direct supervision and full responsibility except as follows:

2.1.1 Those procedures which require professional judgement and skill, such as diagnosis and treatment planning, and the cutting of hard and/or soft tissues, or any intra-oral procedure which would lead to the fabrication of an appliance and/or restoration which, when received by the patient, would come in direct contact with hard or soft tissue and which could result in tissue irritation or injury.

2.1.2 Those procedures allocated by the Dental Code to registered dental hygienists.

2.2 Interpretation of Regulation - Competency of the dental auxiliary personnel must be determined by the individual dentist in assigning specific duties. The dentist is given full responsibility in deciding the scope of work to be allocated to the auxiliary personnel.

2.3 Training of Auxiliary Personnel - Adequate training of dental auxiliary personnel will be the responsibility of the dentist.

2.4 Assignment of Duties - Following are some of the procedures that may be assigned to auxiliary personnel under the conditions and provisions stated above:

Take and develop x-rays. This involves placing an x-ray film in the patient's mouth and exposing that film.

Give and demonstrate home-care procedures to the patient, including those procedures the patient is expected to carry out in preventive care.

Placing a rubber dam.

Placing cotton rolls.

Taking impressions for study models.

Removal of excess cements from dental restorations and appliances with hand instruments only.

Removal of temporary medicinal fillings or packs under direct orders of the dentist.

2.5 Responsibilities - In summary, the Dental Board places full responsibility for the work done by auxiliary personnel directly upon the dentist. Violations of the regulations will be subject to penalties as spelled out in 24 Del.C. §1131(5).

3.0 Prescriptions to Dental Technicians

3.1 Written Prescriptions - Any dentist who uses the services of a dental technician in this State shall furnish him/her with a written prescription, which shall contain:

3.1.1 the name and address of the technician,

3.1.2 the patient's name and/or identification number,

3.1.3 the date on which the prescription was written,

3.1.4 a prescription of the work to be done,

3.1.5 specification of the type and quality of materials to be used and

3.1.6 signature of the dentist and his/her license number.

3.2 Record of Prescriptions - The dentist shall retain a duplicate copy thereof for inspection by the Board or its agent for a period of two years of the original.

3.3 The Dental Technician as an Auxiliary - Dentists employing a dental technician as an auxiliary within the confines of his/her office, may elect to maintain the required date of the prescription as an entry on the patient's record, in lieu of duplicating the prescription form to the technician.

4.0 Acupuncture

- is considered to be an experimental procedure to be researched by qualified investigators, only in institutions having a committee on human research, and only on patients who have given written informed consent.

5.0 Supervision

5.1 Conditions Applicable to General Supervision - A licensed dental hygienist, by virtue of having passed a licensure examination and being duly licensed by the State, is capable of performing those services allowed by law under supervision, the following conditions shall exist:

5.2 Advance Notice to Patient - The patient is notified, as soon as it is known, that the dentist will not be present, and is given the option to reschedule to a time when the dentist will be present in the office.

5.3 Dentist Review of Records - The dentist shall review the treatment records of each patient prior to and

following the patient treatment.

5.4 Patient Contraindications - Patients for whom it is medically or dentally contraindicated, will not be scheduled when the dentist is not present.

5.5 Office Requirements - A second office employee shall be present in the treatment facility at all times when patient care is performed. This is both for safety and security reasons.

5.6 Practice in a Public Health Institution - A licensed dental hygienist, per 24 Del.C. §1157(c), may operate under the general direction of a dentist in an institution, provided that all of the conditions of general supervision are met.

6.0 Continuing Professional Education - Dentists

All persons licensed to practice dentistry in the State of Delaware shall be required to acquire 50 hours of continuing professional education (CPE) credit and to successfully complete a current course in cardiopulmonary resuscitation (CPR) every two (2) years. All dentists, upon initial licensure in Delaware and prior to registration renewal in Delaware in 1990, shall be given a written notice of these CPE requirements.

6.1 Proof of successful completion of the requisite CPE credits is required for registration renewal every two years.

6.2 Said CPE requirements shall become effective May 1, 1988. Proof of CPE credits must be submitted by March 1st of every two (2) even years.

6.3 It shall be the responsibility of the candidate for re-licensure to submit to the ~~appropriate State of Delaware agency~~ Board of Dental Examiners, evidence of his/her compliance with these requirements. The Division of Professional Regulation shall notify the candidate at least 30 days in advance of the need to renew his/her license, and shall request that the candidate submit evidence of compliance with the CPE requirements stated herein, along with other fees and documents required. However, failure to be notified by such agency shall not relieve the licensee of this obligation.

6.4 ~~Of the 50-hour biennial requirement, a maximum of ten (10) hours may be fulfilled by self study with or without testing such as:~~

Not more than ten (10) hours of the fifty (50) hour biennial CPE requirement may be satisfied by self-study without testing from sources approved by the Board which shall include but not be limited to:

~~6.4.1 reading of dental journals with or without testing~~

6.4.21 Reading dental textbooks

6.4.32 Reading dental tape journals

6.4.43 Viewing and listening to dental audio-visual materials.

6.4.5 mail-in testing scores.

6.5 ~~The following is a suggested list of acceptable categories from which these non-self study CPE~~

requirements can be obtained:

6.5.1 Meetings of (Scientific Portions Only):

- 6.5.1.1 American Dental Association
- 6.5.1.2 Delaware State Dental Society
- 6.5.1.3 Delaware Society of Dentistry for

Children

- 6.5.1.4 Academy of General Dentistry
- 6.5.1.5 Kent/Sussex Dental Society
- 6.5.1.6 American Dental Hygienists

Association its constituents and components

- 6.5.1.7 Other recognized dental specialty

societies

- 6.5.1.8 Other recognized state dental societies

societies

- 6.5.1.9 Recognized regional or national dental

programs

- 6.5.1.10 Federal dental service meetings and

- 6.5.1.11 Recognized study clubs

- 6.5.1.12 Meeting of other organizations as

may be approved by the Board

6.5 CPE credits may be granted upon proof of successful completion of:

6.5.1 Scientific CPE programs or courses and/or the scientific sessions of meetings sponsored or approved by:

6.5.1.1 American Dental Association, its constituents and components

6.5.1.2 American Dental Hygienists' Association, its constituents and components

6.5.1.3 American Dental Assisting Association, its constituents and components

6.5.1.4 Recognized national, regional, state and local dental and dental hygiene specialty organizations

6.5.1.5 Recognized dental and dental hygiene study clubs

6.5.1.6 Accredited dental and dental hygiene CPE programs offered by dental and dental hygiene schools,

6.5.1.7 Approved hospital programs,

6.5.1.8 Such other organizations and

associations as may be approved by the Board.

6.5.2 Scientific CPE programs sponsored by:

6.5.2.1 American Dental Association

6.5.2.2 Delaware State Dental Society

6.5.2.3 Recognized dental associations

6.5.2.4 American Dental Hygienists

Association its constituents and components

6.5.2.5 Recognized special associations

6.5.2.6 Accredited dental college or university

6.5.2.7 Hospital

6.5.2.8 Federal dental services

6.5.2.9 Recognized study clubs

6.5.2.10 Recognized dentally-related

organizations

6.5.2.11 Other organizations as may be

approved by the Board

6.5.2 In addition to the maximum of ten (10) hours of the CPE requirement which may be satisfied by self-study without testing and certification, a maximum of twenty (20) hours of the total CPE requirements may be fulfilled by self-study with test and certificate of completion from bona fide dental educational sources including but not limited to:

6.5.2.1 Dental journals

6.5.2.2 Dental textbooks

6.5.2.3 Dental video and audio tape presentations

6.5.2.4 Dental mail-in courses

6.5.2.5 Dental courses presented on the

Internet

6.5.2.6 Dental lectures and courses presented via electronic media including computer disks

Where CPE credits are not specified, one (1) hour of credit will be given for each hour of scientific session attended.

6.6 Special Provisions

6.6.1 A dentist, employed as a faculty member in a recognized school of dentistry, dental hygiene, dental assisting or any dentally-related field will be allowed not more than ten (10) hours credit for teaching per year.

6.6.2 A dentist presenting a CPE course shall be allowed the hours involved in preparation and presentation on a one-time-per-course basis for a maximum of ten (10) hours for the two-year period.

6.6.3 Table Clinics will be allowed, one (1) hour of credit per hour of presentation for a maximum of two (2) hours.

6.6.4 Twelve (12) hours of credit shall be allowed for a scientific article published in a component or state society journal. 25 hours of credit shall be allowed for a scientific article published in a national journal or for a published scientific textbook or a chapter therein.

6.6.5 Any public health dentally-related presentation will be allowed one (1) hour of credit per hour of participation for a maximum of two (2) hours for the two year period.

6.6.6 Practice management, or personal self-improvement and computer courses shall be limited to five (5) hours a year for a total of ten (10) hours for the two (2) year period.

6.6.7 The Board reserves the right to approve any and all activities deemed appropriate for CPE credit. The Board also reserves the right and is the final word to disapprove any activities submitted for credit which it deems inappropriate.

6.6.8 All dentists licensed to practice in Delaware shall be given written notice of these CPE requirements when receiving their initial license.

6.7 Exceptions

6.7.1 An exception will be granted to any dentist who can demonstrate to the Board an acceptable cause as to

why he/she should be relieved of this obligation. Exemptions will be granted only in unusual or extraordinary circumstances. Licensees must petition the Board for exemptions. Should the Board deny the request, the licensee must complete the requirements. Examples of circumstances for which the Board might grant exemptions include prolonged illness, extended absence from the country, or the like.

6.7.2 An individual initially licensed by the Board within the last 2 years shall meet the following schedule of reporting CPE credits for license renewal:

6.7.2.1 If, as of March 1st of the year for license renewal, the licensee has been licensed for less than 1 year, zero hours of CPE is required for license renewal; for licensees who are 1 or more but less than 2 years from their initial licensure, one-half of the required CPE must be presented; for individuals 2 years or more from their initial licensure, the full CPE requirement must be presented for renewal.

6.8 Failure to Comply

When the Board deems someone to be deficient in CPE requirements, the following procedure shall be followed:

6.8.1 The licensee for renewal shall be notified by the Division of Professional Regulation ("Division") by certified mail that a deficiency exists. The deficiency shall be specifically described by the Division.

6.8.2 The licensee's registration will not be renewed until he/she submits proof that the described deficiency has been corrected. Upon submission of satisfactory proof of correction of said deficiency, the licensee shall be eligible for registration renewal.

6.9 Continuing Professional Education (CPE) - Dental Hygienists

All persons licensed to practice dental hygiene in the State of Delaware shall be required to acquire twenty-four (24) hours of CPE credit and successfully complete a current course in cardiopulmonary resuscitation (CPR) every two (2) years. All dental hygienists, upon initial licensure and prior to registration renewal in 1990, shall be given written notice of these CPE requirements.

6.9.1 Proof of successful completion of the requisite CPE credits is required for registration renewal every two (2) years.

6.9.2 Said CPE requirements shall become effective May 1, 1988. Proof of CPE credits must be submitted by March 1st of every two (2) even years.

6.9.3 ~~Each hygienist shall be responsible for submitting proof to the Division or its successor agency of his/her compliance with these requirements. The Division shall notify each licensee at least 30 days in advance of the license renewal deadline, and shall request that the licensee submit evidence of compliance with the requirements stated herein, along with other fees and documents required.~~

~~However, failure to be notified by such agency shall not relieve the licensee from this obligation.~~

It shall be the responsibility of the candidate for re-licensure to submit to the Board of Dental Examiners, evidence of his/her compliance with these requirements. The Division of Professional Regulation shall notify the candidate at least 30 days in advance of the need to renew his/her license, and shall request that the candidate submit evidence of compliance with the CPE requirements state herein, along with other fees and documents required. However, failure to be notified by such agency shall not relieve the licensee of this obligation.

6.9.4 CPE credits may be granted upon proof of successful completion of programs including, but not limited to, the following categories:

6.9.4.1 Scientific CPE programs or courses and/or scientific sessions of meetings sponsored or approved by:

6.9.4.1.1 American Dental Hygienists' Association, its constituents and components.

6.9.4.1.2 American Dental Association, its constituents and components

~~6.9.4.1.3 Accredited dental college, university, community college or technical college~~

6.9.4.1.4 Delaware State Dental Society

6.9.4.1.5 Kent/Sussex Dental Society

~~6.9.4.1.6 Other organizations as may be approved by the Board~~

6.9.4.1.3 American Dental Assisting Association, its constituents, and components

6.9.4.1.4 Recognized national, regional, state, and local dental and dental hygiene specialty societies

6.9.4.1.5 Recognized dental and dental hygiene study clubs

6.9.4.1.6 Accredited dental and dental hygiene schools

6.9.4.1.7 Approved hospital programs

6.9.4.1.8 Such other organizations and associations as may be approved by the Board

~~6.9.4.2 Meeting of: (Scientific session portions only)~~

~~6.9.4.2.1 American Dental Hygienists Association, its constituents and components~~

~~6.9.4.2.2 American Dental Association, its constituents and components~~

~~6.9.4.2.3 Delaware Dental Assisting Association~~

6.9.4.2.4 Delaware State Dental Society

6.9.4.2.5 Kent/Sussex Dental Society

~~6.9.4.2.6 Other organizations as may be approved by the Board~~

6.9.4.2 A maximum of five (5) hours of the total twenty-four (24) hour requirement may be satisfied by self-study without testing from sources approved by the

Board which shall include but not be limited to:

6.9.4.2.1 Reading of dental or dental hygiene journals

6.9.4.2.2 Reading dental or dental hygiene textbooks

6.9.4.2.3 Viewing and listening to dental or dental hygiene audio-visual materials

6.9.4.3 In addition to the maximum of five (5) hours which may be satisfied by self-study without testing, a maximum of ten (10) hours of the total twenty-four (24) hour requirement may be fulfilled by self-study with test and certificate of completion from bona fide dental hygiene educational sources including but not limited to:

6.9.4.3.1 Dental or dental hygiene journals

6.9.4.3.2 Dental or dental hygiene textbooks

6.9.4.3.3 Dental or dental hygiene video and audio tape presentations

6.9.4.3.4 Dental or dental hygiene mail-in courses

6.9.4.3.5 Dental or dental hygiene courses presented on the Internet

6.9.4.3.6 Dental or dental hygiene lectures and courses presented via electronic media including computer disks

Where CPE credits are not specified, one (1) hour of CPE credit will be given for each hour of scientific session attended.

The final approval of acceptable dental hygiene CPE credits shall be made by the Board of Dental Examiners in consultation with the Dental Hygiene Advisory Committee.

6.10 Special Provisions

6.10.1 A dental hygienist, employed as a faculty member in a recognized school of dentistry, dental hygiene or dental assisting, will be allowed not more than five (5) hours credit for teaching per year.

6.10.2 A dental hygienist presenting a CPE course shall be allowed the hours involved in preparation and presentation on a one-time-per-course basis for a maximum of five (5) credits for the two-year period.

6.10.3 Table clinics will be allowed one (1) hour of credit per hour of presentation for a maximum of two (2) hours.

6.10.4 Twelve (12) hours of credit shall be granted for a scientific article published in a component or state society journal. Twelve (12) hours of credit shall be allowed for a scientific article published in a national journal or for a published scientific textbook or a chapter therein.

6.10.5 A dental hygienist giving public education instruction in a school will receive credit up to one (1) hour per year.

6.10.6 ~~Approved home study courses will be accepted for CPE credit, not to exceed five (5) hours of the~~

~~total 24 hour requirement.~~

Practice management or personal self-improvement courses shall be limited to five (5) hours for the two (2) year period.

6.10.6.1 Practice management, personal self-improvement and computer courses shall be limited to 2.5 hours a year for a total of five(5) hours for the two year period.

6.10.7 The Board reserves the right to approve any and all activities deemed appropriate for CPE credit. The Board also reserves the right and is the final word to disapprove any activities submitted for credit which it deems inappropriate.

6.10.8 All dental hygienists licensed to practice in Delaware shall be given written notice of these CPE requirements when receiving their initial license.

6.11 Exceptions

6.11.1 An exception will be granted to any dental hygienist who can demonstrate to the Board an acceptable cause as to why he/she should be relieved of this obligation. Exemptions will be granted only in unusual or extraordinary circumstances. Licensees must petition the Board for exemptions. Should the Board deny the request, the licensee must complete the requirements. Examples of circumstances for which the Board might grant exemptions include prolonged illness, extended absence from the country, or the like.

6.11.2 An individual initially licensed by the Board within the last 2 years shall meet the following schedule of reporting CPE credits for license renewal:

6.11.2.1 If, as of March 1st of the year for license renewal, the licensee has been licensed for less than 1 year, zero hours of CPE is required for license renewal; for licensees who are 1 or more but less than 2 years from their initial licensure, one-half of the required CPE must be presented; for individuals 2 years or more from their initial licensure, the full CPE requirement must be presented for renewal.

6.12 Failure to Comply

When the Board deems someone to be deficient in CPE requirements, the following procedure shall be followed:

6.12.1 The licensee for registration renewal shall be notified by the Division by certified mail that a deficiency exists. The deficiency shall be specifically described by the Division.

6.12.2 The licensee's registration will not be renewed until he/she submits proof that the described deficiency has been corrected. Upon submission of satisfactory proof of correcting said deficiency, a licensee shall be eligible for registration renewal.

Rule 6 revisions are/will be effective February and April of 1997.

7.0 Anesthesia Regulations:

7.1 Definitions:

The following definitions are taken from the **Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry**, American Dental Association, Council on Dental Education (July 1993). These terms refer to the extent of a drug's depressant effect upon the central nervous system and should not be confused with the route by which the drug is administered.

7.1.1 Analgesia -- the diminution or elimination of pain in the conscious patient.

7.1.2 Local Anesthesia -- the elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.

7.1.3 Conscious Sedation -- a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command and that is produced by a pharmacologic or non-pharmacologic method or a combination thereof.

In accord with this definition, the conscious patient is also defined as "one who has intact protective reflexes, including the ability to maintain an airway, and who is capable of rational response to question or command." The drugs and techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

For purposes of these regulations, Conscious Sedation Permits shall be divided into two classifications:

Restricted Permit I -- Conscious Sedation induced by parenteral or enteral or rectal routes. This is not to include the usual and customary pre-operative oral sedation.

Restricted Permit II -- Conscious Sedation induced by nitrous oxide inhalation.

7.1.4 Deep Sedation -- is a controlled state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or to respond purposefully to verbal command, and is produced by a pharmacologic or non-pharmacologic method or combination thereof.

7.1.5 General Anesthesia -- is a controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, and is produced by a pharmacologic or non-pharmacologic method or a combination thereof.

The same level of advanced training is necessary for the administration of both Deep Sedation and General Anesthesia.

7.1.6 Adverse Occurrences -- any mortality or other incident occurring in the out-patient facilities of such

dentist which results in temporary or permanent physical or mental injury requiring hospitalization of said patient during, or as a direct result of, the conscious sedation, or deep sedation, or general anesthesia related thereto.

7.2 Conscious Sedation:

7.2.1 No dentist shall employ or use Conscious Sedation, Restricted Permit I or Restricted Permit II, for dental patients unless such dentist possesses a permit of authorization issued by the Delaware State Board of Dental Examiners. The dentist holding such a permit shall be subject to review and such permit must be renewed biennially.

7.2.2 In order to receive such a permit, the dentist shall produce evidence showing that he or she:

7.2.2.1 For Restricted Permit I Conscious Sedation:

7.2.2.1.1 Has completed a minimum of 60 hours of instruction, including management of at least 20 patients per participant (to achieve competency in this technique).

7.2.2.1.2 Must be certified in CPR as documented by the American Heart Association or the American Red Cross. Advanced Cardiac Life Support Certification is encouraged.

7.2.2.1.3 Must also have a properly equipped facility for the administration of Restricted Permit I Conscious Sedation, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident thereto. Adequacy of the facility and competence of the team is to be determined by the Anesthesia Advisory Consultants appointed by the Board. A certified registered nurse anesthetist may be utilized for Restricted Permit I Conscious Sedation only if the dentist also possesses such a permit.

7.2.3 A list of emergency drugs and equipment that should be on hand would consist of the following:

7.2.3.1 Agents capable of treating:

7.2.3.1.1 hypotension and bradycardia

7.2.3.1.2 allergy/bronchospasm

7.2.3.1.3 seizures

7.2.3.1.4 narcotic-induced respiratory depression (e.g., narcotic antagonists)

7.2.3.1.5 angina pectoris

7.2.3.1.6 adrenal insufficiency (e.g., steroids)

7.2.3.1.7 nausea

7.2.3.2 Equipment necessary to provide artificial respiration and assist in airway maintenance.

7.2.3.3 Equipment necessary to establish an intravenous infusion and to inject medications.

7.2.4 For Restricted Permit II Conscious Sedation:

7.2.4.1 Has completed a minimum of 14 instructional hours including supervised clinical experience in managing patients (in a course required to achieve

competency in nitrous oxide inhalation sedation).

7.2.4.2 Must also show certification in cardiopulmonary resuscitation as certified by the American Heart Association or the American Red Cross.

7.3 Deep Sedation and General Anesthesia (Unrestricted Permit):

7.3.1 No dentist shall employ or use deep sedation or general anesthesia for his/her dental patients unless such dentist possesses a permit of authorization issued from the Delaware State Board of Dental Examiners. This permit also includes all Conscious Sedation techniques. The dentist holding such a permit shall be subject to review and such permit must be renewed biennially.

7.3.2 In order to receive such a permit, the dentist must produce evidence showing that he/she:

7.3.2.1 Has completed a minimum of two years of advanced training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level in a training program as described in Part II of the Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry or, is a Diplomat of the American Board of Oral and Maxillofacial Surgeons, or has satisfactorily completed a residency in Oral and Maxillofacial Surgery at an institution approved by the Council of Dental Education, American Dental Association, or is a fellow of the American Dental Society of Anesthesiology, or employs or works in conjunction with a trained M.D. or D.O. who is a member of the anesthesiology staff of an accredited hospital, provided that such anesthesiologist must remain on the premises of the dental facility until any patient given a general anesthetic or deep sedation regains consciousness. A certified registered nurse anesthetist may be utilized for deep sedation or general anesthesia only if the dentist also possesses an Unrestricted Permit.

7.3.2.2 Has a properly equipped facility for the administration of deep sedation and general anesthesia, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident thereto. Adequacy of the facility and competence of the anesthesia team is determined by the Anesthesia Advisory Committee Consultants appointed by Delaware State Board of Dental Examiners.

7.3.2.3 And is certified in Advanced Cardiac Life Support by the American Heart Association.

7.4 Facility and Staff Requirements:

7.4.1 Inspections: Prior to the issuance of a permit for Restricted Permit I (parenteral, enteral, or rectal Conscious Sedation) or an Unrestricted Permit (Deep Sedation or General Anesthesia), the Board shall require an on site inspection of the facility, equipment and personnel to determine if, in fact, the aforementioned requirements have been met. The evaluation shall be carried out in a manner described by the Board. The evaluation shall be carried out

by the Anesthesia Advisory Consultants appointed by the Board. Each office that the dentist utilizes for Restricted Permit I Conscious Sedation or Deep Sedation or General Anesthesia requires individual inspection and must meet the requirements of that permit for which the dentist is applying.

7.4.2 Anesthesia Advisory Consultants:

7.4.2.1 The Board of Dental Examiners shall appoint a team of Advisory Consultants and alternates who will visit the facility concurrently to conduct the on-site inspection and evaluation of the facilities, equipment and personnel of a licensed dentist applying for written authorization to administer or to employ another to administer Restricted Permit I Conscious Sedation, or Deep Sedation or General Anesthesia (Unrestricted Permit). The Advisory Consultants shall also aid the Board in the adoption of criteria and standards relative to the regulation and control of Conscious Sedation, Deep Sedation and General Anesthesia. The Anesthesia Advisory Consultants shall utilize the "Guidelines for the use of conscious sedation, deep sedation and general anesthesia for Dentist", as approved by the American Dental Association in October 1996, or any current update thereof. If the applicant has been satisfactorily evaluated by another similar organization (e.g., the Delaware Society of Oral and Maxillofacial Surgeons which uses the AAOMS Office Anesthesia Evaluation Manual Standards), then the Board may accept this evaluation and not require additional on-site evaluation.

7.4.2.2 If the results of the initial evaluation of an applicant are deemed unsatisfactory, upon written request of the applicant, a second evaluation shall be conducted by a different team of consultants.

7.4.3 Re-evaluation: The Board may at any time re-evaluate credentials, facilities, equipment, personnel and procedures of a licensed dentist who has previously received a written authorization or permit from the Board to determine if he/she is still qualified to have such written authorization. If the Board determines that the licensed dentist is no longer qualified to have such written authorization, it may revoke or refuse to renew such authorization, after an opportunity for a hearing is given to the licensed dentist.

7.5 Report of Adverse Occurrences:

7.5.1 All licensed dentists engaged in the practice of dentistry in the State of Delaware must submit a complete report within a period of thirty (30) days to the Delaware State Board of Dental Examiners of any mortality or other incident occurring in the out-patient facilities of such dentist which results in temporary or permanent physical or mental injury requiring hospitalization of said patient during, or as a direct result of, the Conscious Sedation or Deep Sedation or General Anesthesia related thereto.

7.5.2 Failure to comply with this rule when said occurrence is related to the use of Conscious Sedation or Deep Sedation or General Anesthesia may result in the loss

of such permit described above, and will be considered unprofessional conduct.

7.6 Applications and Reapplications:

7.6.1 A dentist who desires to obtain a permit to administer Conscious Sedation, Deep Sedation, or General Anesthesia shall submit an application on the form provided by the Board, pay the permit fee, and meet the requirements for the permit described herein.

7.6.2 A dentist who desires to renew a permit shall submit a renewal application on the form provided by the Board and pay the permit renewal fee. Re-inspection of the facility, equipment, and staff shall not be necessary unless new techniques or criteria arise, as determined by the Board with the aid of the Anesthesia Advisory Committee.

7.6.3 A permit issued by the Board under these regulations will expire at the same time as the permit holder's dental license and may be renewed biennially at the same time as the dental license is renewed.

Rule 7 was revised on December 2, 1997, and went into effect as of January 11, 1998. (1 DE Reg. 852)

8.0 Certificate Requirement

An applicant for a license to practice dentistry shall submit to the Board a Certificate issued by the National Board of Dental Examiners showing he/she has completed the National Board Examination with a score of at least 80 on each of Part I and Part 2 of the Examination. (2/13/97).

9.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

9.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

9.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

9.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

9.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to

practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

9.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

9.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

9.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

9.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

9.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

9.6.4 Agreement by the regulated professional to

be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

9.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/ her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

9.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

9.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

9.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

9.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

9.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

9.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the

matter is handled in a nondisciplinary matter.

9.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF COSMETOLOGY AND BARBERING**

24 DE Admin. Code 5100

Statutory Authority: 24 Delaware Code,
Section 5106(1), (24 Del.C. §5106(1))

ORDER ADOPTING RULES AND REGULATIONS

AND NOW, this 29th day of October, 2001, in accordance with 29 *Del.C.* § 10118 and for the reasons stated hereinafter, the Board of Cosmetology and Barbering of the State of Delaware (hereinafter "the Board") enters this Order adopting amendments to Rules and Regulations.

I. Nature of the Proceedings

Pursuant to the Board's authority under 24 *Del.C.* § 5106(1), the Board proposed to revise its existing Rules and Regulations to insert a new rule regarding health and sanitation. The proposed revisions clarify that the United States Food and Drug Administration ("FDA") has not approved the use of any color additive for use in the dyeing or tinting of the eyelash or eyebrow, and additionally, that no product is to be used in a manner that is disapproved of by the Board, the Division of Health and Social Services ("DHSS"), the FDA, or that violates any applicable federal or State statute. Notice of the public hearing to consider the proposed amendments to the Rules and Regulations was published in the Delaware *Register of Regulations* dated August 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 *Del.C.* § 10115. The public hearing was held on September 24, 2001 at 9:00 a.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Board was present. The Board deliberated and voted on the proposed revisions to the Rules and Regulations. This is the Board's Decision and Order ADOPTING the amendments to the Rules and Regulations as proposed.

II. Evidence and Information Submitted

The Board received no written comments in response to the notice of intention to adopt the proposed revisions to the

Rules and Regulations. At the September 24, 2001 hearing, the Board received no public comments regarding the proposed revisions.

III. Findings of Fact and Conclusions

1. The public was given notice of the proposed amendments to the Rules and Regulations and offered an adequate opportunity to provide the Board with comments.

2. The proposed amendments to the Rules and Regulations are necessary to clarify that the FDA has not approved the use of any color additive for use in the dyeing or tinting of the eyelash or eyebrow, and that no product is to be used in a manner that is disapproved of by the Board, DHSS, FDA, or violates any applicable federal or State statute. The proposed amendments will assist licensees in understanding health and sanitation regulations and serve to protect the public.

3. The Board concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del.C.* §5106(1) that implement or clarify the Board's statutes.

4. For the foregoing reasons, the Board concludes that it is necessary to adopt amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 *Del.C.* Chapter 51.

IV. Decision and Order to Adopt Amendments

NOW, THEREFORE, by unanimous vote of a quorum of the Board, **IT IS ORDERED**, that the Rules and Regulations are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations* pursuant to 29 *Del.C.* §10118(g).

BY ORDER OF THE BOARD OF COSMETOLOGY AND BARBERING

(As authenticated by a quorum of the Board)
John Bonarigo, President, Professional Member
Rene Brickman, Vice President, Professional Member
Miriam Harris, Secretary, Professional Member
Bonnie Paynter, Professional Member
Kevin J. Castaldi, Professional Member
Preston Dyer, Professional Member
Vera Murrell, Public Member

Board of Cosmetology and Barbering

Statutory Authority: 24 *Del.C.* 5106

- 1.0 Demonstrations
- 2.0 Temporary Work Permits
- 3.0 Instructor Curriculum for Barbering and Cosmetology
- 4.0 Instructor Requirements

- 5.0 Reciprocity Requirements
- 6.0 Equipment for Cosmetology and Barbering Schools
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- 17.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Demonstrations

Licensed professionals from other states may consult with an individual from this state on new techniques, new trends, new products and equipment knowledge provided they contact the Board of Cosmetology and Barbering and apply for a work permit. This would also apply to consulting in a trade show. The work permit will be good only for thirty (30) days within a calendar year. (24 *Del.C.* §5103 (1))

2.0 Temporary Work Permits

2.1 Temporary work permits will be issued to an applicant who is eligible for admission to the cosmetology, nail technician, barbering or electrology examination with the appropriate fees paid. The purpose of a temporary work permit is to allow an otherwise qualified applicant to practice pending the applicant's scoring of a passing grade on the examination.

2.2 A temporary work permit is valid for thirty (30) days past the next available examination date.

2.3 The holder of a temporary work permit for cosmetology shall practice under the supervision of a licensed cosmetologist, barber, cosmetology or barber instructor.

2.4 The holder of a temporary work permit for nail technology shall practice under the supervision of a licensed nail technical, cosmetologist, or cosmetology instructor.

2.5 The holder of a temporary work permit for barbering shall practice under the supervision of a licensed barber, cosmetologist, cosmetology or barber instructor.

2.6 The holder of a temporary work permit for electrology shall practice under the supervision of a licensed electrologist or electrology instructor.

2.7 A temporary work permit for reciprocity will be issued to an applicant who meets or exceeds all the requirements for the State of Delaware. 24 *Del.C.* §5106(7)

3.0 Instructor Curriculum for Barbering and Cosmetology

- 3.1 Course Outline - Instructor 500 Hours
- | | |
|-----------------------------------|---------------------|
| Subject Matter | Minimum Clock Hours |
| Orientation | 50 |
| Practical Laboratory Management | 200 |
| Classroom Teaching and Management | 200 |
| Theory and Testing | 50 |
- 3.2 Course Outline - Instructor 250 Hours
- | | |
|-----------------------------------|---------------------|
| Subject Matter | Minimum Clock Hours |
| Orientation | 25 |
| Practical Laboratory Management | 100 |
| Classroom Teaching and Management | 100 |
| Theory and Testing | 25 |
- (24 Del.C. §5106(13))

4.0 Instructor Requirements

4.1 Any licensed cosmetologist or barber who has successfully completed a course of 500 hours in teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III); or has at least two (2) years experience as an active licensed, practicing cosmetologist or barber, supplemented by at least 250 hours of teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III).

4.2 Proof of educational documentation from registered school of cosmetology or barbering for specified hours of teacher training.

4.3 Experience shall be documented by a notarized statement from the current or previous employers for at least two (2) years experience as an active licensed practicing cosmetologist or barber. (24 Del.C. §5106 (13)).

5.0 Reciprocity Requirements

5.1 Any applicant from a state with less stringent requirements than Delaware, is required to provide a notarized statement from a present or prior employer(s) testifying to work experience in the field for which the applicant is seeking a license in Delaware for a period of one year before making application. The work experience must have been obtained in a state or jurisdiction outside of Delaware. Unlicensed practice within the State of Delaware shall not qualify as valid work experience.

See 4 DE Reg. 329 (8/1/00)

Reference 2.0 for temporary work permit. (24 Del.C. §5109(a))

6.0 Equipment for Cosmetology and Barbering Schools

6.1 A school enrolling up to 25 students shall have, at a minimum, the following equipment:

- 6.1.1 (4) Shampoo basins.
- 6.1.2 (8) Hair dryers.
- 6.1.3 (4) Manicure tables and chairs.
- 6.1.4 (4) Dry sterilizers (sanitizers).

- 6.1.5 (4) Wet sterilizers (sanitizers).
 - 6.1.6 (6) Dozen permanent wave rods.
 - 6.1.7 (2) Reclining chair with headrest.
 - 6.1.8 (1) Mannequin per student.
 - 6.1.9 (12) Work Stations.
 - 6.1.10 Mirrors and chairs.
 - 6.1.11 (1) Locker for each student.
 - 6.1.12 (4) Closed containers for soiled linen.
 - 6.1.13 (3) Closed waste containers.
 - 6.1.14 (1) Container for sterile solution for each manicure table.
 - 6.1.15 (1) Bulletin board with dimensions of at least 2 feet by 2 feet.
 - 6.1.16 (1) Chalkboard with dimensions of at least 4 feet by 4 feet.
 - 6.1.17 (1) Cabinet for towels.
 - 6.1.18 An arm chair or usable table and chair for each student in the theory room.
 - 6.1.19 (3) Timer clocks.
 - 6.1.20 Attendance records.
 - 6.1.21 (1) Soap machine.
 - 6.1.22 (1) Textbook for each student.
- (24 Del.C. §5117 (a))

7.0 Equipment for Nail Technology Schools

7.1 A school enrolling up to 25 students shall have, at a minimum, the following equipment:

- 7.1.1 (4) Manicure tables and chairs.
 - 7.1.2 (4) Manicure lights.
 - 7.1.3 (1) First Aid Kit.
 - 7.1.4 (1) Pedicure basin and stand.
 - 7.1.5 (1) Covered Waste Container.
 - 7.1.6 (1) Closed storage cabinet for soiled linen.
 - 7.1.7 (1) Closed towel cabinet for clean linen.
 - 7.1.8 Clean linen.
 - 7.1.9 (1) Container for sterile solution for each manicure table.
 - 7.1.10 (1) Bulletin board with dimensions of at least 2 feet by 2 feet.
 - 7.1.11 (1) Chalkboard with dimensions of at least 4 feet by 4 feet.
 - 7.1.12 Attendance Records.
 - 7.1.13 Reception Desk.
 - 7.1.14 Proper Ventilation.
 - 7.1.15 (4) Dry Sterilizers.
 - 7.1.16 (4) Wet Sterilizers.
 - 7.1.17 Dispensary.
- 7.2 For each additional nail technician, equipment and supplies shall be increased so that each nail technician can render services safely and efficiently. (24 Del C. §5117 (a))

8.0 Equipment for Electrology Schools

8.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:

8.1.1 (1) Epilator (Short Wave or Blend) Needle type only.

8.1.2 (1) All purpose chair or lounge.

8.1.3 (1) Magnifying lamp (wall mounted or on a stand).

8.1.4 (1) Tweezers for each student.

8.1.5 (1) Movable table for the epilator.

8.1.6 (1) Adjustable stool on wheels.

8.1.7 All needles used for treatment must be disposable type only.

8.1.8 Sterilizing materials and rubber gloves.

8.1.9 (1) Textbook for each student.

9.0 Course Outline for Aesthetician

9.1 Subject Matter	Clock Hours
Personal Development	10
Health and Science	65
Hygienic Provisions	15
Consultation and Record Keeping	30
Machines, Apparatus, Including Procedures	25
Related Skin Care Procedures	15
Makeup and Color	30
Business Management and Sales Practice	10
Clinic and Practice	100
Total Minimum Hours	300

(24 Del.C. §5132(a))

10.0 Equipment for Aesthetics Schools

10.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:

10.1.1 (1) Complete set of skin care equipment as follows: Steamer - Brush Unit - Vacuum Spray - Galvanic - High Frequency Unit.

10.1.2 (1) All purpose chair or lounge.

10.1.3 (1) Magnifying lamp (wall mounted or on a stand).

10.1.4 (1) Adjustable stool on wheels.

10.1.5 Sterilizing materials and rubber gloves.

10.1.6 (1) Textbook for each student.

(24 Del.C. §5130(a))

11.0 Registration of Salons and Schools

A person licensed by the Board as a cosmetologist, barber, electrologist, nail technician or instructor shall not work in a beauty salon, barbershop, nail salon, electrology establishment, school of cosmetology, barbering, nail technology, or electrology unless this establishment has the certificate of registration. (24 Del.C. §5117)

12.0 Apprenticeship and Supervision

12.1 Any person applying for licensure as a cosmetologist or barber through apprenticeship must complete the necessary apprentice hours in not less than eighteen (18) months and not more than 48 months.

12.2 Any person applying for licensure as a nail technician through apprenticeship must complete the necessary apprentice hours in not less than six (6) weeks and not more than 24 months.

12.3 Any person applying for licensure as an electrologist through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.

12.4 Any person applying for certification as an aesthetician through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.

12.5 On written application to the Board prior to completion of the apprenticeship, the Board may grant extensions to these time frames for good cause shown.

12.6 Applicants for licensure as nail technician may apprentice under the supervision of either licensed nail technician or a licensed cosmetologist.

(24 Del.C. §5107)

2 DE Reg. 1378 (2/1/99)

13.0 Transfer of Nail Technician Hours to Cosmetology Programs

Apprentice nail technician hours earned totaling 250 may be transferred and applied to an apprentice cosmetology program totaling 3,000 hours. Public/private student nail technician hours earned totaling 125 may be transferred and applied to a public/private cosmetology school curriculum totaling 1,500 hours. (24 Del.C. §5107)

14.0 Licensure Requirements

14.1 Each licensee licensed by the Board and each registered person, firm, corporation or association operating a beauty salon, barbershop, nail salon, or electrology establishment shall be responsible for ensuring that all of its employee requiring a license are licensed in Delaware prior to the commencement of employment. The licensee and/or registrant shall have available for inspection on premises at all time a copy of the Delaware license of its employees.

14.2 A Licensee and /or registrant who employs unlicensed individuals may be subject to discipline pursuant to 24 Del.C. § 5113(a)(b).

(24 Del.C. §5103)

2 DE Reg. 1378 (2/1/99)

15.0 Application for Licensure

15.1 All applications for licensure or certification must be submitted on forms approved by the Board and the Division of Professional Regulation and be accompanied by the appropriate fee.

15.2 Each applicant must provide proof of any required general or professional education in the form of : (1) a certified transcript or diploma; or (2) affidavits of the registrar or other appropriate official; or (3) any other

document evidencing completion of the necessary education to the Board's satisfaction.

15.3 Any applicant submitting credentials, transcripts or other documents from a program or educational facility outside the United States or its territories must provide the Board with a certificate of translation from a person or agency acceptable to the Board, if appropriate, and an educational credential evaluation from an agency approved by the Board demonstrating that his or her training and education are equivalent to domestic training and education.

2 DE Reg. 1378 (2/1/99)

16.0 Health and Sanitation; Electric Nail Files and Laser Technology

16.1 Each licensee, instructor, certified aesthetician, and registered salon or school shall follow all regulations or standards issued by the Division of Public Health or its successor agency relating to health, safety or sanitation in the practice of cosmetology, barbering, electrology or nail technology.

16.2 In addition to any regulation or standard adopted by the Division of Public Health, each licensee, instructor, certified aesthetician, and registered salon school shall follow the standards for infection control and blood spill procedures promulgated by the National Interstate Council or its successor organization.

16.3 Electric nail files and electric drills shall not be used on natural nails. The use of methyl methacrylate (MMA) is prohibited. No licensee, instructor, certified aesthetician, school, beauty salon or shop shall use or permit the use of MMA.

See 3 DE Reg. 1197 (3/1/00)

16.4 The use of laser technology for hair removal is not work generally or usually performed by cosmetologists and is prohibited.

16.5 Violation of any of the regulations, standards or prohibitions established under this Rule shall constitute a grounds for discipline under 24 Del.C. §5113 (24 Del.C. §§5100, 5101(4), 5112 and 5113)

2 DE Reg. 1378 (2/1/99)

16.6 The United States Food and Drug Administration ("the FDA") has not approved the use of any color additive for use in dyeing or tinting of the eyelash or eyebrow. No product shall be used in a manner that is disapproved by the Board, the Division of Health and Social Services, the FDA, or is in violation of any applicable federal or State statute or regulation.

17.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

17.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation

receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

17.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

17.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

17.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

17.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

17.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

17.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated

professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

17.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

17.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program. 17.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

17.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

17.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

17.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

17.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of

Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

17.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

17.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

17.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

17.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code,
Section 209(a) (26 Del.C. §209(a))

IN THE MATTER OF THE SALE, |
RESALE, AND OTHER PROVISIONS|
OF INTRASTATE | PSC
TELECOMMUNICATIONS | REGULATION
SERVICES | DOCKET NO. 10
(OPENED MAY 1, 1984; REOPENED)|
NOVEMBER 17, 1998; REOPENED) |
JULY 24, 2001) |

IN THE MATTER OF THE |
DEVELOPMENT OF) |
REGULATIONS FOR THE | PSC
FACILITATION OF) | REGULATION
COMPETITIVE ENTRY INTO THE | DOCKET NO. 45
TELECOMMUNICATIONS LOCAL |
EXCHANGE SERVICE) |
MARKET (OPENED |
NOVEMBER 21, 1995;) |

REOPENED NOVEMBER 17, 1998; |
 REOPENED JULY 24, 2001)) |

ORDER NO. 5833

FINDINGS, OPINION, AND ORDER NO. 5833

A. BACKGROUND

1. In PSC Order No. 5767 (July 24, 2001), the Public Service Commission (“Commission”) reopened Regulation Dockets Nos. 10 and 45 (as captioned above) in order to consider certain amendments to its *Rules For The Provision of Competitive Intrastate Telecommunications Services* (“Rules”), as proposed by Commission Staff. The proposed amendments address Staff’s concerns regarding the application and bonding requirements for certification of competitive local exchange carriers and intrastate carriers. In addition, the proposed amendments reflect certain changes that have occurred in federal and state telecommunications laws.

2. By Order No. 5767, the Commission assigned the reopened dockets to a Hearing Examiner and directed the Commission Secretary to publish public notice of the reopening of the proceeding.¹ (Exhibit No. 1.) The public notice also included a deadline of August 31, 2001, for the filing of initial comments.

3. Verizon Delaware Inc. (“Verizon”) and AT&T Communications of Delaware, Inc. (“AT&T”) filed initial comments in support of Staff’s proposed amendments to the regulations. (Exhibits Nos. 4 and 5, respectively.) The Association of Communications Enterprises (“ASCENT”) filed comments objecting to the bonding requirement (proposed Rule 4(f)(i)) and requesting the addition of a waiver provision for financially viable carriers. (Exhibit No. 6.) The Cable Telecommunications Association of Maryland, Delaware & District of Columbia did not file comments but notified the Commission of its intent to participate in the proceeding. (Exhibit No. 7.) No other entity filed comments or requested participation in the proceedings.

4. Because the initial comments raised only one issue, which already had been addressed in the 2000 proceeding,²

1. The Commission Secretary caused notice of the proposed revised rules to be published in the *Register of Regulations*, on August 1, 2001, as required by 29 Del. C. § 10115. In addition, the Commission Secretary mailed notice to: (1) all prior participants in PSC Regulation Dockets 10 and 45; (2) all persons who have made timely requests for advance notice of such proceedings; and (3) the Division of the Public Advocate.

2. Exhibit No. 6 at 1.

the Hearing Examiner established an abbreviated schedule. That schedule included an allowance for rebuttal comments, a proposed decision by the Hearing Examiner, an exceptions period, and a single hearing to be conducted directly before the Commission, on November 6, 2001.

5. Pursuant to the procedural schedule, Staff submitted rebuttal comments on October 3, 2001. (Exhibit No. 3.) No other participant filed rebuttal comments. An ASCENT representative, however, informed the Hearing Examiner, by telephone, that ASCENT did not intend to participate in the November 6, 2001 hearing.

6. On November 6, 2001, the Commission conducted a hearing, pursuant to 26 Del. C. § 209(a). Staff moved into the record the affidavits of publication of notice (Exhibit No. 1), its proposed rules (Exhibit No. 2), and its rebuttal comments (Exhibit No. 3), as well as the initial comments of the other participants (Exhibits Nos. 4 through 7.) No member of the public offered any comments at the hearing.

B. SUMMARY OF THE PROPOSED AMENDMENTS

7. Under Part A of the Rules, which is entitled “Certification and Regulation of Carriers,” Staff proposes changes to Rule 4(b) and Rule 4(f)(i). Rule 4(b) governs applications from intrastate or local exchange carriers for a Certificate of Public Convenience and Necessity (“CPCN”), which authorizes such providers to offer service in Delaware. Staff proposes to add the following language to Rule 4(b):

If the applicant fails to provide the required information and exhibits within six months of the application, the Commission may take action to close this docket and the applicant will forfeit its application fee.

(Exhibit No. 2, at 8.)

8. Staff proposes the Rule 4(b) change in order to place a time constraint on an applicant’s response to deficiency letters from Staff. (Exhibit No. 3 at 2.) According to Staff, it spends an inordinate amount of time following up on the failure of some applicants to respond to deficiency letters. *Id.*

9. Current Rule 4(f)(i) requires applicants with assets totaling less than \$250,000 to post a \$10,000 performance bond, which must be renewed annually. Staff seeks to change the bonding requirement to include all applicants, regardless of their size. (Exhibit No. 2 at 10.) The bonding requirement ensures that there are funds available to cover advance payments made by customers, as well as abandonment fees that are due when a carrier declares bankruptcy or abandons service. (Exhibit 3 at 3.) Because telecommunications providers of all sizes are at risk to declare bankruptcy, or abandon service, Staff wishes to apply the bonding requirement to all carriers.

10. The remaining proposed revisions serve to update Part B, "Customer Election of Preferred Carrier," to reflect changes that have occurred in federal and state telecommunications laws. (Exhibit No. 2 at 25-40.) The proposed revisions to Rules 15, 16, 17, and 18, which relate to changing a customer's preferred carrier, ensure that the Commission does not have to update its *Rules* every time the Federal Communications Commission ("FCC") makes a change to its rules. When the Commission last approved the *Rules*, in PSC Order No. 5521 (August 15, 2000), Part B mirrored the FCC rules. Since that time, however, changes have been made to the FCC rules. With the proposed revisions, the Delaware *Rules* will simply cite the corresponding section of the FCC rules. In addition, Staff deleted certain definitions under Rule 13 for terms that are no longer used in the proposed *Rules*.

11. Staff also proposes a revision to Rule 19(d), "Refund and Penalties." Currently, Rule 19(d) *allows* the Commission to require a carrier, who has caused an unauthorized change in a customer's choice of carrier (*i.e.*, "slamming"), to refund any charges that result from the unauthorized change. The proposed rule *mandates* that the Commission require a refund under such circumstances, as provided in 26 Del. C. § 924(c). In addition, the proposed Rule 19(d) refers to the FCC's slamming rules and provides that the Commission's remedies are in addition to those included in the FCC's rules.

C. SUMMARY OF THE COMMENTS

12. In a one-page letter, Verizon indicated that it supports the proposed revisions. (Exhibit No. 4.) In particular, Verizon noted that by simply citing the FCC Rules, the Commission will ensure that Delaware rules will change in concert with changes to the FCC rules, without having to expend state resources to effect each change. Verizon also asserted that the references to the FCC rules will ensure that the Commission's rules are consistent with the FCC rules and that carriers, therefore, would not have to comply with two sets of potentially different rules.

13. Also in a one-page letter, AT&T indicated that it supports Staff's recommendations and noted that the references to the FCC rules in the proposed *Rules* make Delaware's "slamming" provisions consistent with the FCC's. (Exhibit No. 5.)

14. In its initial comments, ASCENT objected to the bonding requirement under proposed Rule 4(f)(i). (Exhibit No. 6.) ASCENT urged the Commission to include a provision that would allow a company to seek a waiver of the bonding requirement once the company is able to demonstrate financial viability and responsible customer service for a sustained period of time. ASCENT argued that the proposed revision to the bonding requirements aggravates the current problems that carriers have with the bonding rules by retaining the perpetual bonding

requirement on smaller carriers while imposing a new bonding requirement on the larger carriers. According to ASCENT, a waiver provision would alleviate the current problems.

15. In its rebuttal comments, Staff argued that the bonding requirement serves many purposes and that a waiver provision would not be appropriate. (Exhibit No. 3.) The bond protects the customers' advance payments in the event that a carrier declares bankruptcy or abandons service in Delaware. In addition, the bonding requirement may serve to discourage carriers from seeking certification when they do not intend to provide service to Delawareans. *Id.* According to Staff, a number of companies have filed applications just so they can proclaim that they are certified in all fifty states, even though they have no intention of providing service in Delaware.

16. In addition, Staff noted that the bond ensures collection of the statutory \$150 abandonment fee, which is due the Commission upon abandonment of service. *Id.* As of the filing of its rebuttal comments, Staff asserted that thirty-six companies had abandoned service in Delaware in 2001. Since 1998, the Commission has processed 162 applications to abandon service. Frequently, the Commission is unable to collect abandonment fees, especially when a company files for bankruptcy. *Id.*

17. Staff argued that a waiver for companies that are financially viable would be inappropriate because a company that is financially viable today may fail in the future. *Id.* As an example, Staff cited the stock price of Winstar Communications, Inc., which dropped from its high of \$54.63 in 2000 to 14 cents in April 2001, when it filed for bankruptcy protection.

D. FINDINGS AND OPINION

18. The Commission has the authority and jurisdiction to promulgate and amend regulations under 26 Del. C. § 209(a) and 29 Del. C. § 10111 *et seq.*

19. Pursuant to 26 Del. C. § 209(a), the Commission may fix "just and reasonable" regulations governing any public utility. For the reasons provided by Staff, and summarized above, the Commission determines that all of the proposed revisions to the *Rules* (Exhibit No. 2) are just and reasonable.

20. With one exception, the participants in this docket support all of the proposed revisions. As outlined above, ASCENT objects to the proposed bonding requirement, which would apply to all applicants, rather than just those with less than \$250,000 in assets. ASCENT recommended a waiver provision that would apply to those carriers that could demonstrate sustained financial viability.

21. Staff, however, argued that the larger applicants, including those that are financially viable at the time of the application, are also at risk for either bankruptcy or for abandonment of service in Delaware. The protection that a

bond offers, therefore, is necessary for even the larger carriers and, consequently, no waiver for carriers who demonstrate financial viability is appropriate. The Commission agrees with Staff and, therefore, accepts Staff's proposed bonding requirement and denies ASCENT's request for a waiver provision.

E. ORDERING PARAGRAPHS

Now, therefore, this 6th day of November, 2001, **IT IS ORDERED:**

1. That the Commission adopts the *Rules for the Provision of Telecommunications Services*, as amended, the exact text and citation of which are attached hereto as Exhibit "A."

3. That the Secretary shall transmit this Order, together with the exact text of the *Rules for the Provision of Telecommunications Service* to the Registrar of Regulations for Publication on December 1, 2001.

4. That the effective date of this Order shall be the later of December 10, 2001, or ten days after the date of publication in the *Register of Regulations* of the final text of the *Rules for the Provision of Telecommunications Services*.

5. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
 Joshua M. Twilley, Vice Chair
 Donald J. Puglisi, Commissioner
 Jaymes B. Lester, Commissioner
 Joann T. Conaway, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

EXHIBIT "A"

**PUBLIC SERVICE COMMISSION OF DELAWARE
 RULES FOR THE PROVISION OF
 TELECOMMUNICATIONS SERVICES**

Effective: December 10, 2001

**PART A
 CERTIFICATION AND REGULATION OF
 CARRIERS**

Rule 1. Definitions.

(a) Rules shall mean these Rules, including PARTS A and B, governing the provision of telecommunications services in Delaware.

(b) Carrier shall mean any person or entity offering to the public Telecommunications service that originates or

terminates within the State of Delaware. The term "Carrier" does not include:

(i) any political subdivision, public or private institution of higher education or municipal corporation of this State or operated by their lessees or operating agents that provides telephone service for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation;

(ii) a company that provides telecommunications services solely to itself and its affiliates or members or between points in the same building, or between closely located buildings which are affiliated through substantial common ownership and does not offer such services to the available general public;

(iii) providers of domestic public land mobile radio service provided by cellular technology excluded from the Commission's jurisdiction under 26 *Del. C.* § 202(c); and

(iv) Payphone service providers regulated by this Commission under Rules promulgated in Regulation Docket No. 12.

(c) CPCN shall mean a Certificate of Public Convenience and Necessity issued by the Commission.

(d) Commission shall mean the Public Service Commission of Delaware.

(e) Competitive Local Exchange Carrier ("CLEC") shall mean a Carrier, other than the Incumbent Local Exchange Carrier, offering and/or providing local telecommunications exchange services within the State of Delaware.

(f) Incumbent Local Exchange Carrier ("ILEC") shall mean in Delaware Bell Atlantic-Delaware, Inc., and any successor thereto.

(g) Facilities-based Carrier shall mean a Local Exchange Carrier that directly owns, controls, operates, or manages plant and equipment through which it provides local exchange services to consumers within the local exchange portion of the public switched network.

(h) Local Exchange Carrier ("LEC") shall mean a Carrier offering and/or providing local telecommunications exchange services (i.e., CLECs and ILECs); including both facilities-based and non-facilities-based Carriers.

(i) Local Telecommunications Exchange Service shall mean non-toll, intrastate Telecommunications Services provided over a Local Exchange Carrier's network, including, but not limited to, exchange access services and basic local services.

(j) Resale shall mean the sale to an end user of any telecommunications service purchased from another Carrier.

(k) Telecommunications shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form and content of the information as sent and received.

(l) Telecommunications Service shall mean the offering of telecommunications for a fee directly to the

public within the State of Delaware (originating or terminating within the State, without regard to how the Carrier decides to route the traffic), or to such classes of users as to be effectively available to the public, regardless of the facilities used. "Telecommunications Service" does not include:

(i) the rent, sale, lease, or exchange for other value received, of customer premises equipment, except for specialized terminal equipment as defined in 48 U.S.C. § 610(g);

(ii) telephone or telecommunications answering services, paging services, and physical pickup and delivery incidental to the provision of information transmitted through electronic or electromagnetic media, including light transmission;

(iii) The one-way distribution of entertainment services or informational services with no more than incidental customer interaction required for selection of such entertainment or information services; and

(iv) Telecommunications service provided by either primary cellular technology or by domestic public land mobile radio service, even in the event that such transmission originates or terminates in a wireline telephone.

Rule 2. Applicability.

These Rules shall apply to all Carriers, as defined by these Rules, and shall be construed consistently with Rule 3 of these Rules.

Rule 3. Application of and Conflict With Other Rules, Regulations, Tariffs and/or Price Lists.

(a) The ILEC.

(i) The ILEC will remain subject to the Telecommunications Technology [Investment] Act (TTIA), 26 *Del. C.* sub. Ch. VII-A, and any implementing regulations promulgated by the Commission during the term of its election thereunder. During such term, the ILEC shall not be subject to the requirements of these Part A. Rules; and

(ii) The ILEC has Carrier of last resort obligations in its service territory.

(b) Telephone Service Quality Regulations (Docket No. 20).

All Carriers shall provide telephone service in accordance with the Telephone Service Quality Regulations the Commission adopted in PSC Regulation Docket No. 20, by Order No. 3232 (January 15, 1991) as such may from time to time be amended, except to the extent these Rules impose obligations or grant privileges inconsistent therewith.

(c) Negotiation and Mediation Guidelines.

All Carriers must abide by the Commission's Guidelines for Negotiations, Mediation, Arbitration and Approval of Agreements between Local Exchange Telecommunications Carriers (Order No. 4245).

(d) Rules of Practice and Procedure

The practice and procedure governing any proceedings required or authorized by these Rules shall be as set forth by the Commission's Rules of Practice and Procedure adopted in PSC Docket No. 99-9, by Order No. 5057 (April 6, 1999) as the same may be hereafter from time to time amended.

(e) Other Rules and Statutes.

These Rules shall prevail over any inconsistent requirements imposed by prior Order or regulation of the Commission, except for Rule 3(a) preceding and where expressly authorized by a Commission Order granting a waiver. All Carriers remain subject to any and all applicable provisions of state and federal law.

(f) Tariffs or Price Lists.

To the extent that a tariff or price list of any Carrier is inconsistent with these Rules, then, and in that event, these Rules shall control, subject to Rule 3(a) preceding, unless where expressly authorized by a Commission Order granting a waiver.

Rule 4. Certification.

(a) Certification Requirement.

No person or entity shall offer public intrastate or local exchange telecommunications service within the State of Delaware without first obtaining from the Commission a Certificate of Public Convenience and Necessity authorizing such service. A Carrier offering telecommunications service within the State of Delaware without a CPCN duly issued by this Commission is acting unlawfully and shall immediately cease offering such service until a CPCN is granted.

(b) Application.

An applicant for a CPCN shall file with the Commission an original and ten (10) copies of an Application for Certificate of Public Convenience and Necessity, together with the statutory filing fee set forth in 26 *Del. C.* § 114, as the same may from time to time be amended. Such application shall contain all the information and exhibits hereinafter required and may contain such additional information as the applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial and operational ability to adequately serve the public and that the public convenience and necessity requires or will require the operation of such business. If the applicant fails to provide the required information and exhibits within six months of the application, the Commission may take action to close this docket and the applicant will forfeit its application fee.

(c) Notice.

The applicant shall serve a notice of the filing of such an application upon the Public Advocate, and to such other entities as may be required by the Commission. The applicant shall provide public notice of the filing of the application in two (2) newspapers having general circulation

throughout the county or counties where service is to be offered in a form to be prescribed by the Commission.

(d) Business License and Registered Agent.

An applicant shall demonstrate that it is legally authorized and qualified to do business in the State of Delaware, including that it has received authorization to do business issued by the Secretary of State. An applicant shall provide the name, address, and telephone number of its Delaware Resident Agent. Following certification, all Carriers shall promptly notify the Commission in writing of changes of Resident Agent or the name, address, or telephone number thereof.

(e) Identification and Billing of Intrastate and Interstate Traffic.

An applicant shall be required to set forth an effective plan for identifying and billing intrastate versus interstate traffic, and shall pay the appropriate LEC for access at the LEC's prevailing access charge rates. If adequate means of categorizing traffic as interstate versus intrastate are not or cannot be developed, then, for purposes of determining the access charge to be paid to the LEC for such undetermined traffic, the traffic shall be deemed to be of the jurisdiction having the higher access charges and billed at the higher access charges.

(f) Bonds.

(i) Performance Bonds.

All applicants must post a \$10,000 performance bond with Delaware surety and renew such bond annually.

(ii) Carriers requiring deposits, or any form of payment in advance for service.

No Carrier shall require its customers in Delaware to pay a deposit or pay or otherwise provide any security or advance as a condition of service unless that Carrier first has filed with the Commission a bond, issued by a corporate surety licensed to do business in Delaware, guaranteeing the repayment of all customer deposits and advances upon the termination of service. The bond need not be filed with the application, but no CPCN will be issued until such bond is filed with the Commission. The amount of the bond shall be the greater of: (A) 150% of the projected balance of deposits and advances at the end of three years of operation; or (B) \$50,000. If at any time the actual amount of deposits and advances held by a Carrier exceeds the bond, then the Carrier promptly shall file with the Commission a bond with surety to comply with the requirement of the preceding sentence. A Carrier may petition for waiver of the bond requirement three years from the date the certificate was issued and such waiver will be granted upon a demonstration of an adequate operating history and financial resources to insure the repayment to customers of any advance payments or deposits held.

(g) Minimum Financial Requirements for LECs.

(i) Any applicant for certification as a facilities-

based CLEC shall demonstrate in its application that it possesses a minimum of \$100,000 of cash or cash equivalent, reasonably liquid and readily available;

(ii) Any applicant for certification to do business as a non-facilities-based CLEC shall demonstrate in its application that it possesses a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available;

(iii) Any applicant that has profitable interstate operations or operations in other states may meet the minimum financial requirements of subparagraphs (i) and (ii) above by submitting an audited balance sheet and income statement demonstrating sufficient cash flow to meet the above requirements; and

(iv) An applicant may demonstrate cash or cash equivalent by the following:

(A) Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;

(B) Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;

(C) Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(D) Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least (12) months beyond certification of the applicant by the Commission;

(E) Line of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(F) Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding a controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;

(G) Guarantee, issued by a corporation, copartnership, or other person or association, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(H) Guarantee, issued by a qualified subsidiary, affiliate of the applicant, or a qualified corporation holding controlling interests in the applicant irrevocable for a period of at least twelve (12) months beyond the certification of the applicant by the Commission.

(h) Initial Tariffs or Price Lists.

An applicant shall file proposed initial rates, prices, rules, regulations, terms and conditions of service specifically adopted for the State of Delaware. Upon an investigation into unjust and unreasonable pricing practices, the Commission Staff may require the applicant to provide

cost data demonstrating that rates are reasonably expected to cover the incremental cost of offering the service. Copies of the applicant's rates and terms and condition of service in other jurisdictions must be provided to the Commission upon request. Any applicant's tariff or price lists must include at a minimum specific policies regarding:

- (i) customer deposits and advances;
 - (ii) prompt reconciliation of customer billing problems and complaints; and
 - (iii) timely correction of service problems.
- (i) Demonstration of Fitness.

An applicant shall be required to demonstrate to the Commission its financial, operational, and technical ability to render service within the State of Delaware. Such demonstration shall include, but is not limited to, the following:

(i) The applicant's certified financial statements current within twelve (12) months of the filing, and, where applicable, the most recent annual report to shareholders and SEC Form 10-K;

(ii) A brief narrative description of the applicant's proposed operations in Delaware, any present operations in all other states, and states for which service applications are pending;

(iii) A description of the relevant operations experience of applicant's personnel principally responsible for the proposed Delaware operations;

(iv) A specific description of the applicant's engineering and technical expertise showing its qualifications to provide the intended service, including the names, addresses, and qualifications of the officers, directors, and technical or engineering personnel or contractors who will be operating and/or maintaining the equipment to be used to provide such service; and

(v) A description, including location, of the applicant's facilities that the applicant will use to provide the proposed service in the next three years. Upon written request of the Commission Staff, the applicant shall provide a one year construction, maintenance, engineering, and financial plan for all services intended to be provided within the State of Delaware with a technical description of the equipment which will be used to provide such service.

Rule 5. New Options or Offerings; Changes to Existing Rates, Prices or Terms and Conditions.

(a) Notice Required for New Service Options and Offerings.

No Carrier shall offer new telecommunication service options or offerings except ten (10) days after filing with the Commission the proposed tariff or price list.

(b) Notice Required to Revise Existing Tariff or Price List.

No Carrier shall revise an existing tariff or price list except three (3) days after filing with the Commission the

proposed tariff or price list.

(c) Service of Notice.

A Carrier filing a new service or changes to an existing service pursuant to this Rule shall serve the filing on:

- (i) the Public Advocate; and
- (ii) all interested persons that submit a written request to the Commission to receive such notice.

A Carrier shall file with the Commission a certificate of service as part of its notice requirement. To the extent that any such documents contain information claimed to be proprietary and interested persons have submitted a written request for notice, but have not executed an appropriate proprietary agreement, the Carrier shall provide an expurgated version of the notice to such parties.

(d) Investigation of Filings.

A filing made pursuant to this rule shall not preclude the Commission or its Staff from an informal or formal investigation into the filing in order to protect fair competition, including requiring the Carrier to provide cost data demonstrating that rates are reasonably expected to cover the incremental cost of offering the service.

(e) Special Contracts

A Carrier shall file under this rule all contracts with a customer to the extent the contract changes the terms or conditions generally offered to the public in the carrier's tariff or price list on file with the Commission.

Rule 6. Discrimination Prohibited.

No Carrier shall unreasonably discriminate among persons requesting a service within the State of Delaware. Any finding of unreasonable discrimination shall be grounds for suspension or revocation of the Certificate of Public Convenience and Necessity granted by the Commission, as well as the imposition of monetary and other penalties pursuant to 26 Del. C. §§ 217 and 218.

Rule 7. Abandonment or Discontinuation of Service.

A Carrier may abandon or discontinue service, in whole or in part, in accordance with the terms of 26 Del. C. § 203A(c). The Carrier shall provide notice of its application to discontinue or abandon service to its customers subscribing to such service and to the Division of Public Advocate. Such notice shall describe the options available to the customers. The Carrier's application to abandon or discontinue a service shall contain proposed provision for payment of all relevant outstanding liabilities (deposits and advance payments), if any, to customers within the State of Delaware.

Rule 8. Services to be Provided By CLECs Providing Voice Telephone Service.

Any CLEC providing voice telephone service shall offer, at a minimum, the following telecommunication

services to its customers:

- (a) access to the public switched network;
- (b) dial tone line services;
- (c) local usage services;
- (d) access to all available long distance Carriers;
- (e) TouchTone services;
- (f) White page listing;
- (g) Access to 911 enhanced emergency system;
- (h) Local directory assistance service;
- (i) Access to telecommunications relay service.

Rule 9. Resale Prohibitions.

- (a) Cross-Class Selling.

A Carrier that by tariff or price list makes a service available only to residential customers or a limited class of residential customers may prohibit the purchaser from offering such services to classes of customers that are not eligible for such services from the providing Carrier.

- (b) Other.

With respect to any restrictions on resale other than cross-class selling as described in paragraph (a) above, a Carrier may impose a restriction only if the Commission determines that the restriction is reasonable and nondiscriminatory.

Rule 10. Reports to the Commission.

- (a) Annual and Periodic Reports.

All Carriers shall file with the Commission an Annual Report as described below and such other reports or information as the Commission may from time to time require to fulfill its statutory obligations. The Annual Report shall include standard financial reports (balance sheet, statement of operations, supporting schedules, etc.). This report shall also include:

- (i) the same after-the-fact information that management is provided concerning the measurement of performance provided in Delaware;
- (ii) the information used to determine Delaware income tax liability;
- (iii) financial and operating information for the smallest management unit that includes Delaware;
- (iv) intrastate revenues (net of uncollectible) by service category;
- (v) intrastate access and billing and collection cost by service category;
- (vi) total number of customers by service category;
- (vii) total intrastate minutes of use by service category;
- (viii) total intrastate number of calls by service category;
- (ix) a description of service offered;
- (x) a description of each complaint received by service category (in the form of a single Complaints Log); and

(xi) verification of deposits, customer advances, the bond requirement and the bond with surety, where applicable.

- (b) Accounting System.

All Carriers shall use an accounting system in accordance with Generally Accepted Accounting Principles or such other uniform system of accounts previously approved in writing by the Chief of Technical Services of the Commission.

- (c) Attestation.

All Carriers shall file all reports required by these Rules with a sworn statement by the person under whose direction the report was prepared, that the information provided in the report is true and correct to the best of the person's knowledge and belief.

- (d) Time for Filing.

All periodic reports to be filed with this Commission must be received on or before the following due dates, unless otherwise specified herein, or unless good cause is demonstrated by the Carrier:

- i. Annual Report: one hundred twenty (120) days after the end of the reported period; and
- ii. Special and additional reports: as may be prescribed by the Commission unless good cause to the contrary is demonstrated.

Rule 11. Enforcement.

- (a) Commission Oversight.

The Commission shall have the authority and the discretion to take such action, upon complaint, motion, or formal or informal investigation, to remedy any alleged violations of these Rules. The Commission shall have available to it all remedies and enforcement powers bestowed by statute and consistent with due process.

- (b) Violation and Penalties.

Failure of a Carrier to comply with any provision of these Rules may result in the suspension or revocation of its CPCN, and/or of the imposition of monetary or other penalties as authorized by 26 *Del. C.* §§ 217 and 218.

- (c) Proceedings.

Upon application by any person affected, including the Division of the Public Advocate or another Carrier, or upon its own motion, the Commission may conduct a proceeding to determine whether a Carrier has violated any provision of these Rules. Such proceedings shall be conducted according to the Commission's Rules of Practice and Procedure.

- (d) Investigations.

For the purpose of determining whether it is necessary or advisable to commence a proceeding, the Commission or its Staff may, at any time, investigate whether a Carrier is in compliance with these Rules. Upon request, the Carrier shall provide to the Commission or its Staff sufficient information to demonstrate its compliance or

noncompliance with the Rules, including such data as shall demonstrate that the Carriers' services are provided at rates that generate sufficient revenue to cover the incremental cost of offering that service.

(e) Customer Complaints as Ground for Proceeding or Investigation.

The Commission may hold a proceeding to determine whether to suspend or revoke the certificate of, or otherwise penalize any Carrier for reason of customer complaints. The Commission may investigate any customer complaints received.

Rule 12. Waiver of Rules Upon Petition.

A Carrier may petition the Commission for waiver of a Rule or Rules on a temporary or permanent basis by demonstrating to the satisfaction of the Commission that a waiver is in the public interest or for other good cause, including unreasonable hardship or burden. The Carrier shall comply with all Rules until the petition for waiver has been granted.

PART B

CUSTOMER ELECTION OF PREFERRED CARRIER

Rule 13. Additional Definitions.

For purposes of this PART B, in addition to the Definitions set forth by PART A, the following definitions shall apply:

(a) Preferred Carrier shall mean the Carrier providing service to the customer at the time of the adoption of these Rules, or such Carrier as the customer thereafter designates as the customer's Preferred Carrier.

(b) Preferred Carrier Change Order shall mean generally any order changing a customer's designated Carrier for local exchange service, intraLATA intrastate toll service or both.

Rule 14. Applicability.

Any Carrier offering intrastate and/or local exchange service for public use within the State of Delaware, including the ILEC, Bell Atlantic-Delaware, Inc., shall be subject to the provisions of these Part B Rules.

Rule 15. Verification of Orders for Telecommunications Service.

No Carrier shall submit a Preferred Carrier Change Order unless and until the Order has been first confirmed in accordance with one of the procedures set forth in *47 C.F.R. § 64-1120*.

Rule 16. Letter of Agency Form and Content.

A Carrier may use a letter of agency to obtain written authorization and/or verification of a customer's request to change his or her Preferred Carrier selection. A letter of

agency that does not conform with the requirements set forth in *47 C.F.R. § 64.1130* is invalid.

Rule 17. Submission and Execution of Changes in Customer Carrier Selections.

Submission and execution of changes in customer carrier selection shall comply with *47 C.F.R. § 64.1120*.

Rule 18. Preferred Carrier Freezes.

A Preferred Carrier freeze prevents a change in a customer's Preferred Carrier selection unless the customer has given the Carrier from which the freeze was requested his or her express consent. All Carriers who offer Preferred Carrier freezes must comply with the provisions of *47 C.F.R. § 64.1190*.

Rule 19. Customer Protection.

(a) Procedures To Be Followed By The Customer.

A customer who believes his or her Carrier or Carriers have been changed, without the customer's authorization, and/or that the customer has been billed for charges not authorized by the customer, should first attempt to resolve the matter with the Carrier or Carriers responsible for the unauthorized changes and/or charges. If the customer is not satisfied with the resolution offered by the Carrier, the customer may file a complaint with the Commission.

(b) Procedures To Be Followed By Carriers.

A Carrier who is informed by a customer that the customer believes the Carrier has caused or allowed a change in the customer's Carrier without the customer's authorization, or that the Carrier has caused or allowed the customer to be billed for charges not authorized by the customer shall attempt to resolve the complaint promptly and in good faith. If the customer and Carrier are not able to resolve the complaint, then the Carrier shall inform the customer orally or in writing of the right to file a complaint with the Commission and shall provide the customer with the Commission's address and telephone number.

(c) Carriers to Maintain Record of Complaints.

Each Carrier shall maintain a record of the complaints received by it alleging that the Carrier has caused or allowed a customer's Carrier to be changed without the customer's authorization or has caused or allowed the customer to be billed for charges not authorized by the customer. The Carrier shall maintain the record of each complaint for a period of two years following initial notification of the complaint. Upon request by the Commission or its staff, a Carrier shall furnish a copy of its complaint records and such other information as the Commission Staff may require. A Carrier's complaint records shall include at least the following information:

(i) name, address, and telephone number of complainant and the date and manner received by the Carrier; and

(ii) a chronological summary of the dispute and its current status, including any resolution and date of resolution.

(d) Refund and Penalties.

In the event the Commission determines that a Carrier has caused a customer's Carrier for a service to be changed without the customer's authorization obtained in exact compliance with these Rules, or has caused the customer to be billed for charges imposed without exact compliance with these Rules, then the Commission shall require the Carrier to promptly refund or void to the customer any charges the Carrier has caused to be billed as a result of the unauthorized change or charge, and/or any other remedies available for violation of these Rules as allowed by law. 26 Del. C. § 924(c). The Commission's remedies are in addition to those required under 47 C.F.R. § 64.1170 to the extent the FCC's remedies have not provided a refund or credit to the subscriber in the amount of 100% of all charges the Carrier caused to be billed as a result of the unauthorized change or charge.

DEPARTMENT OF AGRICULTURE

Statutory Authority: 29 Delaware Code,
Section 4815(b)(3)b.2.D. (29 Del.C.
4815(b)(3)b.2.D.

ORDER

Pursuant to 29 Del. C. §10118 and 29 Del. C. §4815(b)(3)b.2.D, the Delaware Standardbred Breeders' Fund Board of the Department of Agriculture ("the Board") hereby issues this final Order promulgating proposed Rules for the administration of the Breeders' Fund Program. Following notice and a public hearing held on July 12, 2000 on the proposed Rules, the Board makes the following findings and conclusions:

SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

1. The Board posted public notice of the proposed rules in the July 1, 2000 Register of Regulations. Notice of the proposed rules and the public hearing was published in the News-Journal and the Delaware State News. The proposal contained sixteen chapters for the administration of the Breeders' Fund. The proposed chapters are as follows: 1) adopt chapter 1 to specify the legislative source of the Board's authority and to establish procedures for managing the Program's funds; 2) adopt chapter 2 to define more specifically the terms referenced in the regulations and enabling statute; 3) adopt chapter 3 to specify the rules

governing eligibility for Delaware-bred races under the Program; 4) adopt chapter 4 to specify the rules governing eligibility for bonus payments paid under the Program; 5) adopt chapter 5 to specify the rules governing eligibility of sires for awards under the Program; 6) adopt chapter 6 to specify the rules governing and the records required for registration in the Program; 7) adopt chapter 7 to establish a process for interested parties to register a horse in the Program; 8) adopt chapter 8 to establish a requirement for the Administrator of the Program to maintain a record of expenses for the Program; 9) adopt chapter 9 to establish rules governing purses and bonus awards under the Program; 10) adopt chapter 10 to establish responsibilities of owners and lessees under the Program; 11) adopt chapter 11 to establish fee structures and procedures for sires under the Program; 12) adopt chapter 12 to establish fee structures and procedures for renewal of sire registration under the Program; 13) adopt chapter 13 to establish the authority of the Administrator of the Program to suspend or deny registration in the Program and to establish a process for appealing said suspensions or denials; 14) adopt chapter 14 to specify the rules governing races under the Program; 15) adopt chapter 15 to establish fee structures and procedures for nominations and sustaining payments for horses racing under the Program; 16) adopt chapter 16 to specify the rules governing investment of funds received pursuant to 29 Del. C. §4815(b)(3)b.2.D and any interest earned thereupon.

2. At the Board's public hearing, there was no public comments submitted on the content of the proposed Rules. The Board did receive written submissions regarding revisions to the length of the breeding season and a sliding scale registration rather than a flat fee.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

3. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing regarding the proposed Rules.

4. The proposed Rules were promulgated by the Board in accord with its statutory duties and authority as set forth in 29 Del. C. §4815(b)(3)b.2.D. The Board concludes these Rules as proposed are necessary for the implementation and operation of the Breeders' Fund as intended by §4815(b)(3)b.2.D. The Board concludes that the adoption of the proposed Rules would be in the best interests of the citizens of the State of Delaware and necessary to establish and efficiently administer the Breeder's Fund. The Board does not find it advisable to revise the proposed Rules to revise the length of the breeding season or to adopt a sliding scale registration. The Board believes it would be advisable to consider at a later date any change to the length of the breeding season.

5. At a meeting of the Board on September, 2000, the

Board formally voted to ratify and adopt the Rules in the proposed form. By final order signed by the Board in October, 2000, the Board again voted to formally ratify and adopt the Rules in the proposed form. This final order was submitted with an intended publication date of November 1, 2000. Due to apparent clerical error, it is necessary for the Board to again execute this Order to adopt the Rules in the proposed form, effective November 11, 2000.

IT IS SO ORDERED this 15th day of November, 2001.

Rep. William Oberle, Speaker of the House appointee
Senator James T. Vaughn, President Pro Tempore appointee

Secretary of Agriculture or designee

Secretary of Finance or designee

Franck Chick, Standardbred Breeders and Owners of Delaware

Pete Geldof, Standardbred Owners Association

Robert Kinsey, Standardbred Owners Association

Andrew Markano, Standardbred Owners Association

Charles Lockhart, Dover Downs

Garnet O'Marrow, Standardbred Owners Association

Jack Walls, Harrington Raceway

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) Standardbred horses;

(2) bred in a manner prescribed in Section 2.0 herein;

(3) the product of a registered Delaware stallion;

(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,

(5) listed in their registry books.

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.

1.2 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) Classes and divisions of races, eligibility of horses and owners therefor and purses and bonuses to be awarded;

(2) Nominating, sustaining and entry fees on horses and races;

(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;

(4) Registration and certification of Delaware stallions, mares bred to such stallions and foals produced thereby; and,

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

1.3 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.

1.4 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.

1.5 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"---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 desicated 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 desicated 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"—A breeder is the owner of the dam at the time of breeding through foaling.

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

"Delaware-bred horse"— A 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"---A Delaware resident is as defined in §10032 of Title 3 of the Delaware Code.

"Delaware sire"—A 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."

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.

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 .

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.

To be eligible for races under the Program for race year 2005 and thereafter, the horse shall be a Delaware sired 2 or 3year 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:

- (a) Suspend or deny the registration of the stallion;
- and
- (b) Schedule a hearing within thirty days of the denial or suspension.

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:

- (a) Suspend the registration; or
- (b) Rescind its suspension of the registration; or
- (c) Deny or revoke the registration; or
- (d) 1. Deny or revoke the registration; and

2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

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:

- (a) Suspend or deny the registration of the stallion;
- and
- (b) 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;

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:

- (a) Rescind its suspension or denial of the registration; or
- (b) Suspend, deny, or revoke the registration; or
- (c) 1. Deny or revoke the registration; and

2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

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:

- (a) Shall suspend or deny the registration of the stallion;
- (b) Notify the person in writing of the action taken by the Commission; and
- (c) May:
 - 1. Deny or revoke the registration; and

2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

13.2 Appeals

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.

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.

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

- 1. Age;
- 2. Sex; and
- 3. Gait.

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.

14.5 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:

<u>2 Year Olds</u>	<u>3 Year Olds</u>
<u>Pacers Trotters</u>	<u>Pacers Trotter</u>
<u>2:10 2:14</u>	<u>2:06 2:12</u>

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.

14.6 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:

(a) 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.

(b) 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.

(c) The Eligibility and class of all horses running in races is carefully screened.

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

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:

- (a) Forty (40) dollars each; and
- (b) 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.

15.7 Sustaining payments shall be as follows:

(a) TWO (2) YEAR OLD PAYMENTS	
March 15th	\$100
May 15th	\$200
Declaration Fee (for each track)	\$500

March 15th payment must be made to ensure eligibility as a three (3) year old.

(c) THREE (3) YEAR OLD PAYMENTS

March 15	\$300
Declaration Fee (for each track)	\$500

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.

DEPARTMENT OF EDUCATION

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

**REGULATORY IMPLEMENTING ORDER
103 SCHOOL ACCOUNTABILITY FOR ACADEMIC
PERFORMANCE****I SUMMARY OF THE EVIDENCE AND
INFORMATION SUBMITTED**

The Secretary of Education seeks the approval of the State Board of Education to amend regulation 103 School Accountability for Academic Performance. The amendments are necessary to bring the regulation in line with the changes in the statute as per H.B. 220. Three new sections were added, 4.0 Performance Classifications, 5.0 School Review Process and 6.0 Appeals Process and in sections 2.3.2, 2.4 and 3.0 the word "accreditation" was changed to the word "performance".

Notice of the proposed regulation was published in the News Journal and the Delaware State News on September 22, 2001, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements. As per the request of the State Board of Education, changes were made to item 5.2 to clarify that there are a total of four members on each School Review Team and Section 5.4 was revised to add specificity to the criteria used to evaluate other evidence of school performance. Also, in item 6.1 words were added to clarify that in the charter schools there is no superintendent to sign an appeal and in item 6.5 "consent of the State Board of Education" has been added to the final decision on an appeal.

II. FINDINGS OF FACTS

The Secretary finds that it is necessary to amend this regulation because of the changes made to the *Delaware Code* through House Bill 220.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provisions 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 fourth 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 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, in open session at the said Board's regularly scheduled meeting on November 15th, 2001. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 15th day of November 2001.

DEPARTMENT OF EDUCATION
Valerie A Woodruff, Secretary of Education

Approved this 15th day of November 2001.

STATE BOARD OF EDUCATION
Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Robert J. Gilsdorf
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

103 School Accountability for Academic Performance

1.0 Accountability School: The school to which a student's performance is assigned shall be the Accountability School. Except as defined in sections 1.1 to 1.3 the Accountability School shall be the school that provided the majority of instructional services to that student in a given school year so long as the student was enrolled in the school for more than 530 school hours or more than 90 school days. No student shall have his/her performance assigned to more than one Accountability School in a given school year.

1.1 Except as in section 1.1.1, for students enrolled in an intra-district intensive learning center or intra-district special school or program operating within one or more existing school facilities the school facility in which the student is served shall be the Accountability School.

1.1.1 If in such a program the number of students included in a School Composite Score would be greater than or equal to 30 a school district may elect to define the program as an Accountability School.

1.1.2 Within 30 days of request by the Secretary of Education school districts shall inform the Secretary of Education in writing of any Accountability Schools they

elect to define pursuant to section 1.1.1. Such definitions may not be changed for four measurement cycles.

1.2 For students enrolled in inter-district special schools or programs that have an agreement to serve students from multiple school districts that school or program shall be the Accountability School provided the number of students included in the School Composite Score is greater than or equal to 30.

1.2.1 If in such a school or program the number of students included in a School Composite Score is less than 30 the student scores shall be assigned to the Accountability School the student would have been assigned to if an Individual Education Program was not in place.

1.3 For students enrolled in alternative school programs pursuant to 14 *Del.C.*, Chapter 16, or the Delaware Adolescent Program the Accountability School shall be the school that assigned them to the program. For the purposes of this chapter the time the students were enrolled in the alternative or transitional program shall be credited to the Accountability School.

2.0 Composite Score: A School Composite Score for each Accountability School shall be created utilizing the formula found in 14 *Del. C.*, Section 154(b)(1).

2.1 The School Composite Score shall include the collective performance of all students in each Standards Cluster as defined in section 2.6 and 2.7 below on the assessments administered pursuant to 14 *Del.C.*, Section 151 (b) and (c).

2.1.1 For students who take a portion of the assessment more than once within a measurement cycle, the best test score except re-tests by 12th grade students shall be included in the School Composite Score.

2.1.2 For school accountability purposes a student not assessed either pursuant to 14 *Del.C.*, Section 151 (b) and (c) or not assessed with alternate assessments approved by the Department of Education shall be assigned to Performance Level 0, and such score shall be assigned to the school that failed to assess the student.

2.1.3 Except for students who participate in out-of-level testing, students who test with non-aggregable conditions as defined in the Department of Education's *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency* shall have her/his performance level included in the School Composite Score.

2.1.4 For school accountability purposes a student who tests but does not meet attemptedness rules as defined in the Department of Education's Scoring Specifications, who participates in out-of-level testing or otherwise receives an invalid score shall be assigned to Performance Level 1.

2.1.5 A student participating in alternate assessments shall have her/his performance level included in

the School Composite Score.

2.2 Schools with more than one tested grade shall receive a single School Composite Score determined by aggregating the performance levels of students who score at each performance level in each tested grade.

2.3 Baselines for Accountability Schools shall be determined using two years of their students' performance, beginning with the Accountability School's first two administrations of the Delaware Student Testing Program. New School Composite Scores shall be established each two years thereafter.

2.3.1 Prior to 2003 reading, writing and mathematics results shall be utilized to determine School Composite Scores.

2.3.2 In 2003 two School Composite Scores shall be calculated. The School Composite Score used to determine ~~accreditation~~ performance shall include reading, writing and mathematics results. The School Composite Score used as the school's new baseline shall include reading, writing, mathematics, science and social studies results.

2.3.3 After 2003 reading, writing, mathematics, science and social studies results shall be utilized to determine all School Composite Scores.

2.4 Schools shall be evaluated for ~~accreditation~~ performance by comparing their performance on the three measures defined in section 3.0 over a measurement cycle.

2.5 Student performance in a tested grade shall be apportioned in equal weights to each grade in a Standards Cluster, except that Kindergarten shall be weighted at 10%.

2.6 Prior to the inclusion of science and social studies results in the School Composite Score the weights assigned to each subject shall be 40% for reading, 40% for mathematics and 20% for writing.

2.6.1 Standards Clusters shall be defined as follows:

Standards Cluster	Spring Assessments, Calendar Year A
Grades K-3	Grade 3 reading, writing, mathematics
Grades 4-5	Grade 5 reading, writing, mathematics
Grades 6-8	Grade 8 reading, writing, mathematics
Grades 9-10	Grade 10 reading, writing, mathematics

2.7 When science and social studies results are included in the School Composite Score, the weights assigned to each subject shall be as follows:

2.7.1 For assessments in grades 3 through grade 6: 35% for reading, 35% for mathematics, 10% for writing,

10% for science and 10% for social studies.

2.7.2 For assessments in grades 8 through grade 11: 20% for reading, 20% for mathematics, 20% for writing, 20% for science and 20% for social studies.

2.7.3 Standards Clusters shall be defined as follows:

Standards Cluster	Spring Assessments, Calendar Year A	Fall Assessments, Calendar Year A
Grades K-3	Grade 3 reading, writing, mathematics	Grade 4 science, social studies
Grades 4-5	Grade 5 reading, writing, mathematics	Grade 6 science, social studies
Grades 6-8	Grade 8 reading, writing, mathematics, science, social studies	
Grades 9-10	Grade 10 reading, writing, mathematics	
Grades 9-11	Grade 11 science, social studies	

3.0 Performance Criteria: The Department of Education shall determine the ~~accreditation~~ performance status of a school by utilizing three measures of performance.

3.1 Absolute Performance: The Absolute Performance of the school's student body on the assessments administered pursuant to 14 *Del.C.*, Section 151 (b) and (c) measured using the School Composite Score. Target School Composite Scores shall be determined by the Department of Education with the consent of the State Board of Education.

3.2 Improvement Performance: The school's record in improving its School Composite Score over a measurement cycle by an amount determined by the Department of Education with the consent of the State Board of Education.

3.2.1 The expected improvement for a given school shall be the difference between the school's current composite score and a target School Composite Score that all schools are expected to achieve divided by the number of measurement cycles the school has to reach the target School Composite Score.

3.2.2 For schools that have already met the target School Composite Score, a higher target shall be established. Target School Composite Scores and time periods shall be determined by the Department of Education with the consent of the State Board of Education.

3.3 Distributional Performance: The school's record in improving the performance of low achieving students over a measurement cycle by an amount determined by the Department of Education with the consent of the State Board of Education.

3.3.1 The expected Distributional Performance for a given school shall be a specified decrease in the

percentage of students performing below the standard (those in levels 0, 1, and 2) in tested content areas while the percentage of students in Level 0 and the percentage of students in Level 1 in tested content areas do not increase by a targeted amount.

3.3.1.1 All regulations utilized to calculate school composite scores pursuant to 2.0 shall also apply to calculate distributional performance.

3.3.2 An Accountability School that has no change in the percentage of students performing below the standard or reduces that percentage by less than the target shall be assessed by whether the Distributional Composite Score, calculated by including only those students who have not met the standard, increases by a targeted amount. Distributional Targets shall be determined by the Department of Education with the consent of the State Board of Education.

4.0 ~~Accreditation:~~ **RESERVED.**

Performance Classifications: Schools shall be rated by the Department of Education based on their collective performance on the three specific measures of performance described in section 3.0. The performance classification of each school shall be reported in School Profiles.

4.1 Superior Performance: A school's performance is deemed excellent. Schools in this category shall have met or exceeded performance targets as determined by the Department of Education with the consent of the State Board of Education.

4.2 Commendable Performance: A school's performance is deemed acceptable. Schools in this category shall have met sufficient performance targets as determined by the Department of Education with the consent of the State Board of Education.

4.3 Under School Improvement: A school's performance is deemed as needing improvement. Schools in this category have not met sufficient performance targets as determined by the Department of Education with the consent of the State Board of Education. Schools initially classified in this category shall be evaluated using a School Review Process pursuant to section 5.0 below. Following a final classification of a school as Under School Improvement the school shall be required to undertake improvement and accountability activities as defined in 14 *Del.C.*, Section 154(d)(2).

4.4 Unsatisfactory Performance: A school's performance is deemed as unacceptable. Schools Under School Improvement who after two years have not met sufficient performance targets as determined by the Department of Education with the consent of the State Board of Education shall be classified as Unsatisfactory. Schools in this category shall be required to undertake improvement and accountability activities as defined in 14 *Del.C.*, Section 154(d)(3).

4.5 Schools required to develop a school improvement plan pursuant to 14 Del.C., Section 154(d)(2) and (3) shall include specific strategies to improve the performance of students in each low performing sub-population as defined by the Department of Education.

5.0 Appeals process: ~~RESERVED.~~

5.0 School Review Process: Schools classified as Under School Improvement shall be evaluated by a School Review Team.

5.1 The purpose of the evaluation is to determine whether additional evidence of school performance demonstrates that a school should be reclassified as Commendable.

5.2 For each school subject to review, the School Review Team shall consist of [four members who shall include] two representatives of the Department of Education and two educators from Delaware public schools, and may include educators who have retired within the previous five years. Each team shall be chaired by a representative of the Department of Education. All School Review Team members shall be appointed by the Secretary of Education.

5.3 Schools subject to review shall provide the Department of Education with evidence of school performance in a form acceptable to the Department. Such evidence, along with school performance data available to the Department of Education, shall provide the basis for the evaluation of the school's performance.

5.4 Criteria used to evaluate other evidence of school performance shall include at a minimum:

~~5.4.1 Curriculum aligned to state content standards and assessments aligned to curriculum and standards.~~

~~5.4.2 Instruction aligned to the curriculum and teaching strategies selected based on student needs.~~

~~5.4.3 School community collaborations that support high standards of student achievement and behavior for all students.~~

~~5.4.4 The use of data to improve instruction for all students.~~

~~5.4.5 Development and maintenance of a climate in the school that supports high achievement.~~

~~5.4.6 Development and implementation by school community of a comprehensive plan to address all students' needs.~~

~~5.4.7 Professional development opportunities that support the acquisition of new knowledge and the transference of skills to classroom practices.~~

~~5.4.8 Resources identified and used effectively to support best educational practices.~~

5.4.1 The use and analysis of student achievement data and other data to determine areas of need

5.4.2 Curriculum and instructional decisions

based on student needs identified through data analysis

5.4.3 Professional development aligned to curriculum, instruction and identified student needs

5.4.4 Community involvement in the school's decision making process, including evaluation and planning

5.4.5 Curriculum aligned to the state content standards

5.4.6 Research-based instruction aligned to curriculum and teaching strategies based on student needs

5.4.7 Resources aligned with student needs and goals and objectives identified in the School Improvement Plan

5.4.8 The school develops and implements strategies to promote a positive climate supportive of student achievement].

5.5 The School Review Team shall evaluate evidence of school performance with respect to the criteria in section 5.4 above using a scoring process approved by the Department of Education. A target score shall determine whether a school should receive a site visit or shall remain classified as Under School Improvement. Target scores for site visits shall be determined by the Department of Education with the consent of the State Board of Education. No school with a score below the target shall receive a site visit or be reclassified.

5.5.1 Schools that are designated to receive a site visit shall have the option of declining such a visit. No school shall receive a recommendation to be reclassified to Commendable without a site visit by a School Review Team. The district in which the school is located shall have five working days to notify the Secretary of Education in writing if they do not wish to receive a site visit. Charter schools shall have five working days to notify the Secretary of Education in writing if they do not wish to receive a site visit. All schools that decline a site visit shall remain classified as Under School Improvement.

5.6 Following any site visits the School Review Team shall recommend to the Secretary of Education whether a school shall remain Under School Improvement or whether additional evidence exists to reclassify the school to Commendable Performance. Target scores used as the basis for such recommendations shall be determined by the Department of Education with the consent of the State Board of Education.

5.6.1 Upon such a recommendation the Secretary of Education may reclassify a school to Commendable Performance subject to the consent of the State Board of Education.

6.0 Appeals Process: A school may appeal its performance classification as follows.

6.1 The school must file a written notice of appeal with

the Secretary no later than 30 days after receiving written notification of its performance classification. The notice of appeal shall state with specificity the grounds for the appeal, and shall be signed by the principal of the school and [except in the case of a charter school,] the superintendent of the district that has authority over the school.

6.2 Upon receipt of a satisfactory form of notice of appeal, the Secretary will decide whether to hear the appeal or assign it to a hearing officer.

6.3 The Secretary or hearing officer, as the case may be, will establish a date upon which the appeal will be heard. The school shall be given not less than 20 days notice of the hearing date. A written position statement, legal brief or memorandum in support of its appeal shall be filed by the school with the Secretary or hearing officer no later than 10 days prior to the hearing date. Any written statement must clearly identify the issues raised in the appeal. Briefs or legal memoranda shall be submitted with the written statement if the appeal is based upon a legal issue or interpretation.

6.4 A school challenging its classification must prove by clear and convincing evidence that the classification assigned to it by the department was contrary to law or regulations, was not supported by substantial evidence, or was arbitrary or capricious, or should be changed because of other extraordinary mitigating circumstances beyond the school's control.

6.5 If the appeal has been assigned to a hearing officer, the hearing officer will issue a recommended decision to the Secretary in the form of a Proposed Order. The Secretary will not conduct any further hearings on the matter, but [with the consent of the State Board of Education,] will issue a final decision within 30 [working] days thereafter.

REGULATORY IMPLEMENTING ORDER

910 GENERAL EDUCATIONAL DEVELOPMENT 915 JAMES H. GROVES HIGH SCHOOL

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 910 General Educational Development and Section 3.0 item, 3.15 of regulation 915 James H. Groves High School to change the minimum acceptable passing scores on the GED test as established by the American Council on Education. The amendment is necessary because the GED Testing Service of the American Council on Education begins a new GED test series in January 2002. On October 19, 2001 the General Educational testing Service (GEDTS) released the minimum

acceptable passing score for the new GED test that was established by the American Council on Education. These new scores are based on norms derived from a national study of high school seniors in which Delaware participated. Each state administering the GED test must follow the new policy established by the GED Testing Service.

The scores are now stated in a manner consistent with ACT and SAT reporting. Individuals must earn a standard score of not less than 410 (formally 40) on each of the five tests with an average standard score of not less than 450 (formally 45) and a total score of not less than 2250 (formally 225) in order to be issued a GED Endorsement.

Since this change in these regulations is non-substantive the changes are exempt from the Administrative Procedures Act process. The Administrative Procedures Act still requires that the changes be recorded in the Register of Regulations office hence it is necessary to take action to amend these regulations as to the minimum passing scores.

II. FINDINGS OF FACTS

The Secretary finds that it is necessary to amend this regulation because the GED Testing Service of the American Council on Education begins a new GED test series in January 2002 and on October 19, 2001 the General Educational testing Service (GEDTS) released the minimum acceptable passing score for the newly normed GED test as established by the American Council on Education. These regulations must include the newly normed scores.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provisions 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 fourth 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 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, in open session at the said Board's regularly scheduled meeting on November 15, 2001. The effective date of this Order shall be ten (10) days

from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 15th day of November 2001.

DEPARTMENT OF EDUCATION
Valerie A Woodruff, Secretary of Education

Approved this 15th day of November 2001.

STATE BOARD OF EDUCATION
Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Robert J. Gilsdorf
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

910 General Educational Development (GED)

The Delaware General Educational Development (GED) Endorsement is given to persons who satisfactorily pass the General Educational Development (GED) Test.

- 1.0 To be eligible to take the GED Test an applicant shall:
- 1.1 Be a resident of Delaware or if a resident of another state work in the state for at least one year.
 - 1.2 Have withdrawn from a regular high school program.
 - 1.3 Be 18 years of age or older, or be 16 or 17 years of age and meet the following requirements:
 - 1.3.1 Be a resident of the State of Delaware.
 - 1.3.2 Be officially withdrawn from a regular high school program.
 - 1.3.3 Be at least 16 years of age at the time of application for a waiver.
 - 1.3.4 Make written application to the ~~Education Associate~~ **Director** of Adult Education at the Delaware Department of Education showing good cause for taking the test and designating where the test will be taken.
 - 1.3.5 Provide verification of withdrawal from high school and a copy of the GED practice scores.
 - 1.4 Pass the Official GED Practice Test with a score of ~~240~~ 2450 or better and not less than ~~45~~ 470 on each of the 5 sub-test areas.
- 2.0 An individual shall have a standard score of not less than ~~40~~ 410 on each of the five tests with an average standard score of not less than ~~45~~ 450 for all five tests and a total standard score of not less than ~~225~~ 2250 in order to be issued a GED Endorsement. Forty-five days must lapse prior to re-testing and instruction is recommended before re-

testing.

915 James H. Groves High School

(Section 3 Item 3.15)

3.15 Certificate of Educational Attainment (CEA3)
- The CEA3 enables a student to demonstrate high school level skills through a written test. By passing the Official GED Practice Test with a score of ~~240~~ 2450 or better with no less than ~~45~~ 470 in each sub-test area and writing a Groves approved content area research paper, students are awarded 10 units of credit toward graduation.

DEPARTMENT OF FINANCE

DIVISION OF REVENUE

DELAWARE STATE LOTTERY OFFICE

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 hereby issues this Order promulgating proposed amendments to the Video Lottery Regulations. Following notice and a public hearing held on October 22, 2001 on the proposed Video Lottery Regulation amendments, the Lottery makes the following findings and conclusions:

SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

1. The Lottery posted public notice of the proposed rule revisions in the October 1, 2001 Register of Regulations and in the Delaware Capital Review and the Delaware State News. The proposal contained proposed amendments to Video Lottery Regulations 5.2.1(2), 7.2, 7.3, and 14.7(4). The proposed amendments to Video Lottery Regulations 5.2.1(2), 7.2, and 7.3 would revise the maximum bet limit to \$100.00. The proposed amendment to Video Lottery Regulation 14.7(4) would add a new subsection (4) to provide that a person determined to be unsuitable for licensure under the Video Lottery Regulations may not reapply for licensure for a period of twelve months.
2. The Lottery held a public hearing on October 22, 2001 and received no public comments. The Lottery received no written comments from the public during the month of October, 2001.

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing regarding the proposed rule amendments.

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 5.2.1(2), 7.2, 7.3, and 14.7(4) were promulgated by the Lottery in accord with its statutory duties and authority as set forth in 29 Del. C. §4805(a). The Lottery concludes that the proposed Video Lottery Regulations should be adopted in the proposed form.

5. The effective date of this Order shall be ten (10) days from the publication of this order in the Registrar of Regulations on December 1, 2001. A copy of the enacted Video Lottery Regulations is attached as Exhibit #1 to this Order.

IT IS SO ORDERED this 1st day of November, 2001.

Wayne Lemons, Director

5.0 Technology Providers: Contracts; Requirements; Duties

5.1. The Director shall, pursuant to the procedures set forth in chapter 69 of title 29 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 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.

5.2.1 All contracts with technology providers who are video lottery machine manufacturers 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 ~~twenty five dollars (\$25)~~ one-hundred (\$100) shall be permitted for wagering on a single play of any video game;

(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 and shall provide the Director with keys and locks subject to the Director's specifications for each approved video lottery machine;

(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;

5.2.2 All contracts with technology providers shall include without limitation, provisions to the following effect:

(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;

(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;

(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

(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.

5.3 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.

(15) Supervise its employees and their activities to ensure compliance with these rules.

(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.

(17) Comply with such other requirements as shall be specified by the Director.

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 ~~\$25.00~~ \$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 ~~\$25.00~~ \$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 (1) 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:

(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.

14.0 Fingerprinting Procedure

14.1 The license applicant, licensee, or video lottery agent or technology provider employee will contact the State Bureau of Identification or the Delaware State Police Video Lottery Enforcement Unit to make arrangements for fingerprint processing.

14.2 A fee is required to be paid for state and federal processing of fingerprint cards and criminal history cards and criminal history records. The fee is set by the State Bureau of Identification and payment is to be made directly to that agency.

14.3 Applicants must complete fingerprint cards with the necessary personal information to sign the waiver form to release criminal history to the Director or the Video Lottery Enforcement Unit. At the time of the processing, the applicant must show proof of identification to complete the criminal history request.

14.4 Certified copies of the criminal history record will be forwarded to the Director of the Lottery or the Video Lottery Enforcement Unit. The Lottery Director or Video Lottery Enforcement Unit will forward copies of the criminal history to license applicants or licensees. For employees of video lottery agents or technology providers, the Director or the Video Lottery Enforcement Unit will forward copies of the employee's criminal history to the employer's designated contact person upon request.

14.5 The State Bureau of Identification shall act as the intermediary for the receipt of the federal criminal history record checks performed by the Federal Bureau of Identification. The State Bureau of Identification shall forward the results of these federal record checks to the attention of the Lottery Director and/or the Video Lottery Enforcement Unit in a confidential manner.

14.6 A person subject to 29 **Del. C.** §4807A shall have the opportunity to respond to the Lottery Director regarding any information obtained prior to a determination of suitability for licensure. Such a response shall be made

within ten (10) working days of the person's receipt of the criminal background information from the State Bureau of Identification.

The determination of suitability for licensure shall be made by the Lottery pursuant to the factors listed in 29 **Del. C.** §4807A regarding an applicant's criminal history. The Lottery will also consider the factors contained in 29 **Del. C.** chapter 48 and these Video Lottery Regulations in considering applications for licensure. The Lottery will consider the truthfulness of the applicant, licensee, or employee in disclosing their criminal history. Under 29 **Del. C.** §4805(a)(16)(17), the Lottery Director shall consider the background of key employees or video lottery operations employees in order to determine if the person's reputation, habits, and associations pose a threat to the public interest of the State or to the reputation of or effective regulation and control of the video lottery. It is specifically provided, pursuant to 29 **Del. C.** §4805(a)(16)(17), that any person convicted of any felony, a crime involving gambling, or a crime of moral turpitude within ten (10) years prior to applying for a license or at any time thereafter shall be deemed unfit. The Director may determine whether the licensing standards of another state are comprehensive, thorough and provide similar adequate safeguards and, if so, may in the Director's discretion, license an applicant already licensed in such state without the necessity of a full application and background check. The Delaware State Police shall conduct the security, fitness, and background checks required by §4805(a)(16)(17) and the Video Lottery Regulations.

14.7 The Lottery shall communicate the results of the determination of suitability in writing, to the license applicant or licensee within thirty (30) days of receipt of the criminal history information, unless extenuating circumstances require a longer period. If a determination is made to deny a person licensure, the person shall have an opportunity to appeal for reconsideration as set out below.

(1) Appeal shall be initiated by a person notified that he/she is being denied a license pursuant to 29 **Del. C.** §4807A and Video Lottery Regulation 13.3 by submitting a request for a hearing to the Director within ten (10) working days of the receipt of the written notice.

(2) The appeal shall be reviewed by the Lottery Director and the person shall be given the right to be heard by the Director or the Director's designee within thirty (30) working days of the receipt of the letter of appeal, unless extenuating circumstances require a longer period. Any hearing will be pursuant to the procedures in the Video Lottery Regulations 13.5-13.11, whichever is applicable.

(3) A written decision shall be rendered by the Director or the Director's designee within thirty (30) working days of the hearing unless extenuating circumstances require a longer period. All decisions made by the Lottery under this appeal procedure are final.

(4) A person determined to be unsuitable for licensure pursuant to these Regulations shall be prohibited from reapplying for licensure for a period of twelve (12) months.

14.8 The Lottery or the Video Lottery Enforcement Unit will communicate the results of suitability in writing regarding an employee to either the video lottery agent or technology provider employing said individual. The Lottery will provide a copy of the criminal history record to the employee upon request.

14.9 All records pertaining to criminal background checks, pursuant to 29 Del. C. §4807A and copies of suitability determinations of applicants for licensure, shall be maintained in a confidential manner, including, but not limited to the following:

(1) Access to criminal background check records, and letters of reference accompanying out-of-state criminal background checks, and determinations of suitability of applicants shall be limited to the Director and designated personnel;

(2) All such records shall be kept in locked, fireproof cabinets;

(3) No information from such records shall be released without the signed release of the applicant.

14.10 Subsequent criminal history shall be sent by the State Bureau of Identification to the Director of the Lottery and/or the Video Lottery Enforcement Unit. This subsequent criminal history information shall be used by the Lottery and the Video Lottery Enforcement Unit in making a determination about the person's continued suitability as a licensee or employee of a video lottery agent. The licensee or employee shall notify the Video Lottery Enforcement Unit within twenty-four (24) hours of any change in his criminal history information.

Section 122(3)(v).

On August 1, 2001 (Volume 5, Issue 2), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by September 4, 2001, or be presented at a public hearing on August 23, 2001, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal comments were received and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

FINDINGS OF FACT:

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

The proposed regulations include modifications from those published in the August 1, 2001, Register of Regulations, based on comments received during the public notice period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed Standards for Public Health Assurances in the Practice of Cosmetology and Barbering are adopted and shall become effective January 2, 2002, after publication of the final regulation in the Delaware Register of Regulations.

11.14.01 VINCENT P. MECONI
SECRETARY

SUMMARY OF EVIDENCE

A public hearing was held on August 23, 2001, at 1:30 PM, in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, before David P. Walton, Hearing Officer, to discuss the proposed Department of Health and Social Services (DHSS) Rules and Regulations Governing Cosmetology and Barbering Establishments. The announcement regarding the public hearing was advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Mr. Thom May from the Health Systems Protection Section, Division of Public Health, made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Public testimony was given at the public hearing and a call was received on September 5, 2001, after the public comment period ended (August 1 - September 4, 2001). All public comments and the DHSS (Agency) responses are as follows:

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 122(3)(v) (16 Del.C. 122(3)(v))

ORDER

NATURE OF THE PROCEEDINGS

The Department of Health and Social Services ("DHSS") initiated proceedings to adopt Standards for Public Health Assurances in the Practice of Cosmetology and Barbering. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 1,

- **In regards to nail salons, how do we get beyond having the sanitation protocols for proper cleaning of equipment between customers and get to ensuring that these businesses are actually complying with them?**

Agency Response: The purpose of these new regulations is to protect public health through the establishment of industry sanitation standards in Delaware. To that end, we offer the following steps to motivate compliance and protect public health:

Establishment of standards effective January 2, 2002 (regulations);

Work with industry to make them aware of new standards;

Conduct surprise inspections and complaint driven investigations;

Notify the Board of Cosmetology and Barbering of failure to comply with these standards for the Board to pursue disciplinary sanctions as allowed by law. This is specified in the Compliance and Enforcement section of these regulations (Section 81.9).

- **The Division of Public Health may want to give some consideration to putting something in the regulation that would specifically address the sanitation of the footbaths.**

Agency Response: After a thorough review of the regulation, it was determined that footbaths could be more clearly addressed. As a result of this comment, the following amendments were made to the regulation:

In Section 81.301, a new paragraph was added to specifically address footbath sanitizing.

- **I'm interested in knowing what resources you're expending, since this is the first time you'll be doing this. Will your inspections will be unannounced, surprise inspections?**

Agency Response: Included in the Cosmetology and Barbering legislation that eventually became law was funding for one position to establish this program. In addition, inspections on these facilities will be unannounced.

- **Exhaust hoods should be required when shops do acrylic nails. Fumes that customers and employees are subject to are not acceptable and may do damage to health. (Telephone call received outside of the public comment period)**

Agency Response: DHSS believes this type of problem should be dealt with on a case-by-case basis versus an across the board regulatory requirement. In this way, specialized

air testing equipment can be used to validate such a claim.

The public comment period was open from August 1, 2001 to September 4, 2001.

Verifying documents are attached to the Hearing Officer's record. This regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

STATE OF DELAWARE
STANDARDS FOR PUBLIC HEALTH ASSURANCES
IN THE PRACTICE OF
COSMETOLOGY AND BARBERING

SECTION 81.1, GENERAL PROVISIONS

81.101 Preamble

The Secretary, Delaware Health and Social Services (DHSS), adopts these standards pursuant to the authority vested by 16 Del.C. §122(3)(v). These standards establish sanitation requirements for the practice of cosmetology, barbering, aesthetics, electrology, and nail technology and in the operation of beauty salons, schools of cosmetology, schools of electrology, schools of nail technology and schools of barbering, and for the investigation of complaints involving unsanitary or unsafe practices or conditions in such professions or facilities.

81.102 Purpose

These standards shall be construed and applied to promote their underlying purpose of protecting the public health. They establish minimum standards for public health assurance in the practice of aesthetology, cosmetology, barbering, electrology, and nail technology. Individuals, schools and businesses engaged in a profession licensed by the Board of Cosmetology and Barbering (Board) are encouraged to employ more stringent requirements.

81.103 Severability

If any provision or application of any provision of these standards is held invalid, that invalidity shall not affect other provisions or applications, which can be given effect without the invalid provision.

81.104 Date of Effect

These standards shall become effective January 2, 2002.

81.105 Inspections

The Secretary, DHSS, or authorized designee shall have right of entry, during the facility's hours of operations and other reasonable times and in a reasonable manner without fee or hindrance, for the purpose of determining if the facility is in compliance with these standards. The facility shall allow for inspection and shall provide information and records needed to determine compliance with these

standards, whether or not the evidence exists that the facility is in violation of these standards.

81.106 Variance

DHSS may grant a variance by modifying or waiving the requirements of these standards if in the opinion of DHSS a health hazard or nuisance will not result from the variance. A variance, if granted, is rendered void upon the following: when the physical facility is demolished, or when a remodeling project in the facility includes area(s) addressed in the variance, or when the license or certificate holder granted the variance ceases to operate the facility for a period exceeding thirty (30) consecutive days. A variance shall not be transferable from person to person, nor from location to location. If a variance is granted, DHSS shall retain the information specified below in its records for the facility.

A. Statement of the proposed variance of the requirements of these Standards, citing the relevant section of these Standards;

B. An analysis of the rationale for how the potential public health hazards or nuisances will be alternatively addressed by the proposal; and

C. Any other information requested by DHSS that may be deemed necessary to render judgement.

81.107 Facilities – Existing and New

Facilities that are lawfully in existence and operating at the time of adoption of these standards shall be permitted to have their use and maintenance continued if the use, maintenance or repair of the physical facility and structure is in accordance with the original design and no hazard to life or health is created by the existing facility.

New or remodeled facilities shall before commencing work, submit an application and plans, as required, by and to, the Department of Administrative Services, Division of Professional Regulation (DPR). All construction and renovation shall comply with any and all applicable local, state or federal laws and regulations.

81.108 Failure to Comply

When a facility or licensee is not in compliance with the provisions of these regulations, the Department shall refer the matter to the Board for enforcement action. However, in the event a facility or licensee poses an immediate risk to the public health, the Secretary, in accordance with 16 Del. C. §122(1), may take immediate action.

81.109 Definitions

81.109.1 “Apprentice” means any person who is engaged in the learning of any or all the practices of cosmetology, barbering, nail technology or electrology from a practitioner licensed in the profession the apprentice is studying. The apprentice may perform or assist the licensed

practitioner in any of the functions which the practitioner is licensed to perform.

81.109.2 “Antiseptic” means an agent that destroys disease-causing microorganisms on human skin or mucosa.

81.109.3 “Aesthetician” means a person who practices the cleansing, stimulating, manipulating and beautifying of skin, with hands or mechanical or electrical apparatus or appliances and to give treatments to keep skin healthy and attractive.

81.109.4 “Barber” means any person who, for a monetary consideration, shaves or trims beards, cuts or dresses hair, gives facial or scalp massaging, treats beards or scalps with preparations made for this purpose or dyes hair.

81.109.5 “Board” means and refers to the Delaware Board of Cosmetology and Barbering.

81.109.6 “Beauty salon” means any place or part thereof, wherein cosmetology, barbering, electrology or nail technology, or any of its practices, are practiced, whether such place is known or designated as a cosmetological establishment, beauty salon or barber shop, nail salon or electrology establishment, or where the person practicing cosmetology, barbering, nail technology or electrology therein holds oneself out as a cosmetician, cosmetologist, beauty culturist, barber, nail technician or electrologist, or by any other name or designation indicating that cosmetology or barbering is practiced therein.

81.109.7 “Contaminated Waste” means any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; sharps and any wastes containing blood and other potentially infectious materials, as defined in the latest edition of the Federal CFR known as “Occupational Exposure to Bloodborne Pathogens.”

81.109.8 “Cosmetologist” means any person, including students and apprentices, who engages in the practice of cosmetology.

81.109.9 “Cosmetology” means any one and/or combination of practices generally and usually performed by and known as the occupation of beauty culturalist, cosmeticians, cosmetologists or hairdressers or any person holding him or herself out as practicing cosmetology in or upon whatever place or premises.

Cosmetology shall include, but otherwise not be limited to, the following or any combination of the following practices: embellishing, arranging, dressing, curling, waving, cleansing, beautifying, cutting, singeing, bleaching, coloring, or similar work upon the hair of any person by any means and with hands or mechanical or electrical apparatus, devices or appliances or by use of cosmetic preparations, antiseptics, tonics, lotions, creams or otherwise, massaging,

cleansing, stimulating, manipulating, exercising, beautifying or similar work, the scalp, face, neck, arms, hands, bust or upper part of the body, or manicuring, pedicuring or sculpting the nails of any person.

81.109.10 "Department" means the Delaware Health and Social Services (DHSS) as defined in Title 29, Section 7901, of the Delaware Code.

81.109.11 "Disinfection" means the destruction of pathogenic microorganisms by chemical or physical means directly applied.

81.109.12 "Equipment" means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus and appurtenances used in connection with the operation of an establishment.

81.109.13 "Electrologist" means any person who, for a monetary consideration, engages in the removal of superfluous hair by use of specially designed electric needles.

81.109.14 "Handsink" means a lavatory equipped with hot and cold running water, under pressure and used solely for washing hands, arms or other portions of the body.

81.109.15 "Hot Water" means water which attains and maintains a temperature of at least 110°F.

81.109.16 "Instructor" means any person who is a cosmetologist, barber, electrologist or nail technician, who teaches cosmetology, barbering, electrology or nail technology in a duly registered school of cosmetology, barbering, electrology or nail technology.

81.109.17 "Invasive" means entry into the body either by incision or insertion of an instrument into or through the skin or mucosa, or by any other means intended to puncture, break or compromise the skin or mucosa.

81.109.18 "Licensee" means any person, beauty salon, barbershop, nail salon, electrology establishment, school, or other facility licensed by or holding a certificate of registration with the Board.

81.109.19 "Liquid Chemical Germicide" means a disinfectant or sanitizer registered with the Environmental Protection Agency or an approximate 1:10 dilution of household chlorine bleach made fresh daily and dispensed from a spray bottle.

81.109.20 "Nail technician" means any person who engages only in the practice of manicuring, pedicuring or sculpting nails, including acrylic nails, of any person.

81.109.21 "Person" means an individual, any form of business or social organization or any other non-governmental legal entity including but not limited to a corporation, partnership, limited liability company, association, trust or unincorporated organization.

81.109.22 "Person in charge" means the individual present at the regulated facility that is responsible for the operation at the time of the inspection. For the purposes of disciplinary action the owner or licensee shall be liable.

81.109.23 "Sanitize/Sanitation Procedure" means a process of reducing the numbers of microorganisms on cleaned surfaces and equipment to a safe level as judged by public health standards and which has been approved by DHSS.

81.109.24 "Secretary" means the administrator of DHSS or his or her designee.

81.109.25 "Sharps" means any object that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, pre-sterilized, single use needles, and razor blades.

81.109.26 "Sharps Container" means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation and disposal and is labeled with the international "biohazard" symbol.

81.109.27 "Single Use" means products or items that are intended for one-time, one-person use and are disposed of after use on each client including, but not limited to, cups, gauze and sanitary coverings, razors, piercing needles, stencils, and cotton swabs or balls, tissues or paper products, paper or plastic protective gloves.

81.109.28 "Sterilization" means a powerful process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.

81.109.29 "School of cosmetology", "school of electrology", "school of nail technology", "school of barbering" shall mean any place or part thereof where cosmetology, barbering, electrology, nail technology or any of the practices are taught, whether such place or establishment is known or designated as a cosmetological establishment, barbering school, beauty culture school, school of electrology, or by any other name or designation, indicating that cosmetology, barbering, electrology or nail technology is taught therein to students.

81.109.30 "Universal Precautions" means a set of guidelines and controls, published by the Center for Disease Control (CDC) as "guidelines for prevention of transmission of human immunodeficiency virus and hepatitis B virus to health-care and public-safety workers" in Morbidity and Mortality Weekly Report (MMWR), June 23, 1989, Vol. 38, No. S-6, and as "recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures," in MMWR, July 12, 1991, Vol. 40, No. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV and other blood pathogens. Precautions include hand washing, gloving, personal protective equipment, injury prevention, and proper handling and disposal of needles, other sharp instruments, and blood and body fluid contaminated products.

SECTION 81.2. REQUIREMENTS FOR PREMISES**81.201 Water Supply**

A. Water shall be obtained from an approved source that is constructed, maintained and operated according to the requirements of the Department of Natural Resources and Environmental Control (DNREC) and DHSS.

B. The water source and system shall be of sufficient capacity and pressure to meet the demands of the facility. Hot and cold water shall be provided at all sinks.

C. The water source shall conform to the State of Delaware Drinking Water Standards and shall be analyzed annually if a private supply.

81.202 Sewage

Sewage shall be disposed of through an approved public treatment sewage plant or private disposal system that is sized, constructed, maintained and operated according to the requirements of DNREC and DHSS.

81.203 Plumbing

A. Plumbing shall be sized, constructed, installed, maintained and operated according to the requirements of the applicable plumbing code.

B. One service sink shall be provided in all regulated facilities.

C. Sanitary drinking fountains or bottled water with single use disposable cups must be provided.

81.204 Toilet Facilities

A. Each regulated facility shall provide the number of toilets and hand washing sinks required by the applicable plumbing code. They are required to be accessible during business hours and maintained in good working order, have adequate ventilation, and may not be used for storage of linen or beauty supplies.

B. Rest rooms shall be kept in a sanitary condition, maintained in a safe and orderly manner and be equipped with a liquid soap dispenser, disposable towels, toilet paper, and a covered waste receptacle.

81.205 Hand Washing Facilities

A hand washing sink which is convenient and accessible to all work stations shall be provided. This sink must be supplied with liquid soap, disposable paper towels and a covered waste receptacle and shall be used for no other purpose.

81.206 Insect and Rodent Control

Facilities shall be designed so as to prevent the entry and occurrence of insects and rodents. Pest control measures shall be provided and if a problem occurs professional pest control services shall be provided.

81.207 Animals

No animals shall be allowed in any salon, establishment or school except for those that assist persons with disabilities. Fish aquariums are allowed in the waiting area.

81.208 Garbage and Refuse

A covered waste receptacle shall be provided at each workstation and be emptied daily. Exterior refuse containers shall be cleanable with a tight fitting lid and collected weekly, at minimum.

81.209 Laundry

Soiled reusable cloth items may be mechanically washed with detergent and then dried on premises provided that washers and dryers are installed per local codes and are not included in the area used by clients.

81.210 Floors, Walls, and Ceilings

All floors, walls, and ceilings shall be smooth, free of open holes or cracks, washable and maintained in a clean condition and in good repair.

81.211 Equipment Construction and Design

All interior surfaces of the facility and fixtures shall be designed so as to be easily maintained and kept clean. Procedure surfaces, including client chairs/benches shall be easy to clean and sanitize.

81.212 Lighting

Artificial light sources shall be provided equivalent to at least twenty (20) foot candles three (3) feet off the floor, except that 100 foot candles shall be provided at the level where cosmetology is being performed, and where equipment is assembled.

81.213 Ventilation

Every beauty salon, establishment and school shall have a system of adequate ventilation in accordance with the provisions of local building codes.

81.214 General

A. All areas shall be maintained in a safe, orderly and sanitary condition.

B. Residential beauty salons, establishments and schools shall be separate from living quarters and have their own entrance.

C. Except where allowed by State or Local law, smoking is prohibited.

SECTION 81.3. SAFETY AND SANITATION REQUIREMENTS**81.301 General**

A. Instruments shall be disinfected or sterilized in

accordance with Section 81.5 of these standards.

B. An instrument that caused a skin abrasion or a cut to the skin shall be cleaned and disinfected immediately. If bleeding occurs, a tissue or cotton shall be used to collect the blood. Blood contaminated materials shall be disposed of immediately in a sealed, double-plastic bag.

C. Hair, cotton, or other waste material shall be removed from the floor without delay and deposited in a lidded, closed waste container.

D. Objects dropped on the floor may not be used until they are cleansed and disinfected.

E. Soiled combs, brushes, towels, or other used material shall be removed from the tops of workstations immediately after use.

F. All supplies or instruments which come in direct contact with a patron and cannot be disinfected (for example, cotton pads, emery boards used on the natural nail, and neck strips) must be disposed of in a covered waste receptacle immediately after their use.

G. All instruments that have been used on a patron or soiled in any manner shall be placed in a properly labeled receptacle while awaiting cleaning and sanitizing.

H. Neck dusters and all other brushes used on a patron shall be maintained in a clean and sanitary condition.

I. Permanent waving retention rods shall be cleansed and sanitized after each use. End papers must be discarded immediately after use.

J. Shampoo trays and bowls must be cleansed with soap and water or other detergent after each shampoo, kept in good repair and in a sanitary condition at all times.

K. Pressing combs shall be kept clean and free of carbon, and a hot soda solution or similar cleansing agent shall be used for this purpose. Between clients, pressing combs shall be scrubbed with a stiff brush, rinsed, disinfected, and dried.

L. Curling irons and hot combs shall be wiped free of grease or hair, with a clean cloth, after use on each client. They shall be cleaned per approved procedures and maintained clean and free from rust, grease, and dirt.

[M. Foot-baths shall be cleaned and sanitized after each customer use in accordance with Section 81.5 of these standards.]

81.302 Employee

A. Disposable medical gloves shall be worn if the employee has a cut or open wound.

B. A person whose hands come in contact with blood shall wash and disinfect them immediately.

C. Hair clips, hairpins, bobby pins, or similar implements may not be placed in the mouth.

D. Hot combs and curling irons shall be used in a well-ventilated area.

E. A person who uses a dye, tint or other chemical shall follow the directions, regulations or instructions as they

appear on the container or package.

81.303 Single Service

A. Only clean cloth towels or disposable paper towels shall be used on clients. A cloth towel that has been used on a client shall be immediately placed in a closed container for soiled linen. A disposable paper towel that has been used on a client shall be immediately discarded in a covered waste container.

B. The headrest of a facial chair and footrest and manicure cushion shall be covered with a clean cloth towel or an unused disposable paper towel before the start of each facial, manicure or pedicure.

C. The use of neck dusters, powder puffs, sponges, styptic pencils, and lump alum or any other equipment or implement, which cannot be sanitized and disinfected, may not be used on more than one client.

D. Treatment tables must be covered with a clean sheet of examination paper for each patron.

E. A clean cloth towel, unused disposable paper towel or unused neck strip shall be placed around the neck of each client whose hair is about to be cut to prevent the hair cloth from touching the skin.

81.304 Equipment Storage

A. Each regulated facility shall have at least one wet sanitizer, of sufficient size to hold all equipment and instruments as required and one closed drawer or cabinet for containing an active fumigant or electrical sanitizer for each workstation.

B. Cleaned and disinfected implements and equipment shall be stored in a clean and dry cabinet or drawer.

C. Unused clean cloth towels and disposable towels shall be stored in a closed, clean cabinet or towel dispenser.

D. A closed cabinet or separate bin or hamper for the disposal of soiled towels is required as appropriate.

81.305 Supplies

A. A minimum of eight combs and four brushes shall be available for each cosmetologist or barber.

B. Only powdered or liquid astringents, applied with a clean cloth towel or clean piece of cotton, may be used to check bleeding. The use of powder puffs or styptic pencils is prohibited.

C. Lotions, oils, and any other type liquid shall be poured into a disinfected container or disinfected hand. Any excess remaining after application shall be discarded immediately and not returned to the original container or applied to another client.

D. Creams and other semisolid substances shall be removed from their containers with a sterile spatula or similar utensil. The spatula or similar utensil may not be permitted to come into contact with the skin of a client.

E. All liquids, creams, and other cosmetic preparations

shall be kept in clean, closed and distinctly labeled containers. Poisonous substances shall be in additionally marked containers. Powders may be kept in clean shakers.

F. When only a portion of a cosmetic preparation is to be used on a patron, it shall be removed from the container in such a way as not to contaminate the remaining portion.

81.4 ADDITIONAL REQUIREMENTS

81.401 Cosmetologist

In addition to the sanitation requirements in 81.3, all beauty salons, establishments or schools that offer or provide services normally performed by a cosmetologist shall also comply with the requirements of this section:

1. Creams, lotions, powders and other cosmetics shall be removed from the client by means of disposable absorbent cotton, cleansing tissue, cotton swab, pledget, or other similar material.

2. Lip color, eye color, shadows, or other cosmetics shall be applied to the client with a disposable or cleansed and sanitized applicator.

3. Disposable lip, makeup, eyelash, or other cosmetic applicator shall be discarded immediately after use.

4. Hair removal waxes may not be used for more than one client. Any excess wax left after client service shall be discarded immediately.

5. Blood lancets shall be wrapped and discarded immediately after each use.

6. Disinfected solutions or 70 percent alcohol shall be kept on the cosmetology tray for contact disinfection of implements that may come into contact with blood. The disinfectant solution shall be changed every 1 to 2 hours, or immediately upon becoming cloudy or contaminated with blood.

7. The use of laser technology for hair removal is not work generally or usually performed by cosmetologists and is prohibited.

81.402 Nail Technologists

A. In addition to the sanitation requirements in 81.3, all beauty salons, establishments or schools offering services normally performed by a nail technologist shall comply with the requirements of this section:

1. The manicure tabletop shall be maintained in a sanitary condition at all times.

2. Instruments used on an individual client shall be placed in a jar sanitizer containing cotton saturated with 70 percent alcohol or bleach during the manicure process so as to keep the instruments in a sanitary condition during the entire manicure procedure.

3. The following procedures shall be followed when paraffin wax is used:

a. A paraffin wax treatment shall be provided before, and not after, a manicure or pedicure.

b. The client shall be free of broken skin or any skin disorder.

c. The hands or feet of the client shall be disinfected before being dipped into paraffin wax.

d. The paraffin wax shall be kept free of any debris and in a sanitary manner.

B. The use of methyl methacrylate (MMA) is prohibited.

C. Electric nail files and electric drills shall not be used on natural nails.

SECTION 81.5 DISINFECTION AND STERILIZATION OF INSTRUMENTS AND EQUIPMENT

81.501 Non-Electrical Instruments and Equipment

A. Before use upon a client, all non-electrical instruments with or without a sharp point or edge shall be disinfected in the following manner:

1. Cleaned with soap or detergent and water.

2. Then totally immersed in:

a. Commercially marketed U.S. Environmental Protection Agency (EPA) approved and registered disinfection agents sold for the purpose of disinfecting implements and tools used in the practice of beauty culture, provided that all manufacturer's instructions are carefully followed or,

b. A solution of one part household bleach to ten parts water for 10 minutes or,

c. 70 percent alcohol for 20 to 30 minutes.

B. The disinfectant solutions required in 81.501A, shall:

1. Remain covered at all times.

2. Be changed per the manufacturer instructions but at least once per week or whenever visibly cloudy or dirty.

3. Bleach based disinfectant solutions shall be changed daily.

C. If instruments and equipment specified in Section 81.4 are sterilized in accordance with the requirements outlined in 81.3, the requirements of this section will be deemed to have been met.

81.502 Electrical Instruments and Equipment

Clippers, vibrators, and other electrical instruments shall be disinfected prior to each use by:

1. First removing all foreign matter and,

2. Use of a commercially marketed EPA approved and registered disinfection agent(s) sold for the purpose of disinfecting implements and tools used in the practice of beauty culture, provided that all manufacturer's instructions are carefully followed.

81.503 Electrolysis Instruments and Equipment

A. All non-single use, non-disposable instruments such as, but not limited to electrolysis needles or tweezers shall be:

1. cleaned thoroughly by scrubbing with soap, detergent and hot water and,
2. placed in an ultrasonic unit that shall be operated in accordance with manufacturer's instructions.

B. After cleaning, all non-single use, non-disposable instruments shall be packed individually, in peel packs, and subsequently sterilized in accordance with 81.503C. Peel packs shall contain either a sterilized or internal temperature indicator. Peel packs must be dated with an expiration date not to exceed six months. Sterile equipment may not be used if the package has been breached or after the expiration date without first sterilizing and repackaging. All equipment shall remain in sterile packaging until just before use.

C. All cleaned, non-disposable instruments shall be sterilized in a U.S Food and Drug Administration (FDA) approved steam autoclave or dry heat sterilizer. The sterilizer shall be used, cleaned and maintained according to the manufacturer's instruction. A copy of the manufacturer's recommended procedures for the operation of their sterilization unit must be available for inspection. Sterilizers shall be located away from workstations or areas frequented by the public. If a beauty salon, establishment or school uses all single use, disposable instrument and products, and utilizes sterile supplies, an autoclave shall not be required.

D. Each beauty salon, establishment or school shall demonstrate that the sterilizer used is capable of attaining sterilization by monthly spore destruction tests. These tests shall be verified through an independent laboratory. These test records shall be retained for a period of three years and made available upon request of the Board or DHSS.

E. When assembling instruments, the operator shall wear disposable medical gloves and use medically recognized techniques to ensure that the instruments and gloves are not contaminated.

SECTION 81.6 PERSONNEL**81.601 Employee Health**

No beauty salon, establishment or school shall knowingly permit a person afflicted with an infection or parasitic infestation capable of being transmitted to a client to serve clients or instruct or train in the beauty salon, establishment or school.

81.602 Hygienic Practices

Every person performing services shall thoroughly wash his or her hands with soap and water or any equally effective cleansing agent immediately before serving each client.

81.603 Clothing

The person and the uniform or attire shall be clean at all times.

SECTION 81.7 INFECTIOUS, CONTAGIOUS OR COMMUNICABLE DISEASES**81.701 General**

A. No beauty salon, establishment or school shall knowingly require or permit an employee, apprentice or student to work upon a person believed to have an infection or parasitic infestation capable of being transmitted to the employee, apprentice or student unless the client can produce a physician's certification that the client does not have an infectious, contagious or communicable disease.

B. Employees, apprentices and students shall wear gloves when required to serve a person with skin that is inflamed, broken, abraded, cut or where a skin infection or eruption is present.

C. No person may perform any act, which affects the structure or function of living tissue of the face or body. Any such act shall be considered an invasive procedure. Invasive procedures include, but are not limited to, the following:

1. Application of electricity which contracts the muscle.
2. Application of topical lotions, creams, or other substances which affect living tissue.
3. Penetration of the skin by metal needles, except electrolysis needles.
4. Abrasion of the skin below the non-living, epidermal layers.

D. Only the non-living, uppermost layers of facial skin, known as the epidermis, may, by any method or means, be removed, and then only for the purpose of beautification.

E. Only commercially available products for the removal of facial skin for the purpose of beautification may be used. Mixing or combining skin removal products is prohibited except, as it is required by manufacturer instructions.

F. Universal precautions shall be used when handling human blood or body fluids.

SECTION 81.8 PROHIBITED HAZARDOUS SUBSTANCES/USE OF PRODUCTS**81.801 General**

A. No beauty salon, establishment or school shall have on the premises cosmetic products containing hazardous substances, which have been banned by the Delaware Code, the Board, DHSS, or the FDA for use in cosmetic products.

B. No product shall be used in a manner that is disapproved by the Board, DHSS, or the FDA, or is in violation of any applicable Federal or State statute or regulation.

SECTION 81.9, COMPLIANCE AND ENFORCEMENT**81.901 General**

A. The certificate holder of any beauty salon, barbershop, nail salon, electrology establishment, school of cosmetology, school of barbering, school of electrology or school of nail technology shall be responsible for maintaining the Standards for Public Health Assurances established by these regulations.

B. Refusal to permit, or interference with, an inspection by the DHSS or the Board, constitutes violation of these standards.

C. DHSS shall investigate all complaints for violations of these Standards as herein regulated and shall refer any failure to comply with these Standards to the Board for disciplinary sanctions as allowed by law.

81.902 Penalty

Any person violating any of the requirements established by these Standards is subject to be referred to the Board for disciplinary sanctions pursuant to 24 Del.C., Chapter 51.

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

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



Secretary's Order No.: 2001-A-0041

**Proposed Regulation 42
(Specific Emission Control Requirements)
Section 1:
Control of NOx Emissions from Industrial Boilers**

Date of Issuance: October 10, 2001
Effective Date of the Amendment: December 11, 2001

I. Background:

A public hearing was held on August 29, 2001, at the Department's Priscilla Building Conference Room of DNREC in Dover to receive comment on the proposed Regulation 42, Section 1 provision, designed to reduce the emissions of nitrogen oxides, or NOx, from industrial boilers. NOx is a precursor in the formation of ground-level ozone. This proposed regulation would set NOx emission rates applicable to sources that remain high NOx emitters even after the application of RACT and post-RACT requirements, and have not committed substantial capital funds to reduce these NOx emissions. This rule making is an effort within the ozone transport control region, which along with a series of other regulations on consumer products, portable fuel containers, architectural and industrial maintenance coatings, solvent cleaning operations, and mobile equipment and repair and refinishing operations, would hopefully reduce VOC and NOx emissions, and thereby help bring Delaware within the attainment range for ozone. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a Hearing Officer's Report to the Secretary dated October 9, 2001. Both the Department's Response Document and the Hearing Officer's Report are expressly incorporated into this Order.

II. Findings and Conclusions:

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the proposed adoption of Regulation No. 42, Section 1. In addition, the record will show that the following findings have been made:

1. Proper notice of the hearing was provided, as required by law.

2. The universe being regulated under this rule making is appropriate and necessary in order to achieve mandatory air quality improvements, and does not represent an unfair regulation, simply because it does not further regulate units that emit more NOx than the existing three Sunoco units, and does not regulate units that have installed control technology, instead of or in addition to, units that comply with Regulation No. 12 through fuel switching, as further elaborated in the Department's response document.

3. The May 1, 2004 compliance date is both achievable and necessary, for reasons already indicated and set forth in the Department's response document.

4. The proposed limits are not unfair, insofar as they may go beyond existing Regulation No. 12 limits, for reasons already discussed above, and also considering that the three Sunoco boilers, even under existing regulatory programs, remain grossly high NOx emitters, even after the

application of NO_x RACT under Regulation No. 12.

5. It is appropriate to revise the proposed regulation (consistent with AQM's recommendations) to accommodate situations when combined fuels are being fired, to reflect the fact that the predominant fuel should determine the appropriate NO_x emission limitation.

6. The transfer of allowances to the Department each month may be burdensome and unnecessary (as reflected in AQM's revision of the proposed regulation), but the accounting of emissions and the purchase of allowances on a monthly basis is not burdensome, and is both appropriate and necessary for compliance purposes.

III. Order:

On the basis of the foregoing findings, it is hereby ordered as follows:

1. The Hearing Officer's Report and the Department's response document are made a part of this Order, and expressly incorporated herein.

2. Regulation No. 42, Section 1, as revised consistent with the recommendations in the response document attached hereto, shall be adopted, in accordance with the customary regulatory procedure, as set forth by law.

IV. Reasons:

It is apparent that Regulation No. 42, Section 1, along with a whole series of other regulations being enacted on a region-wide basis through the Ozone Transport Commission, is absolutely essential in order to meet Federal requirements for attainment within this region and within the State of Delaware, and are necessary to protect the public hearing and the environment, in furtherance of the policies and purposes of 7 Del. C., Ch. 60.

Nicholas A. DiPasquale
Secretary

Regulation No. 42

Specific Emission Control Requirements

Section 1 - Control of NO_x Emissions from Industrial Boilers

~~XXX/XX/2001~~ 12/12/2001]

a. Purpose.

New Castle County and Kent County are part of the Philadelphia-Wilmington-Trenton 1-hour ozone non-attainment area. All areas of Delaware impact this non-attainment area. On December 19, 1999 the EPA identified an emission reduction "shortfall" associated with this non-attainment area. Promulgation of Section 1 of this regulation is one measure that the Department is taking to mitigate this shortfall.

In determining the applicability of this Section the Department attempted to minimize the impact on facilities that recently installed NO_x controls under Regulation No. 12 (NO_x RACT) and Regulation No. 37/39 (NO_x Budget Trading Program). The Department did this by regulating only large sources that, as of the effective date of this Section, emitted NO_x at a rate greater than the rate identified in Table I of Regulation No. 12, were not equipped with NO_x emission control technology, and were not subject to the requirements of Regulation No. 39. In effect, this Section regulates sources that remain high NO_x emitters after the application of RACT and post RACT requirements, and that have not committed substantial capital funds to reduce NO_x emissions.

b. Applicability.

1. This section applies to any person that owns or operates any combustion unit with a maximum heat input capacity of equal to or greater than 100 million btu per hour, except that this section shall not apply to any unit that, as of the effective date of this Section:

A. Emits NO_x at a rate equal to or less than the rate identified in Table I of Regulation No. 12 of the State of Delaware "Regulations Governing the Control of Air Pollution."

B. Is equipped with low NO_x burner, flue gas recirculation, selective catalytic reduction, or selective noncatalytic reduction technology.

C. Is subject to the requirements of Regulation No. 39 of the State of Delaware "Regulations Governing the Control of Air Pollution."

2. The requirements of this section are in addition to all other state and federal requirements.

3. Affected persons shall comply with the requirements of paragraph (c) of this Section as soon as practicable, but no later than May 1, 2004.

c. Standards.

1. The NO_x emission rate from any unit subject to this Section shall be equal to or less than the following:

A. Between May 1st through September 30th of each year, inclusive: 0.10 lb/mmBTU, 24-hour calendar day average.

B. During all times that gaseous fuel is being fired: 0.10 lb/mmBTU, 24-hour calendar day average.

C. During all times not covered by Section 1(c)(1)(A) and (B): 0.25 lb/mmBTU, 24-hour calendar day average.

2. As an alternative to compliance with the requirements of paragraph (c)(1) of this Section, compliance may be achieved through the procurement and retirement of NO_x allowances authorized for use under Regulation No. 39

of the State of Delaware **“Regulations Governing the Control of Air Pollution.”** as follows:

A. The actual 24-hour calendar day average NO_x emission rate in pounds per million btu shall be determined for each day of unit operation, using CEMs operated in accordance with paragraph (d) of this section.

B. The actual heat input to each unit in million btu shall be determined for each day of unit operation, using methods proposed by the person subject to this Section and acceptable to the Department.

C. 0.10 or 0.25, as applicable and consistent with paragraph (c)(1) of this section, shall be subtracted from the rate determined in paragraph (c)(2)(A) of this section.

D. To obtain the number of pounds of NO_x emitted for a particular day the emission rate determined in paragraph (c)(2)(C) of this section shall be multiplied by the heat input to the unit for that day determined in paragraph (c)(2)(B) of this section. If the emission rate determined in paragraph (c)(2)(C) of this section is equal to or less than zero, then the number of pounds of NO_x emitted for that day shall be zero.

E. **[Not later than the 20th day of each month:**

[F: a.] The number of pounds of NO_x emissions calculated pursuant to paragraph (c)(2)(D) of this section shall be summed for each calendar month, the result shall be divided by 2000, and shall be rounded to the nearest whole ton.

[b. For each ton of NO_x emissions calculated pursuant to paragraph (c)(2)(E)(a), records shall be maintained demonstrating that one NO_x allowance owned by the person subject to this Section is identified and available, by serial number, for retirement.]

F. Not later than ~~[February 1 20th day]~~ of each calendar ~~[month]~~ year, the NO_x allowances identified pursuant to paragraph (c)(2)(E)(b) of this Section for the previous calendar year, ~~a number of NO_x allowances equal to the number of tons of NO_x calculated in accordance with paragraph (c)(2)(E) for the previous calendar month]~~ shall be submitted to the Department for retirement. Such submission shall detail the calculations specified in (c)(2)(A) through (c)(2)(E) above, and shall indicate the serial number of each allowance to be retired.

d. Monitoring Requirements. Compliance with the NO_x emission standards specified in this section shall be determined based on CEM data collected in accordance with the requirements of Regulation 17, Section 3.1.2 (Performance Specification 2), and in compliance with the requirements of 40 CFR, Part 60, Appendix F.

e. Recordkeeping and Reporting Requirements.

1. Not later than 180 days after the effective date of this Section, any person subject to this Section shall develop, and submit to the Department for approval, a schedule for bringing the affected emission unit(s) into compliance with the requirements of this Section. Such schedule shall include, at a minimum, all of the following:

A. The method by which compliance will be achieved

B. The dates by which the affected person commits to completing the following major increments of progress, as applicable:

a. Completion of engineering

b. Submission of permit applications

c. Awarding of contracts for construction and/or installation

d. Initiation of construction

e. Completion of construction

f. Commencement of trial operation

g. Initial compliance testing

h. Submission of compliance testing reports

i. Commencement of normal operations (in full compliance)

2. Any person subject to this Section shall submit to the Department an initial compliance certification not later than May 1, 2004. The initial compliance certification shall, at a minimum, include the following information:

A. The name and the location of the facility.

B. The address and telephone number of the person responsible for the facility.

C. Identification of the subject source(s).

D. The applicable standard.

E. The method of compliance.

F. Certification that each subject source is in compliance with the applicable standard

G. All records necessary for determining compliance with the standards of this Section shall be maintained at the facility for a period of five years.

3. Any person subject to this Section shall, for each occurrence of excess emissions, within 30 calendar days of becoming aware of such occurrence, supply the Department with the following information:

A. The name and location of the facility.

B. The subject source(s) that caused the excess emissions.

C. The time and date of first observation of the excess emissions.

D. The cause and expected duration of the excess emissions.

E. The estimated rate of emissions (expressed in the units of the applicable emission limitation) and the operating data and calculations used in determining the magnitude of the excess emissions.

F. The proposed corrective actions and schedule to correct the conditions causing the excess emissions.

4. Any person subject to this section shall maintain all information necessary to demonstrate compliance with the requirements of this section for a minimum period of five years. Such information shall be immediately made available to the Department upon verbal and written request.

Section 2 - Reserved.

DIVISION OF AIR & WASTE MANAGEMENT

Air Quality Management Section

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

Secretary's Order No.: 2001-A-0043

Proposed Regulation 43:

**"Not To Exceed California Heavy Duty Diesel Engine Standards"
State Implementation Plan**

Date of Issuance: November 13, 2001

Effective Date of the Amendment: December 11, 2001

I. Background:

On Wednesday, October 31, 2001, and Thursday, November 1, 2001, a two-part public hearing was held in the Priscilla Building Conference Room of DNREC in Dover to receive comment on a proposed revision to the State Implementation Plan (SIP) for the Attainment and Maintenance of the National Ambient Air Quality Standards for Ozone. This proposed revision to the State of Delaware's SIP contains a new regulation, Air Regulation No. 43, "Not to Exceed California Heavy Duty Diesel Engine Standards". Seven of the largest heavy-duty diesel engine (HDDE) manufacturers have had "specific" test procedures imposed on them by consent decree for model years 2003 and 2004. This regulation requires that "specific" test procedures in effect for most model year 2004 manufacturers are required in model years 2005 and 2006 by all manufacturers.

The proposed regulation will require manufacturers to perform supplemental test procedures, in addition to the existing Federal Test Procedure (FTP). It will also require manufacturers and dealers to provide documentation to purchasers of the applicable heavy duty diesel vehicles they sell in the State of Delaware which verifies said vehicles are equipped with engines that comply with the "Not to Exceed" California rules. The Department has proposed to submit this analysis document to the Environmental Protection Agency (EPA) as a State Implementation Plan (SIP) Revision relating to the Delaware Ozone Attainment

Demonstration. Written comments were received from International Truck and Engine Corporation through their representatives, Latham & Watkins, Attorneys at Law, regarding this proposed SIP revision, and their comments, along with the Department's response to the same, are addressed in detail below. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a Hearing Officer's Report to the Secretary dated November 9, 2001. Both the Department's Response Document and the Hearing Officer's Report are expressly incorporated into this Order.

II. Findings and Conclusions:

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the proposed adoption of Regulation No. 43. In addition, the record will show that the following findings have been made:

1. Proper notice of the hearing was provided, as required by law.

2. Upon implementation of Regulation No. 43, the State of Delaware Department of Motor Vehicles (DMV) shall not register "new" HDDVs without the certification that the engines installed in such vehicles pass CA-CARB requirements for that specific engine.

3. In the future, DMV will verify that the Certificate of Origin clearly identifies an engine as CA certified.

4. DNREC will be auditing the manufacturer records (retained for three years) to verify the Certificate of Origin's accuracy.

III. Order:

On the basis of the foregoing findings, it is hereby ordered that the Hearing Officer's Report and the Department's response document is made a part of this Order, and expressly incorporated herein.

Furthermore, it is hereby ordered that Regulation No. 43 be adopted, in accordance with the customary regulatory procedure, as set forth by law.

V. Reasons:

It is apparent that Regulation No. 43 is yet another essential step being taken by the State of Delaware in order to meet Federal requirements for ozone attainment, both within this region and within the State of Delaware. Additionally, the implementation of Regulation No. 43 is necessary to protect the public and the environment, in furtherance of the policies and purposes of 7 Del. C., Ch. 60.

Nicholas A. DiPasquale
Secretary

Proposed Regulation 43
Not To Exceed California Heavy Duty Diesel Engine
Standards

~~xx/xx/2001~~ 12/11/2001]

Section 1 - Applicability

These rules apply to heavy-duty diesel engines produced for the 2005 and 2006 model years, and to new motor vehicles with a gross vehicle weight rating (GVWR) of greater than 14,000 pounds containing such engines that are sold, leased, offered for sale or lease, imported, delivered, rented acquired, or received in the State of Delaware

~~xx/xx/2001~~ 12/11/2001]

Section 2 - Definitions

The following definitions are applicable to this regulation:

Department means The Delaware Department of Natural Resources and Environmental Control.

Division means The Delaware Division of Motor Vehicles of the Delaware Department of Public Safety

Emergency vehicle means any publicly owned and operated ambulance, lifeguard, or lifesaving equipment or any privately owned or operated to operate in response to emergency calls. Any publicly owned vehicle operated by the following persons, agencies, or organizations: (1) Any federal, state, or local agency, department, or district employing peace officers for use by those officers in the performance of their duties. (2) Any forestry or fire department of any public agency or fire department Any vehicle owned by the state, or any bridge and highway district, and equipped and used either for fighting fires, or towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment. Any state-owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Delaware Emergency Management Agency or by any public agency or industrial fire department to which the Delaware Emergency Management Agency has assigned the vehicle. Any vehicle owned or operated by any department or agency of the United States government when the vehicle is used in responding to emergency fire, ambulance, or lifesaving calls or is actively engaged in law enforcement work. Any vehicle for which an authorized emergency vehicle permit has been issued by the Superintendent of the Delaware State Police.

Executive Order means a document issued by the California Air Resources Board (CARB) certifying that a specified engine family or model year vehicle has met all applicable Title 13 CCR requirements for certification and sale in California.

Heavy-duty diesel engine means a diesel engine that is used to propel a motor vehicle with a Gross Vehicle Weight

Rating of 14,001 pounds or greater.

Heavy-duty motor vehicle means a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater

Model year means the manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

New motor vehicle means a motor vehicle, the equitable or legal title to which has never been transferred to an ultimate purchaser

New motor vehicle engine means a new engine in a motor vehicle.

Ultimate purchaser means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

Ultra-small volume manufacturer means any manufacturer with Delaware sales less than or equal to 300 new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles, and heavy-duty engines per model year based on the average number of vehicles and engines sold by the manufacturer in the previous three consecutive model years.

Urban bus means a passenger-carrying vehicle powered by a heavy heavy-duty diesel engine, or of a type normally powered by a heavy heavy-duty diesel engine, with a load capacity of fifteen (15) or more passengers and intended primarily for intra-city operation, i.e., within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick-operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or token, rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for the collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, e.g., restrooms, large luggage compartments, and facilities for stowing carry-on luggage.

~~xx/xx/2001~~ 12/11/2001]

Section 3 - Severability

Each section of this regulation shall be deemed severable. If any section of this regulation is held to be invalid, the remainder shall continue in full force and effect.

~~xx/xx/2001~~ 12/11/2001]

Section 4 - Reporting Requirements

All manufacturers of 2005 and 2006 model year heavy-duty diesel vehicles with a MGWR of 14,001 pounds or greater shall provide certification that the engine used in the manufacturer's vehicle comply with the applicable exhaust

emissions standards under Title 13, Section 1956.8 of the California Code of Regulations, and shall be consistent with the Executive Order issued by CARB for the appropriate engine family or model year. This certification shall be sent to the Department thirty (30) days prior to the date of the first vehicle being potentially available for sale.

~~xx/xx/2001~~ 12/11/2001]

Section 5 - Dealer Compliance

No person who is a resident of this state, or who operates an established place of business within this state, shall sell, lease, rent, import, deliver, lease, purchase, acquire, or receive in the State of Delaware, or offer for sale, lease, or rental in this state (or attempt or assist in any such prohibited action) any of the following types of motor vehicles or engines that are intended primarily for use or for registration in the State of Delaware, unless the manufacturer has certified on the Certificate of Origin that the engine in the vehicle complies with Title 13, Section 1956.8 of the California Code of Regulations last amended on July 25, 2001 or complies with other documentation approved and provided by the Department:

- a. A 2005 or 2006 model year heavy-duty diesel engine;
- b. A new motor vehicle equipped with a 2005 or 2006 model year heavy-duty diesel engine; or
- c. A motor vehicle with a new 2005 or 2006 model year heavy-duty diesel engine.

~~xx/xx/2001~~ 12/11/2001]

Section 6 - Exemptions and Technology Review

Notwithstanding Section 4, the requirements of this regulation shall not apply to:

- a. A model year 2005 or 2006 heavy-duty diesel engine manufactured by an ultra-small volume manufacturer or intended for use in an urban bus;
- b. An engine if, following a technology review, the California Air Resources Board determines that it is inappropriate to require compliance for heavy-duty diesel engines of that particular model year and engine family;
- c. A vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen;
- d. A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;
- e. A motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this

state and who, upon registration of the vehicle in this state provides satisfactory evidence to the Division of the previous residence and registration;

- f. An emergency vehicle;
- g. A military tactical vehicle or equipment; or
- h. Any other vehicles exempted by the California Health and Safety Code, section 43656 as of March 20, 2001.

~~xx/xx/2001~~ 12/11/2001]

Section 7 - Manufacturer Compliance with California Orders and Voluntary Recalls

a. Any order or enforcement action taken by the California Air Resources Board to correct noncompliance with any heavy-duty diesel engine requirements adopted by such Board on December 8, 2000 shall be applicable to all such engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in Delaware, except where the manufacturer demonstrates to the Department satisfaction, within 21 days of issuance of such CARB action, that this action is not applicable to such engines or vehicles in Delaware.

b. Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to Title 13, sections 2113 through 2121 of the California Code of Regulations shall extend to all applicable engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of approval of the campaign by the CARB, that this campaign is not applicable to such engines or vehicles in Delaware.

~~xx/xx/2001~~ 12/11/2001]

Section 8 - Adoption and Incorporation by Reference of California Rules

The Department hereby adopts and incorporates by reference the exhaust emission standards (and associated performance test procedures) for model year 2005 and 2006 heavy-duty diesel engines adopted by the California Air Resources Board on December 8, 2000, and any future amendments to these provisions that the CARB may promulgate. These standards are found in section 1956.8 of Title 13 of the California Code of Regulations, which incorporates by reference the test procedures for determining compliance with the standards.

~~xx/xx/2001~~ 12/11/2001]

Section 9 - Requirements for Vehicle Registration and Transactions

a. No new motor vehicle equipped with a 2005 or 2006 model year heavy-duty diesel engine may be registered with the Division unless the applicant provides a copy of the Certificate of Origin which complies with Section 5 of this

regulation or the Department provides notification to the Division that all vehicles from a specific manufacturer are in compliance with Section 5 of this regulation or other documentation approved by the Department.

b. No person who is a resident of this state, or who operates an established place of business within this state, shall sell, lease, rent, import, deliver, lease, purchase, acquire, or receive in this state, or offer for sale, lease, or rental in this state (or attempt or assist in any such prohibited action) any of the following types of motor vehicles or engines that are intended primarily for use or for registration in this state, unless the manufacturer of the engine has received such a Certificate of Origin complies with the standards adopted in Section 4 of this regulation or the manufacturer provides other Department approved documents certifying compliance with Title 13, Section 1956.8 of the California Code of Regulations, last amended July 25, 2001:

1. A 2005 or 2006;
2. A new motor vehicle equipped with a 2005 or 2006 model year heavy-duty diesel engine; or
3. A motor vehicle with a new 2005 or 2006 model year heavy-duty diesel engine.

~~xx/xx/2001~~ 12/11/2001]

Section 10 - Exemptions and Technology Review

Notwithstanding section 8 the requirements of this regulation shall not apply to:

a. A model year 2005 or 2006 heavy-duty diesel engine manufactured by an ultra-small volume manufacturer or intended for use in an urban bus;

b. An engine if, following a technology review, the CARB determines, and is subsequently approved by the Department, that it is inappropriate to require compliance for heavy-duty diesel engines of that particular model year and engine family;

c. A vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen;

d. A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;

e. A motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this state and who, upon registration of the vehicle in this state provides satisfactory evidence to the Division of the previous residence and registration;

f. An emergency vehicle;

g. A military tactical vehicle or equipment; or
h. Any other vehicles exempted by the California Health and Safety Code, section 43656 as of March 20, 2001.

~~xx/xx/2001~~ 12/11/2001]

Section 11 - Manufacturer Compliance with California Orders and Voluntary Recalls

a. Any order or enforcement action taken by the CARB to correct noncompliance with any heavy-duty diesel engine requirements adopted by such Board on December 8, 2000 shall be applicable to all such engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in State of Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of issuance of such CARB action, that this action is not applicable to such engines or vehicles in Delaware.

b. Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to Title 13, sections 2113 through 2121 of the California Code of Regulations shall extend to all applicable engines and motor vehicles subject to this regulation:

1. Sold, leased, or rented,
2. Offered for sale, lease, or rental, or
3. Registered in Delaware,

except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of approval of the campaign by the CARB, that this campaign is not applicable to such engines or vehicles in Delaware.

DIVISION OF WATER RESOURCES

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

Secretary's Order No.: 2001-A-0044
Total Maximum Daily Load (TMDL) for the Murderkill
River Watershed, Delaware

Date of Issuance: November 15, 2001
Effective Date of the Order: December 11, 2001

I. Background

The State of Delaware Department of Natural Resources and Environmental Control (DNREC) has proposed to establish and adopt Total Maximum Daily Loads for nutrients and oxygen demanding materials for the Murderkill River watershed.

The proposed TMDL was established based on extensive analysis of a calibrated and verified Hydrodynamic and Water Quality Model of the Murderkill

River. Significant public participation efforts were undertaken by the Department prior to development of the proposed TMDL. Public participation efforts started with the formation of a Murderkill River Model Review Committee in May 1999. Committee members included staff from several Federal, State, and Local agencies as well as other affected parties. The Murderkill River Model Review Committee met on numerous occasions during the model development period to review and comment on the modeling effort. Following completion of the model, the Committee assisted the DNREC in its effort to develop the Murderkill River TMDL by providing technical assistance, reviewing model results, and suggesting various loading scenarios.

In addition to the Model Review Committee, a Tributary Action Team was formed in April 2001. The Tributary Action Team, made up of concerned citizens and other affected parties within the watershed, has met several times and will assist the DNREC in developing a Pollution Control Strategy to implement the requirements of the Murderkill River TMDL.

The proposed TMDL Regulations were published in Delaware Register of Regulations, Volume 5, Issue 2, August 1, 2001. A workshop was held September 13, 2001, and was followed by a Public Hearing that evening. During the workshop, DNREC again presented the proposed regulation and the technical basis for the regulation and responded to questions and comments from the audience. During and after the hearing, there were requests to extend the deadline to make comments. DNREC extended the original deadline from September 20 to September 27, 2001. In addition, Kent County and the Widener Environmental Law Clinic were allowed yet another extension until October 4, 2001 to address certain legal and policy issues raised by the Hearing Officer.

II. Findings and Conclusions:

1. Proper notice of the hearing was provided as required by law.

2. The Department prepared a Response Document, dated November 1, 2001 (attached), which accurately identifies the relevant issues raised by the record of this hearing, and provides reasoned explanations in response to 68 specific comments regarding the various aspects of the proposed TMDL, based on credible evidence in the record. That Response Document is expressly incorporated into this Order.

3. As indicated in the Hearing Officer's Report dated November 9, 2001 (attached), the Department's Response Document contains specific analyses and evidence with respect to each relevant issue, as set forth in paragraphs 1 through 68, which are sufficient to constitute findings, and are hereby incorporated for that purpose into this Order.

4. Collateral policy and legal issues raised by the

County's attorney in its October 31, 2001 fax (attached) to the Hearing Officer are not sufficient to justify deferral of this rulemaking in whole or in part, for reasons set forth in the Hearing Officer's Report.

III. Order

In view of the above findings, it is hereby ordered that the TMDL for the Murderkill River Watershed be adopted as proposed at the hearing, in the customary manner required by law.

IV. Reasons

This TMDL promulgation is a necessary and well-founded step toward the remediation of impaired water quality in the Murderkill River, as required under Federal and State law, and in furtherance of the policy and purposes of 7 Del.C. Ch. 60.

Nicholas A. DiPasquale
Secretary

Total Maximum Daily Load (TMDL) for the Murderkill River Watershed, Delaware

A. INTRODUCTION and BACKGROUND

Intensive water quality monitoring performed by Delaware Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of the Murderkill River and several of its tributaries and ponds are impaired as the result of low dissolved oxygen and high nutrients. Low concentrations of dissolved oxygen are harmful to fish, shellfish, and other aquatic life. With regard to nutrients (nitrogen and phosphorus), although they are essential elements for both plants and animals, their presence in excessive amounts causes undesirable conditions. Symptoms of nutrient overenrichment include frequent phytoplankton blooms, decreased water clarity, dissolved oxygen deficiency, alteration of composition and diversity of economically important native species of plants and animals, and possible human health effects.

A reduction in the amount of nutrients and oxygen consuming pollutants reaching the waters of the Murderkill River and its tributaries and ponds is necessary to reverse these undesirable impacts. These pollutants and nutrients enter the waters of the Murderkill River from point sources and nonpoint sources. Point sources are end-of-pipe discharges from municipal or industrial wastewater treatment plants. Nonpoint sources include runoff from agricultural and urban areas, septic tank effluent, and ground water discharges.

Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to

develop Total Maximum Daily Loads (TMDLs) for pollutants of concern. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.

DNREC listed the Murderkill River and several of its tributaries and ponds on the Delaware's 1996, 1998, and 2000 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous, and Carbonaceous Biochemical Oxygen Demand (CBOD).

B. Total Maximum Daily Loads (TMDLs) Regulation for the Murderkill River Watershed, Delaware

Article 1. The total nitrogen load from the four point source facilities in the watershed (City of Harrington, Kent County Facility, Canterbury Crossing Mobile Home Park, and Southwood Acres Mobile Home Park) shall be limited to 406.3 pounds per day. The load allocation for each facility includes: City of Harrington (25 pounds per day), Kent County Facility (375 pounds per day), Canterbury Crossing Mobile Home Park (4.3 pounds per day), and Southwood Acres Mobile Home Park (2.0 pounds per day).

Article 2. The total phosphorous load from the four point source facilities in the watershed shall be limited to 27.3 pounds per day. The load allocation for each facility includes: City of Harrington (2 pounds per day), Kent County Facility (25 pounds per day), Canterbury Crossing Mobile Home Park (0.2 pounds per day), and Southwood Acres Mobile Home Park (0.1 pounds per day).

Article 3. The CBOD5 (5-day Carbonaceous Biochemical Oxygen Demand) load from the four point source facilities in the watershed shall be limited to 672.1 pounds per day. The load allocation for each facility includes: City of Harrington (33 pounds per day), Kent County Facility (625 pounds per day), Canterbury Crossing Mobile Home Park (9.6 pounds per day), and Southwood Acres Mobile Home Park (4.5 pounds per day).

Article 4. The nonpoint source nitrogen load in the entire watershed shall be reduced by 30 percent (from the 1997 base-line). This shall result in a yearly-average total nitrogen load of 560 pounds per day.

Article 5. The nonpoint source phosphorus load in the entire watershed shall be reduced by 50 percent (from the 1997 base-line). This shall result in a yearly-average total phosphorous load of 96 pounds per day.

Article 6. Based upon hydrodynamic and water quality model runs and assuming implementation of reductions identified by Articles 1 through 5, DNREC has determined that, with an adequate margin of safety, water quality standards and nutrient targets will be met in the Murderkill River and its tributaries and ponds.

Article 7. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Department's Whole Basin Management Program, Murderkill River Tributary Action Team, and other affected parties.

DIVISION OF WATER RESOURCES
SURFACE WATER DISCHARGES SECTION
Statutory Authority: 7 Delaware Code,
Section 6010 (7 Del.C. 6010)

Secretary's Order No.: 2001-A-0045
Proposed Regulations for Licensing Operators
Of Wastewater Facilities

Date of Issuance: November 15, 2001

Effective Date of the Amendment: December 11, 2001

I. Background

On August 29, 2001 a public hearing was held in the Downs Lecture Hall at the Delaware Technical and Community college, Terry Campus, in Dover to receive comment on the Department's proposed revisions to the **Delaware Regulations for Licensing Operators of Wastewater Facilities**. A public workshop was held on September 13, 2000, to explain the proposed changes to these regulations. As a result of the comments received at the public workshop, the Surface Water Discharges Section of the Division of Water Resources proposed modifications to the previously noticed changes. The revised proposed regulatory revisions were published in the Delaware Register of Regulations, Volume 4, Issue 11, dated May 1, 2001.

The aforementioned proposed revisions withdraw the current regulations, and replace the current regulations with new proposed regulations. The proposed changes include updated definitions, consistent use of terminology, clearer language, and the recognition of new technology. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Report to the Secretary dated November 7, 2001, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

On the basis of the record developed in this matter, it appears that the Surface Water Discharges Section of the Department's Division of Water Resources has provided a sound basis for the proposed revisions to the **Delaware Regulations for Licensing Operators of Wastewater**

Facilities, including reasoned responses to the various comments and has, where necessary, proposed minor changes to satisfy public concerns.

III. Order

It is hereby ordered that the Department's proposed revisions be made and that the proposed regulatory revisions be promulgated in final form, in accordance with the customary and established rule-making procedure required by law.

IV. Reasons

The adoption of these Regulations for Licensing Operators of Wastewater Facilities will update current definitions, provide a more consistent use of terminology and clearer language within the framework of these Regulations, recognize the existence of new technology, and will assist the Department in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

Nicholas A. DiPasquale
Secretary

Section 1 - Authority and Purpose

1.01 Authority - These regulations are adopted by the Secretary of the Department of Natural Resources and Environmental Control, under and pursuant to, the authorities set forth in 7 Del.C., Chapter 60, Section 6023.

1.02 Purpose - The purpose of these regulations is to protect the public health and to conserve and protect the water resources of the State; to provide for the classification of all public and private (including industrial) wastewater treatment facilities; to require the examination of operators and licensing of their competency to operate, on-location, such facilities; to create a Board of Certification; and to provide for reciprocal licensing arrangements with other states.

Section 2 - Definitions

2.01 Association of Boards of Certification For Operating Personnel in Water and Wastewater Utilities (ABC) - Means that organization which: serves as an information center for certification activities; recommends minimum standards and guidelines for classification of Wastewater Facilities and certification of operators; aids in the establishment of reciprocity between State Programs; and assists authorities in establishing new certification programs and updating existing ones.

2.02 Board - Means the State Board of Certification for Operators of Wastewater Facilities.

2.03 Department - Means the Department of Natural Resources and Environmental Control.

2.04 Direct Responsible Charge (DRC) - Means on-location accountability for, and on-location performance of, active daily operation (including Technical Supervision, Administrative Supervision, or Maintenance Supervision) for a Wastewater Facility, an operating shift of a system or a facility, or a major segment of a system or facility.

2.05 On-Site Wastewater Disposal System - Means a Wastewater Facility permitted under Delaware's Regulations Governing the Design, Installation, and Operation of On-site Wastewater Treatment and Disposal Systems.

2.06 Operate - Means the actions necessary for the effective performance of a Wastewater Facility or a major segment of a system or facility.

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

2.08 Secretary - Means the Secretary of the Department of Natural Resources and Environmental Control or his/her duly authorized designee.

2.09 Wastewater Facility (Facilities) - Means the system of pipes, structures, equipment, or processes required to treat any wastewater, and dispose of the effluent; including the treatment, handling, and disposal of residuals and biosolids related thereto.

2.10 Wastewater Operator - Means an individual, who at a given time, through observation, interpretation, or decision, operates a Wastewater Facility or a segment of a system or facility.

Section 3 - State Board of Certification For Operators of Wastewater Facilities

3.01 The Board shall be appointed by the Secretary to advise and assist the Secretary in the administration of the certification program. The Board will consist of three (3) members: One (1) member who is currently certified as a Wastewater Operator or who is eligible to be licensed under these regulations; one (1) member representing the Department, who shall be responsible for maintaining records; and one (1) member-at-large. Board members will serve three (3) year terms which will be staggered so that the

term of not more than one (1) member will expire in any single year.

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

[a] procedures for examination of applicants and renewal of licenses

[b] procedures for the suspension and revocation of licenses

[c] guidelines for evaluating equivalency of training and examinations conducted by recognized agencies and institutions

[d] guidelines for evaluating equivalency of other certification and/or licensing programs for the purpose of according reciprocal treatment

[e] procedures for establishing regularly scheduled meetings

[f] procedures for evaluating continuing education requirements, in accordance with Section 8.01(d)

[g] procedures for evaluating applications to operate more than one (1) Wastewater Facility.

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

Section 4 - Licensing Requirements

4.01 Any Wastewater Facility (except those specifically exempted by the Department), whether publicly or privately owned, used or intended for use by the public or private persons, shall be under the supervision of a Wastewater Operator(s) in Direct Responsible Charge, whose competency is licensed by the Secretary in a classification corresponding to, or higher than, the classification of the Wastewater Facility.

4.02 No person shall perform the duties of a Wastewater Operator without obtaining a Delaware Wastewater Operator's License.

4.03 Any Wastewater Facility (except those specifically exempted by the Department), whether publicly or privately owned, used or intended for use by the public or private persons, shall at all times have available, a Delaware Licensed Wastewater Operator(s) capable of operating the Wastewater Facility.

4.04 On or before January 31 of each year, any owner of a Wastewater Facility whether publicly or privately owned,

used or intended for use by the public or private persons, shall register with the Department and list the type of facility, the average daily flow, and the name(s) of all Wastewater Operators in Direct Responsible Charge (DRC). Any personnel changes involving the operator(s) in Direct Responsible Charge (DRC) shall be reported to the Department within 30 days after the change.

4.05 On-Site Wastewater Disposal Systems with a design flow less than 2,500 gallons, are exempt from the provisions of these regulations. Other Wastewater Facilities may be granted exemption by the Department under Section 5.02.

4.06 All persons must be operating (or have written offer of employment) at a Wastewater Facility in Delaware, in order to be issued a Wastewater Operators License.

Section 5 - Classification of Wastewater Facilities

5.01 The Department shall classify Wastewater Facilities which discharge into other wastewater systems, or to receiving bodies of water, or on land surface or subsurface. The classification shall consider the skill, knowledge, and experience required of an operator; and shall be in accordance with the criteria hereby established.

5.02 Classification of Wastewater Facilities: Wastewater Facilities shall be classified in one of four classes. These classifications shall be made in accordance with the Point System established in accordance with the "State Board of Certification Point System Classification of Wastewater Facilities" (included as Table 1 of these regulations), and the range of points for each class of facility as shown below:

Class I 11 - 30 Points

Class II 31 - 55 Points

Class III 56 - 75 Points

Class IV 76 Points or greater

Wastewater Facilities other than those with on-site wastewater disposal systems,

scoring fifteen (15) points or less, shall be exempt from the requirements of Section 4.01 of these regulations, and the owner shall be so notified by the Department. Wastewater Facilities with on-site wastewater disposal systems only, scoring ten (10) points or less, shall be exempt from the requirements of these regulations (unless otherwise required by the Department), and the owner shall be so notified by the Department.

5.03 Any Wastewater Facility may be classified in a group other than indicated by the general criteria after determination by the Secretary. The Secretary may consider special features of design, characteristics or conditions of flow, or use of the receiving waters or combination of such conditions. The owner of the facility shall be given due

notice of the Secretary's tentative determinations, and any comments shall be considered before making the final determination.

5.04 The classification of any Wastewater Facility may be changed at the discretion of the Secretary by reason of changes in condition or circumstances on which the original classification was predicated. Due notice of any such change shall be given to the owner of the Wastewater Facility.

Section 6 - Operator Qualifications and Classifications

6.01 Applicants for Licensing shall be evaluated by the Board as to education, experience, and knowledge. Further, applicants may be required to give evidence of good character, dependability, interest in work, and other pertinent characteristics in relation to responsible operations. Applicants must pass the required written examination, unless the Board determines that an alternate examination format is necessary.

6.02 In evaluating an applicant's qualifications, the Board will be guided by the following:

[a] Experience requiring technical knowledge, and whether or not Direct Responsible Charge (DRC) was included. In large plants where responsibility is divided, operators of important divisions may be credited with having Direct Responsible Charge, as long as the DRC designation appears on the annual Section 4.04 submission.

[b] Experience, to be acceptable, must be the result of satisfactory accomplishment of work. Evaluation may be based on reports of the employers, or by state and local agencies having appropriate responsibilities for supervising systems and plants.

[c] Partial credit may be given for operating experience in maintenance, laboratories, or other work involving water or wastewater facilities.

[d] Where applicable, education may be substituted for a portion of operating experience requirements as specified below:

[i] Where education or training is substituted for operating experience, it shall not exceed an amount which would reduce the requirement of actual operating experience to less than one year for Class I, or less than two years actual operating experience for Classes II, III, and IV.

[ii] Education applied to the operating experience requirement cannot also be applied to the education requirement.

[iii] College Level education in engineering or allied subjects, or equivalent, as approved by the Board, may be substituted on a year for year basis for operating experience (any Wastewater Facility Classification).

[iv] Specialized operator training courses,

correspondence courses, Seminars, workshops, etc., may be substituted for operating experience on a case by case basis; and the equivalency will be determined by the Board.

[e] Where applicable, operating experience may be substituted for educational requirements as specified below:

[i] Operating experience applied to educational requirement may not also be applied to the operating experience requirement.

[ii] One year of Direct Responsible Charge operating experience may be substituted on a year-for-year basis for one year of college level education.

[f] Substitutions for formal education may be made as follows:

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

[ii] An acceptable High School Equivalency Certificate (GED) may be used to substitute for a High School Diploma.

[g] Additionally, the Board may be guided by special circumstances, if appropriate.

6.03 Wastewater Operators - Four (4) Classes of operators are hereby established. The qualifications are intended to relate, as nearly as possible, to the corresponding classifications for Wastewater Facilities.

Class IV

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

[2] Four (4) years of acceptable operating experience in Wastewater Facilities of Class III or higher; two years of which must have been in a position of Direct Responsible Charge (DRC).

Class III

[1] High School Diploma and two (2) years of approved college level education in engineering or allied subjects, **plus**

[2] Four (4) years of acceptable operating experience in Wastewater Facilities of Class II or higher; two years of which must have been in a position of Direct Responsible Charge (DRC).

Class II

[1] High School Diploma, **plus**

[2] Three (3) years of acceptable operating experience in Wastewater Facilities of Class I or higher.

Class I

[1] High School Diploma, **plus**

[2] One (1) year of acceptable operating experience.

6.04 Specialty License - where a Wastewater Facility is of a highly unusual character, requiring skills and techniques other than those indicated by the general criteria, the Board

may, with the consent of the Secretary, provide a Specialty License to an operator. Such Specialty License shall only be valid for operating the specific Wastewater Facility for which it is issued. The requirements for a Specialty License shall be determined by the Board on a case-by-case basis.

Section 7 - Examination

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

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

7.03 Examinations shall be written, unless the Board determines that an alternate format is necessary. All examinations will be graded by the Board, or by others designated by the Board, and the applicant notified of the outcome. Papers will not be returned to the applicant. However, a method will be provided to review the results with a member of the Board or its authorized designee on request by the applicant.

7.04 Separate examinations shall be prepared to cover each class of operator, as established in Section 6.03.

7.05 Any person who has failed the written examination for a particular operator class on three (3) consecutive occasions, shall then satisfactorily complete an approved educational examination review course prior to again being considered to take that particular class of written examination.

Section 8 - Licensing

8.01 Issuance of a License

[a] Upon satisfactory fulfillment of the requirements provided herein, and based on the recommendation of the Board, the Secretary **may** issue a suitable license to the applicant. This license will indicate the class for which the operator has qualified.

[b] A license may be issued, without examination, in a comparable classification, to any person who holds a current valid certificate or license in any jurisdiction, if in the judgement of the Board, the requirements under which the person's certification or license was issued, are of a standard not lower than that specified by these regulations.

[c] A license shall be renewable every two years unless revoked for cause, replaced by one of a higher grade, or invalidated under subsection [d] below.

[d] An applicant for a license renewal shall submit with

the renewal application, proof that the applicant has in the preceding two years, attended or satisfactorily completed a minimum of twenty (20) classroom, seminar, or workshop hours, relating to Wastewater Facility operations or maintenance, that are sponsored by recognized government, educational, or industrial groups, including equipment manufacturers.

[e] An operator whose license is invalidated, may be issued a new license of like classification, provided appropriate proof of competency is presented to the Board. Successful completion of a written examination shall be required if the license has been invalidated for two (2) or more years.

[f] Operator-In-Training License - An applicant who desires to become licensed and does not meet the experience or educational requirements may, with the approval of the Board, receive an Operator-In-Training (OIT) license, pending fulfillment of these requirements, providing the appropriate examination has been successfully passed. A holder of an OIT license **may, only with the recommendation of the Board** be allowed to be in Direct Responsible Charge (in accordance with Section 4.01) of a Wastewater Facility on a temporary basis, until the requirements are met; up to a maximum period of two years.

[g] Emergency License - An emergency license may be issued, when it is demonstrated to the satisfaction of the Secretary, that the owner is unable to hire a licensed operator in spite of good faith efforts. The applicant for an Emergency License shall meet specific requirements as set forth by the Board. Such licenses may be issued with special conditions or requirements deemed necessary to protect the public health and the water resources of the State. An emergency license shall be valid only for that plant or system for a period of one (1) year, and may be renewed for a maximum of one (1) additional year, when extreme extenuating circumstances are shown and concurred with by the Board.

8.02 Suspension and Revocation of License - The Secretary may suspend or revoke the license of an operator, after considering the recommendation of the Board, when it is found that the operator has practiced fraud or deception; that reasonable care, judgement, or the application of knowledge or ability, was not used in the performance of the operator's duties; or that the operator is incompetent or unable to perform duties properly. The Board shall act in accordance with the procedures established under Section 3.02[b] of these regulations, and shall hold a hearing before making its recommendations.

8.03 Additional Persons Licensed - The Secretary may determine, due to size of plant, shift operation, or other influencing factors, that more than one (1) operator shall be required to be in Direct Responsible Charge at a given

facility.

8.04 Additional Wastewater Facilities

[a] Application may be made to the Secretary to operate more than one Wastewater Facility, and must include justification and capabilities. The Board will evaluate the application in accordance with the procedures established under Section 3.02[g].

[b] Any person considered in Direct Responsible Charge of more than one (1) Wastewater Facility may be required to be licensed in a classification higher than the classification of those facilities in the operator's charge. The degree of operator classification may be further increased depending upon the total number of facilities under the responsible charge of the operator. The Board will recommend, with the consent of the Secretary, the degree of classification in accordance with these factors.

Section 9 - Fees

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

Section 10 - Prohibited Acts

10.01 It shall be unlawful:

[a] To operate any Wastewater Facility (except those exempted under provisions of these regulations) unless the person(s) in Direct Responsible Charge is (are) duly licensed under the provisions of these regulations; and

[b] For any person to routinely perform the duties of an operator without being duly licensed under the provisions of these regulations.

Section 11 - Penalties

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

Section 12 - Reciprocity

12.01 Certification or licensing of operators by any State, as determined by the Secretary, which accepts certifications made or certification requirements determined to be substantially equivalent to the requirements of these regulations or any rules promulgated hereunder, shall be recognized as valid and sufficient within the purview of these regulations.

12.02 In making determination pursuant to subsection 12.01 of this section, the Secretary shall consult with the Board, and may consider any generally applicable criteria and

guidelines developed by the Association of Boards of Certification for Operating Personnel in Water and Wastewater Utilities (ABC).

Section 13 - Repealer

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

Section 14 - Severability

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

Section 15 - Department Contact Point

15.01 Division of Water Resources, Wastewater Board of Certification Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901, Telephone: 302-739-5731

**EXECUTIVE DEPARTMENT
DELAWARE ECONOMIC DEVELOPMENT OFFICE
DELAWARE TOURISM OFFICE
Statutory Authority: Laws of Delaware
Volume 73, Chapter 74, Section 67**

Direct Grants Program

**ORDER ADOPTING AND PROMULGATING
REGULATION FOR DIRECT GRANTS PROGRAM**

TITLE OF REGULATION:

Direct Grants Program

**ORDER ADOPTING AND PROMULGATING
REGULATION**

AND NOW this 9th day of November, 2001, John D. Wik, as Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision) in cooperation with the Tourism Advisory Board (the "Board") in accordance with 29 Del. C. §§ 5005(11) and 10118(b) and with 73 Delaware Laws Ch. 74, Section 67 (June 28, 2001) for the reasons stated below enters this ORDER adopting and promulgating the regulation set forth below in connection with the Direct

Grants Program (as defined below) of the DTO.

NATURE OF PROCEEDINGS: SYNOPSIS OF THE SUBJECT AND SUBSTANCE OF THE PROPOSED REGULATION:

In accordance with the procedures set forth in 29 Del. C. Ch. 11, Subch. III, 29 Del. C. Ch 101 and 73 Delaware Laws Ch. 74, Section 67 (June 28, 2001), the Director of DEDO, in cooperation with the Board, proposed to adopt a regulation for the administration of the direct grants program set forth in 73 Delaware Laws Ch. 74, Section 67 (the "Direct Grants Program") and for the application and award procedures of the Direct Grants Program. The regulation describes the Direct Grants Program, the eligibility criteria and application procedure for awards under the Direct Grants Program, the procedure for making of awards and the uses to which Direct Grants Program awards may not be put.

Notice of the public hearing to consider the proposed regulation appeared in the October 1, 2001 issue of the *Delaware Register of Regulations*, 5 Del. R. 817-818 (October 1, 2001) and in Delaware newspapers of general circulation on October 8, 2001 in accordance with 29 Del. C. §10115(b). An employee of DEDO designated by the Director of DEDO in accordance with 29 Del. C. §§5005(10) and 10117(1) and a quorum of the Board held the public hearing on November 9, 2001 at 9:00 a.m. at the DEDO offices at 99 Kings Highway, Dover, Delaware, as duly noticed. This is the order of the Director of DEDO adopting the proposed regulation.

SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED:

DEDO received no written comments in response to the notice of the proposed regulation, and no member of the public made comment on the proposed regulation at the public hearing on November 9, 2001.

FINDINGS OF FACT AND CONCLUSIONS:

1. The Delaware General Assembly provided in 73 Delaware Laws Ch. 74, Section 67 (June 28, 2001) that up to \$50,000 of the Appropriated Special Funds allocated to the DTO for the fiscal year of the State ending June 30, 2002 pursuant to 30 Del. C. §6102(b) contained in 73 Delaware Laws Ch. 74, Section 1 (June 28, 2001) should be used by DTO for a grant program where no matching funds were required, i.e., the Direct Grants Program, and that DTO, in cooperation with the Board, should develop regulations to implement the Direct Grants Program.

2. DTO has developed the proposed regulation, which the Board reviewed and approved at its meeting on September 14, 2001.

3. The Director of DEDO, as the head of the agency that operates the DTO has statutory authority, in cooperation with the Board, to promulgate the regulation pursuant to 29

Del. C. §5005(11) and 73 Delaware Laws Ch. 74, Section 67 (June 28, 2001).

DECISION AND ORDER CONCERNING THE PROPOSED REGULATION

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of DEDO, in cooperation with the Board, ORDERS that the regulation be, and that it hereby is, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 Del. C. §10118(g).

John D. Wik, Director, Delaware Economic Development Office

APPROVED IN COOPERATION WITH DTO by the members of the Tourism Advisory Board:

Jacques Amblard, Chairman
Norma Lee Burton Derrickson
Frank Fantini
Ed Sutor
Xavier Teixido
Carol Harding
Kay Wheatley

1.0 Program Description

1.1 The purpose of the program is to attract visitors to Delaware and to bring in overnight business to Delaware. The goal of the Direct Grant Program is to increase the visibility of Delaware's tourism product. Direct Grants are only toward not-for-profit tourism entities are eligible. All projects must tie in to the State Marketing Plan.

1.2 The total amount available is for direct grants is designated by the general assembly in the operating budget. It is expected that there will be a number of direct grant programs awarded.

1.3 To be eligible, organizations must have a marketing plan with a clear vision as to how to attract out-of-state visitors.

1.4 The grants are to be used for the marketing of tourism organizations, products, programs or areas.

1.5 Use of Funds:

1.5.1 It is expected that the funds will be used to actively market the petitioning tourism organization or partnership of organizations to attract new visitors to the state of Delaware.

1.5.2 The same organization may apply for more than one Direct Grant program.

2.0 Award Determination:

2.1 The organizations receiving awards will be selected by a panel composed of the following:

2.1.1 Delaware Tourism Office

2.1.2 Governor's Tourism Advisory Board**3.0 Criteria:**

3.1 Organizations must demonstrate that their vision supports one or more of the attract goals of the Delaware tourism industry's Five-Year Strategic Plan and Marketing Plan. Awards will be based on the organization's ability to communicate a vision that the panel believes is possible and has the potential to increase tourism. The program must support the Delaware Tourism Office Marketing Plan. DTO logo must appear on all created collateral. There will be no attempt to balance the awards geographically, politically, or categorically.

4.0 Award Process

4.1 All complete applications that are received by the deadline will be forwarded to the awards panel for rating. The applications receiving the highest average rating will be scheduled to make an oral presentation to the panel. Awards will be announced the following week.

4.2 Direct Grant Award Payments:

4.2.1 Payments will be paid upon proof of completion of the project and submission of invoices supporting the funds expenditures. All requirements and criteria of the program need to be met.

5.0 Eligibility

5.1 Not-for-profit tourism related businesses and organizations.

5.2 Submitting organizations must submit proof of not-for-profit status.

5.3 Only in-state tourism entities may apply

5.4 The organization's main product or program must fit into the Industry's 5-Year Strategic Plan.

6.0 Application Requirements

6.1 Incomplete applications will not be considered (see application for required attachments).

6.2 More than one application may be submitted per organization.

6.3 All completed applications must sent to the Delaware Tourism Office at 99 Kings Highway, Dover, DE 19901. Applications will not be accepted after the deadline or at any other location.

6.4 It is the responsibility of the applicant to ensure that the application is complete and received prior to deadline.

7.0 Grant Awards

7.1 Awards will be granted based on the merit of the program being submitted. The purpose of the Direct Grant Program is to attract new visitors and overnight business to Delaware. The goal of the Direct Grant Program is to increase the visibility of Delaware's tourism product. Only not-for-profit entities are able to submit direct grant

proposals. All projects must tie in to the State Marketing Plan. There will be no attempt to balance the awards geographically, politically, or categorically.

8.0 Payments

8.1 Final payments may be requested after all project completion requirements have been met and proper documentation is submitted.

8.2 All invoices must be submitted to the Delaware Tourism Office.

9.0 Use of Funds

9.1 Funds may not be used for:

9.1.1 General operating expenses including staff salaries.

9.1.2 Administrative expenses, including any commissions, fees or other expenses for administration of the project.

9.1.3 Food and beverages

9.1.4 Equipment purchase and rental

9.1.5 Business directories

9.1.6 Postage and office supplies

9.1.7 Meeting expenses

9.1.8 Anything contrary to state law.

9.1.9 Other restrictions on the use of the funds may be added at the time of the award based on the project definition.

10.0 Project Completion Requirements

10.1 At a minimum the following must be submitted for final payment:

10.1.1 Completed project report

10.1.2 Invoices must be submitted.

10.1.3 Marketing plan

10.1.4 Delaware Tourism Office name and logo must appear on all created collateral

10.2 Other project completion requirements may be added at the time of the award based on project definition.

11.0 Applicant Information

11.1 Applicants shall fill out the Direct Grant program Applicant Information Sheet as prescribed by the Delaware Tourism Office. The Applicant Information is available at 99 Kings Highway, Dover, DE 19901.§

DELAWARE ECONOMIC DEVELOPMENT OFFICE**DELAWARE TOURISM OFFICE**

Statutory Authority: Laws of Delaware
Volume 73, Chapter 74, Section 67

**ORDER ADOPTING AND PROMULGATING
REGULATION FOR MATCHING GRANTS
PROGRAM****TITLE OF REGULATION:**

Matching Grants Program

**ORDER ADOPTING AND PROMULGATING
REGULATION**

AND NOW this 9th day of November, 2001, John D. Wik, as Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision) in cooperation with the Tourism Advisory Board (the "Board") in accordance with 29 Del. C. §§ 5005(11) and 10118(b) and with 73 Delaware Laws Ch. 74, Section 67 (June 28, 2001) for the reasons stated below enters this ORDER adopting and promulgating the regulation set forth below in connection with the Matching Grants Program (as defined below) of the DTO.

**NATURE OF PROCEEDINGS: SYNOPSIS OF THE
SUBJECT AND SUBSTANCE OF THE PROPOSED
REGULATION:**

In accordance with the procedures set forth in 29 Del. C. Ch. 11, Subch. III, 29 Del. C. Ch 101 and 73 Delaware Laws Ch. 74, Section 67 (June 28, 2001), the Director of DEDO, in cooperation with the Board, proposed to adopt a regulation for the administration of the matching grants program set forth in 73 Delaware Laws Ch. 74, Section 67 (the "Matching Grants Program") and for the application and award procedures of the Matching Grants Program. The regulation describes the Matching Grants Program, the eligibility criteria and application procedure for awards under the Matching Grants Program, the procedure for making of awards and the uses to which Matching Grants Program awards may not be put.

Notice of the public hearing to consider the proposed regulation appeared in the October 1, 2001 issue of the *Delaware Register of Regulations*, 5 Del. R. 818-820 (October 1, 2001) and in Delaware newspapers of general circulation on October 8, 2001 in accordance with 29 Del. C. §10115(b). An employee of DEDO designated by the Director of DEDO in accordance with 29 Del. C. §§5005(10) and 10117(1) and a quorum of the Board held the public hearing on November 9, 2001 at 9:00 a.m. at the DEDO offices at 99 Kings Highway, Dover, Delaware, as duly noticed. This is the order of the Director of DEDO adopting the proposed regulation.

**SUMMARY OF EVIDENCE AND INFORMATION
SUBMITTED:**

DEDO received no written comments in response to the notice of the proposed regulation, and no member of the public made comment on the proposed regulation at the public hearing on November 9, 2001.

FINDINGS OF FACT AND CONCLUSIONS:

1. The Delaware General Assembly provided in 73 Delaware Laws Ch. 74, Section 67 (June 28, 2001) that up to \$200,000 of the Appropriated Special Funds allocated to the DTO for the fiscal year of the State ending June 30, 2002 pursuant to 30 Del. C. §6102(b) contained in 73 Delaware Laws Ch. 74, Section 1 (June 28, 2001) should be used by DTO for a matching grants program, and that DTO, in cooperation with the Board, should develop regulations to implement the Matching Grants Program.

2. DTO has developed the proposed regulation, which the Board reviewed and approved at its meeting on September 14, 2001.

3. The Director of DEDO, as the head of the agency that operates the DTO has statutory authority, in cooperation with the Board, to promulgate the regulation pursuant to 29 Del. C. §5005(11) and 73 Delaware Laws Ch. 74, Section 67 (June 28, 2001).

**DECISION AND ORDER CONCERNING THE
PROPOSED REGULATION**

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of DEDO, in cooperation with the Board, ORDERS that the regulation be, and that it hereby is, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 Del. C. §10118(g).

John D. Wik, Director, Delaware Economic
Development Office

APPROVED IN COOPERATION WITH DTO by the
members of the Tourism Advisory Board:

Matching Grants Program

Jacques Amblard, Chairman
Norma Lee Burton Derrickson
Frank Fantini
Ed Sutor
Xavier Teixido
Carol Harding
Kay Wheatley

1.0 Program Description

1.1 The purpose of the program is to attract visitors to Delaware and to bring in overnight business to Delaware.

The goal of the Matching Funds Program is to increase the visibility of Delaware's tourism product. Only not-for-profit entities are able to submit matching funds proposals. However, for profit businesses are allowed to participate in partnership programs submitted by not-for-profits. All packaging programs must include at least one hotel property in order to promote overnight business to Delaware. All projects must tie in to the State Marketing Plan.

1.2 The total amount available for matching grants is designated by the general assembly in the operating budget. It is expected that there will be a number of matching funds programs awarded. Four or more properties working together on a package will be able to receive a match of 2 to 1 instead of 1 to 1.

1.3 To be eligible, the applicant organization must have a marketing plan with a clear vision as to how to attract outofstate visitors.

1.4 The grants are to be used for the marketing of tourism organizations, products, programs or areas.

1.5 Use of ~~[Matching Grants]~~ ~~[Funds]~~:

1.5.1. It is expected that the ~~[Matching Grants]~~ funds will be used to market the petitioning tourism organization or partnership of organizations to attract new visitors to the state of Delaware:

1.5.2 The same organization may apply for more than one Matching ~~[Grants Program grant.]~~ ~~[Fund program.]~~

1.5.3 The purpose is to attract visitors to Delaware and to bring in overnight business. Therefore, advertising applicants must show a plan to advertise out of state.

2.0 Matching Funds:

2.1 Matching funds are required. The organization's matching fund commitment is part of the application. The organization's matching fund commitment must be met for full payment of the grant. No other state grant funds may be used for the organization's match.

3.0 Award Determination:

3.1 The organizations receiving awards will be selected by a panel composed of the following:

3.1.1 Delaware Tourism Office

3.1.2 Governor's Tourism Advisory Board

4.0 Criteria:

4.1 Organizations must demonstrate that their vision supports the Delaware tourism industry's FiveYear Strategic Plan and Marketing Plan. Awards will be based on the organization's ability to communicate a vision that the panel believes is possible and has the potential to increase tourism. There will be no attempt to balance the awards geographically, politically, or categorically.

5.0 Award Process

5.1 All complete applications that are received by the deadline will be forwarded to the awards panel for rating. The applications receiving the highest average rating will be scheduled to make an oral presentation to the panel. The awards will be announced a week later.

5.2 Grant Award Payments:

5.2.1 The payments will be paid upon proof of completion of the project and submission of invoices supporting the funds expenditures. To receive final payment, all organizations will need to complete all project completion requirements.

6.0 Eligibility

6.1 Notforprofit tourism related businesses and organizations.

6.2 Submitting organizations must submit proof of not-for-profit status.

6.3 For profit tourism businesses may be part of programs submitted for grant programs ,however, they must be a partner of a not-for-profit applicant organization.

6.4 Only instate tourism entities may apply.

6.5 The organization's main product or program must be intended to attract new visitors and overnight business.

6.6 Partnerships between four or more tourism entities are encouraged. Partnerships will receive a 2 to 1 dollar match instead of a 1 to 1 dollar match.

7.0 Application Requirements

7.1 Incomplete applications will not be considered (see application for required attachments).

7.2 More than one application may be submitted per organization.

7.3 All completed applications must be received at the Delaware Tourism Office at 99 Kings Highway, Dover, DE 19901. Applications will not be accepted after the deadline or at any other location. Applications may not be submitted electronically, via fax or email.

7.4 It is the responsibility of the applicant to ensure that the application is complete and received prior to deadline.

7.5 If the creation of a package is a proposal for Matching Funds the package must include a hotel property.

7.6 All invoices must be received at the Delaware Tourism Office, 99 Kings Highway, Dover DE 19901.

8.0 Matching Funds

8.1 All funds must be raised and collected prior to payment of the award.

8.2 No other state grant funds may be used for the organization's match.

8.3 Staff salaries, volunteer labor and inkind donations do not qualify as a match.

9.0 Grant Awards

9.1 Awards will be granted based on the merit of the

program being submitted. The purpose of the Matching [Grants] ~~[Funds]~~ Program is to attract new visitors and overnight business to Delaware. The goal of the Matching [Grants] ~~[Funds]~~ Program is to increase the visibility of Delaware's tourism product. Four or more properties working together including at least one hotel, through a package will be able to receive a match of 2 to 1 instead of 1 to 1. Only not-for-profit entities are able to submit matching funds proposals. However, for-profit businesses are allowed to participate in partnership programs submitted by ~~[not-for-profit organizations]~~ ~~[nonprofits]~~. All package programs must include at least one hotel property in order to promote overnight business to Delaware. All projects must tie in to the State Marketing Plan. There will be no attempt to balance the awards geographically, politically, or categorically.

~~[Funds]~~ Program Applicant Information Sheet as prescribed by the Delaware Tourism Office. The Applicant Information is available at: 99 Kings Highway, Dover, DE 19901.

10.0 Payments

10.1 Final payments may be requested after all project completion requirements have been met and proper documentation is submitted.

10.2 All invoices must be sent to the Delaware Tourism Office.

11.0 Use of Funds

11.1 Funds may not be used for:

11.1.1 General operating expenses including staff salaries.

11.1.2 Administrative expenses, including any commissions, fees or other expenses for administration of the project.

11.1.3 Food and beverages

11.1.4 Equipment purchase and rental

11.1.5 Business directories

11.1.6 Postage and office supplies

11.1.7 Meeting expenses

11.1.8 Anything contrary to state law.

11.1.9 Other restrictions on the use of the funds may be added at the time of the award based on the project definition.

12.0 Project Completion Requirements

12.1 At a minimum the following must be submitted for final payment:

12.1.1 Completed project report

12.1.2 Invoices

12.1.3 Marketing plan

12.1.4 Delaware Tourism Office name and logo must appear on all created collateral.

12.2 Other project completion requirements may be added at the time of the award based on project definition.

13.0 Applicant Information

13.1 Applicants shall fill out the Matching [Grants]

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER TWENTY-ONE

**RE: ESTABLISHMENT OF EARLY CARE AND
EDUCATION COUNCIL**

WHEREAS, research demonstrates that the quality of early care has a significant impact on children's development and their long-term performance in school as stated in the report of the Delaware Commission for Reading Success that "recent research on the brain and children's early development has shown that the experiences of children during their first five years of life have a lasting impact on their ability to succeed in school and become productive, responsible adults" and that "a child's early learning and experiences help to determine brain structure, thus shaping their learning, thinking and behavior for the rest of their lives"; and

WHEREAS, it has also been shown that parents are more productive and dependable employees when quality care is available for their children and that there is strong community and business commitment in Delaware on behalf of families and children; and

WHEREAS, it is in the best interest of Delaware's children and families for the private and public sectors to work together collaboratively to ensure that early care and education services in Delaware meet the needs of parents and prepare our young children for success, and that the early childhood investments being made within the state by parents, state agencies, businesses and communities are yielding positive results; and

WHEREAS, opportunities for resources and support are increasingly available, especially at the private, foundation and federal levels, for coordinated and strategically targeted plans that support and enable increased quality with a focus on cost-effectiveness, better professional development, dissemination of best practices and linkages to health and social services; and

WHEREAS, demand for early care and education is increasing throughout the state with more than 40,000 Delaware children currently receiving care in over 2,300 licensed family child care homes and child care center and the cost of that care being subsidized by the state for nearly 12,000 of those children; and

WHEREAS, representatives of Delaware early childhood professionals, policymakers, business and community members reached agreement on critical issues facing Delaware's early childhood community, and those recommendations are presented in the report: "Early Success: Creating a Quality Early Care and Education

System for Delaware's Children", with the goals of

- Ensuring that all Delaware's children are safe while their parents work
- Ensuring that all Delaware's young children are fully prepared for school and, as a result, are far more effective students
- Ensuring equality, continuity, and efficiency in an early care and education system for all Delaware's young children and their families

I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, HEREBY ORDER ON THIS 18th DAY OF OCTOBER 2001:

1. The establishment of the Delaware Early Care and Education Council, comprised primarily of private sector members, who shall advise the Interagency Resource Management Committee annually concerning early care and education services in Delaware based on the recommendations of the Early Success Report.

2. The Early Care and Education Council shall be appointed by the Interagency Resource Management Committee, shall represent the racial, economic and geographic diversity of our state and shall consist of the following twelve members:

- One center-based early care and education provider;
- One family-home based early care and education provider;
- Two parents whose children receive care in a licensed home or center, one of whom shall be a parent of a child with special needs;
- One Delaware Head Start/ECAP Association representative;
- One public school district representative;
- One higher education representative;
- Two business community representatives;
- Two community members; and
- One chairperson.

3. The Delaware Early Care and Education Office in the Department of Education shall staff the Council with support from the Interagency Resource Management Committee agencies as needed.

4. The Council may establish subcommittees to assist in meeting its responsibilities.

5. The Council will report annually to the Interagency Resource Management Council on the status of its work.

6. A summary of the Council's work shall be included in the Interagency Resource Management Committee's Annual Report.

Ruth Ann Minner, Governor

Attest:

Harriet Smith Windsor, Secretary of State

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER TWENTY-TWO**

RE: BUILDING SAFETY

WHEREAS, the State of Delaware has moved quickly in recent weeks to respond to the concerns presented by the recent terrorist activity in the United States; and

WHEREAS, it is necessary to clarify for all state agencies and the public the lines of authority that have been established for state government's response to potential threats;

I, RUTH ANN MINNER, BY VIRTUE OF THE AUTHORITY VESTED IN ME AS GOVERNOR OF THE STATE OF DELAWARE, HEREBY ORDER ON THIS 19th DAY OF OCTOBER, 2001:

1. The Secretary of Public Safety is assigned exclusive responsibility for security at the Carvel State Office Building. The heads of all other executive agencies are directed to comply with the Secretary of Public Safety's directives relating to matters of building security at the Carvel Building. The Secretary's authority includes, but is not limited to:

(a) the authority to require state officers and employees to show state-issued identification upon entry into the Carvel Building;

(b) the authority to seek identification from and if necessary deny access to persons who are not state officers and employees;

(c) the authority to search the bags of persons in the Carvel Building;

(d) the authority to search vehicles entering or within the parking lot partially located beneath the Carvel Building;

(e) the authority to restrict parking or remove vehicles on streets adjacent to the Carvel Building, to the extent permitted by statute; and

(f) the authority to order evacuation of the Carvel Building.

2. Persons responsible for security at all other state facilities are directed to take all reasonable steps to ensure that access to state facilities is limited to state officials and employees and persons who have legitimate business in those facilities. Each building or state facility owned or operated by the State of Delaware is to report to the Director of the Delaware Emergency Management Associate ("DEMA") within seven days of this Order the following information:

(a) The name, title and 24-hour contact information for the person responsible for security at that building or facility. Contact information should be kept current;

(b) Measures taken to restrict and monitor access by persons and vehicles to the building or facility and parking areas;

(c) Procedures in place to respond to emergencies affecting the building or facility.

Reports made to DEMA pursuant to this paragraph shall be confidential pursuant to 29 Del.C. §§10002(d)(5) - 10002(d)(6).

3. The DEMA Director is appointed as the coordinating authority for anti-terrorism efforts in the State of Delaware. All state agencies are to immediately comply with any requests made by the DEMA Director in connection with anti-terrorism and security efforts.

4. Each state agency shall review its regulations and, within ten days of the date of this order, promulgate any emergency regulations pursuant to 29 Del.C. §10119 that are necessary to ensure the health and safety of Delawareans in light of the possibility of future terrorist incidents. Copies of these documents shall be sent to DEMA in addition to other recipients dictated by statute.

Ruth Ann Minner, Governor

Attest:

Harriet Smith Windsor, Secretary of State

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Architects	Mr. Steven W. Atchley	10/16/04
Board of Dental Examiners	Ms. Kimberly A. Hickman-Bowen Mr. Robert P. Marier, Sr.	10/16/04 10/16/04
Board of Pharmacy	Ms. Laura Yvonne Brown Ms. Jessica Davis Ms. Nancy E. Weldin	10/16/04 07/01/04 07/01/04
Board of Podiatry Examiners	Dr. Jonathan P. Contompasis Ms. Sheri J. Morris Ms. Frances E. Pruitt	10/16/04 10/16/04 10/16/04
Board of Professional Counselors of Mental Health	Mr. Michael D. Betts Ms. Virginia Kurilla	10/23/04 10/23/04
Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers	Ms. Carolyn R. Cotter Mr. Charles M. Murrell	10/16/04 10/16/04
Charles Mills Boulevard Improvement Corporation	Ms. Sabrina D. Hill Mr. Dennis N. Forney, Chair Mr. Michael A. Meoli	Pleasure of the Governor Pleasure of the Governor Pleasure of the Governor
Child Placement Review Board-New Castle	The Honorable Joyce E. Nolan	10/23/04
Council on Aging and Adults with Physical Disabilities	Ms. C. Regina Byers Mr. Albert J. Miller	10/23/04 10/23/04
Council on Alcoholism, Drug Abuse and Mental Health	Ms. Roberta S. Ray Mr. Pierre V. Stevens	10/16/04 10/16/04
Council on Game and Fish	Mr. Raymond E. Townsend, Jr.	10/16/04
Council on Hispanic Affairs	Mr. Gonzalo Martinez	10/22/04
Council on Shell Fisheries	Mr. Clifford A. Copp Mr. E. Wayne Cropper	10/16/04 10/16/04
Council on Transportation	Ms. Mary W. Davis	10/16/04
Delaware Commission on Veterans Affairs	Mr. Charles E. Farrell Mr. Benjamin Pernol, Jr. Mr. David Timberman Colonel Robert E. Wasson	10/23/05 10/23/05 10/23/05 10/16/04
Delaware Commission for Women	Ms. Maria Picazo	10/16/04
Dental Hygiene Advisory Committee	Ms. Patricia A. Murphy-Davis	10/16/04

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Developmental Disabilities Planning Council	Ms. Mary T. Anderson	10/15/04
	Ms. Carol E. Barnett	04/29/02
	Dr. Merriel E. Bullock, Ph.D.	10/15/04
Developmental Disabilities Planning Council	Ms. Aileen D. Fink	10/15/04
	Mr. Anthony L. Horstman	10/15/04
	Ms. Joanne M. Koston	10/15/04
	Ms. Lorraine Y. Loera	10/15/04
Governor's Council on Equal Employment Opportunity	Ms. Karryl Hubbard	Pleasure of the Governor
	Reverend Clyde H. Knotts	Pleasure of the Governor
Magistrate Screening Committee	Mr. John F. Gangi	Pleasure of the Governor
State Board of Social Work Examiners	Ms. Bridgett Joyce	10/23/04
Worker's Compensation Advisory Council	Mr. John D. Daniello	10/23/04

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY**

PLEASE TAKE NOTICE, pursuant to 29 **Del. C.** Chapter 101 and 24 **Del. C.** Sections 105(1) and 105(5), the Delaware Board of Accountancy proposes to revise its Rules and Regulations. The proposed amendments implement and clarify the requirements for firm permits to practice by revising Section 9.0 in its entirety, including proposed rules to implement 24 **Del. C.** 112 regarding professional responsibility standards. Other proposed changes include clarifying the definition of "firm," and deleting language from the rules and regulations relating to the conduct of hearings.

A public hearing on the proposed Rules and Regulations originally scheduled for August 22, 2001, and rescheduled for November 14, 2001, has been rescheduled for Wednesday, January 16, 2002 at 9:00 a.m., in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Dana Spruill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Dana Spruill at the above address by calling (302) 744-4505.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing

REAL ESTATE COMMISSION

PLEASE TAKE NOTICE, pursuant to 29 **Del. C.** Chapter 101 and 24 **Del. C.** Sections 2905(a)(1) and 2911(b), the Delaware Real Estate Commission proposes to revise its Guidelines for Fulfilling the Delaware Real Estate Education Requirement. The proposed amendments revise the quorum requirement for meetings of the Education Committee and provide that members of the Education Committee attending at least eighty percent (80%) of meetings during a biennial licensure period may receive up to six (6) elective credit hours of continuing education.

A public hearing will be held on the proposed Education Guidelines on Thursday, January 10, 2002 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in

writing from any person on the proposed Education Guidelines. Any written comments should be submitted to the Commission in care of Joan O'Neill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Education Guidelines or to make comments at the public hearing should notify Joan O'Neill at the above address by calling (302) 744-4519.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

DEPARTMENT OF AGRICULTURE

Aquaculture Regulations

The Department proposes these regulations pursuant to 3 **Del.C.** §407(a). The proposed regulations contain the following general sections: Definitions, Aquaculture Registration, General Aquaculture Permits, Restricted Aquaculture Permits, Aquaculture Stock Certification, Aquaculture Broodstock, Identification and Certification, Inspection of Premises, Enforcement, Future Considerations, Fee Fishing, Aquaculture Facility Protection, and Civil Penalties. These regulations are intended to more clearly define the role of the Department in the Delaware aquaculture industry. The proposed regulations will be considered at a public hearing scheduled for January 15, 2002 at 1:00 p.m. at the Delaware Department of Agriculture Building, Veterinarians office. Comments may be submitted in writing to Bruce Walton on or before 1:00 p.m. on January 15, 2002, and/or in person at the hearing. The Delaware Department of Agriculture is located at 2320 S. DuPont Highway, Dover, Delaware, 19901 and the phone number is (302) 698-4503.

HARNESS RACING COMMISSION

The Harness Racing Commission proposes to change certain regulations. The proposed amendment to Rule 6.2.2.9 would prohibit trailing horses on half-mile tracks and limit the field to only one trailer on larger tracks. The proposed amendment to Rule 6.3.1.1 would strike the existing rule in its entirety and substitute U.S.T.A. rule 10, subsection (3)(b) requiring that the trainer warrant that he is authorized to enter the horse in the claiming race. The proposed amendment to Rule 6.4.4.17 would provide that the maximum field shall be one trailer and the event shall be split if there would be more than one trailer. The proposed amendment to Rule 8.3 would detail additional factors for the State Steward to consider in assessing penalties for

medication violations. The proposed amendment to Rule 8.3.2 would be amended to revise and increase the penalty schedule for medication violations involving class 1-5 drugs.

The Commission will accept written comments on the proposed rule amendments from December 1, 2001 until January 2, 2002. Written comments should be sent to the Delaware Harness Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901, att: John Wayne. Copies of the Commission's existing rules and the proposed rules can be obtained by contacting the Commission office at 302-698-4600. The Commission will conduct a public hearing on these proposed rules on January 3, 2002 at Dover Downs at 1:00 p.m.

THOROUGHBRED RACING COMMISSION

The Thoroughbred Racing Commission proposes to change certain regulations. The proposed amendment to 13.05 would provide that a claimed horse shall not run for twenty days after being claimed in a race in which the eligibility price is less than twenty-five percent than the claiming price, and the amended rule will not apply to starter handicaps, allowance, and starter allowance races. The Commission also proposes to delete the current Rule 13.19 which currently provides that no horse claimed in a claiming race shall race in another race less than the original claiming price for a thirty day period.

The Commission will accept written comments on the proposed rule amendments from December 1, 2001 until January 3, 2002. Written comments should be sent to the Delaware Thoroughbred Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901, att: John Wayne. Copies of the Commission's existing rules and the proposed rules can be obtained by contacting the Commission office at 302-698-4600. The Commission will conduct a public hearing on these proposed rules on January 3, 2002 at 10:00 a.m. at the Department of Agriculture, 2320 S. DuPont Highway, Dover, DE.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, December 20, 2001 at 9:00 a.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH OFFICE OF EMERGENCY MEDICAL SERVICES

Notice Of Public Hearing

The Office of Emergency Medical Services, Division of Public Health of the Department of Health and Social Services, will hold a public hearing to discuss the proposed changes to the Air Medical Ambulance Service Regulations. This public hearing will be held on Thursday, January 3, 2002 at 2:00 PM in the Conference Room, Delaware Office of Emergency Medical Services, Blue Hen Corporate Center, Suite 4-H, 655 S. Bay Road, Dover, Delaware.

Copies of the proposed revisions are available for review by contacting:

Office of Emergency Medical Services
Blue Hen Corporate Center, Suite 4-H
655 Bay Road
Dover, Delaware 19901
Telephone: (302) 739-4710

Anyone wishing to present his or her oral comments at this hearing should contact Debbie Vincent at (302) 739-4710 by close of business December 31, 2001. Anyone wishing to submit written comments as a supplement to, on in lieu of, oral testimony should submit such comments by close of business January 3, 2002 to:

David Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, DE 19903-0637

DIVISION OF PUBLIC HEALTH

Notice of Public Hearing

The Office of Drinking Water, Division of Public Health of the Department of Health and Social Services (DHSS), will hold a public hearing to discuss proposed revisions to the "State of Delaware Regulations Governing Public Drinking Water Systems." DHSS is proposing to adopt new US EPA requirements for public notification, consumer confidence reports, the interim enhanced surface water treatment rule, and the stage 1 disinfection/disinfection byproducts rule. In addition the DHSS is proposing a primary maximum contaminant level for MTBE of 0.01 mg/L and moving the compliance date for the new arsenic standard from September 2006 to January 2006.

The public hearing will be held January 8, 2002 at 4:00 PM in the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway

Dover, Delaware.

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

Office of Drinking Water
 Blue Hen Corporate Center, Suite 203
 655 Bay Road
 Dover, DE 19901
 Telephone: (302) 739-5410

Anyone wishing to present his or her oral comments at this hearing should contact Mr. Edward Hallock at (302) 739-5410 by January 4, 2002. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by January 11, 2002:

Dave Walton, Hearing Officer
 Division of Public Health
 PO Box 637
 Dover, DE 19903

DEPARTMENT OF INSURANCE

Notice of Public Hearing

Insurance Commissioner Donna Lee H. Williams hereby gives notice that a **PUBLIC HEARING** will be held on Monday, January 14, 2002, at 10:00 a.m. in the Executive Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider **amendments to Regulation 10** relating to the the arbitration of certain claims for benefits available under automobile, health, or homeowners' policies or agreements and the of **implementation of Regulation No. 11** (Proposed) entitled " Arbitration Of Health Insurance Claims And Internal Review Processes Of Medical Insurance Carriers"

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 *Del. C.* Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than Friday, January 11, 2002, and should be addressed to Deputy Attorney General Michael J. Rich, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or give an oral statement must notify Michael J. Rich at (302) 739-4251, Ext. 171 no later than Friday, January 11, 2002.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT WASTE MANAGEMENT SECTION

Title of the Regulations:

Delaware Regulations Governing Hazardous Substance Cleanup

Brief Synopsis of the Subject, Substance and Issues:

The proposed amendment clarifies and places the definition of a "Brownfield" under 7 Delaware Code, Chapter 91, the Hazardous Substance Cleanup Act (HSCA). The amendment to the Regulations Governing Hazardous Substance Cleanup delineates criteria for determining when all or part of a parcel of real property may be certified as a Brownfield.

Notice of Public Comment:

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by U.S. Mail by writing or calling Mr. James M. Poling, Department of Natural Resources and Environmental Control (DNREC), Division of Air & Waste Management (DAWM), Site Investigation and Restoration Branch (SIRB), 391 Lukens Drive, New Castle, DE, 19720, phone (302) 395-2600.

The Secretary of Department of Natural Resources and Environmental Control, or an employee of the DNREC designated by the Secretary, will hold a public hearing at which members of the public may present comments on the proposed regulation on January 8, 2002 in the conference facilities of the Lukens Drive building from 6:00 to 8:00 PM. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. James M. Poling at the address of the DNREC-SIRB office set forth above. Written comments must be received on or before January 8, 2002.

DELAWARE RIVER BASIN COMMISSION

P.O. BOX 7360
 25 STATE POLICE DRIVE
 WEST TRENTON, NEW JERSEY 08628-0360

The Delaware River Basin Commission will meet on Tuesday, December 18, 2001 in West Trenton, New Jersey. For more information contact Pamela M. Bush, Commission Secretary, at (609) 883-9500 ext. 203.

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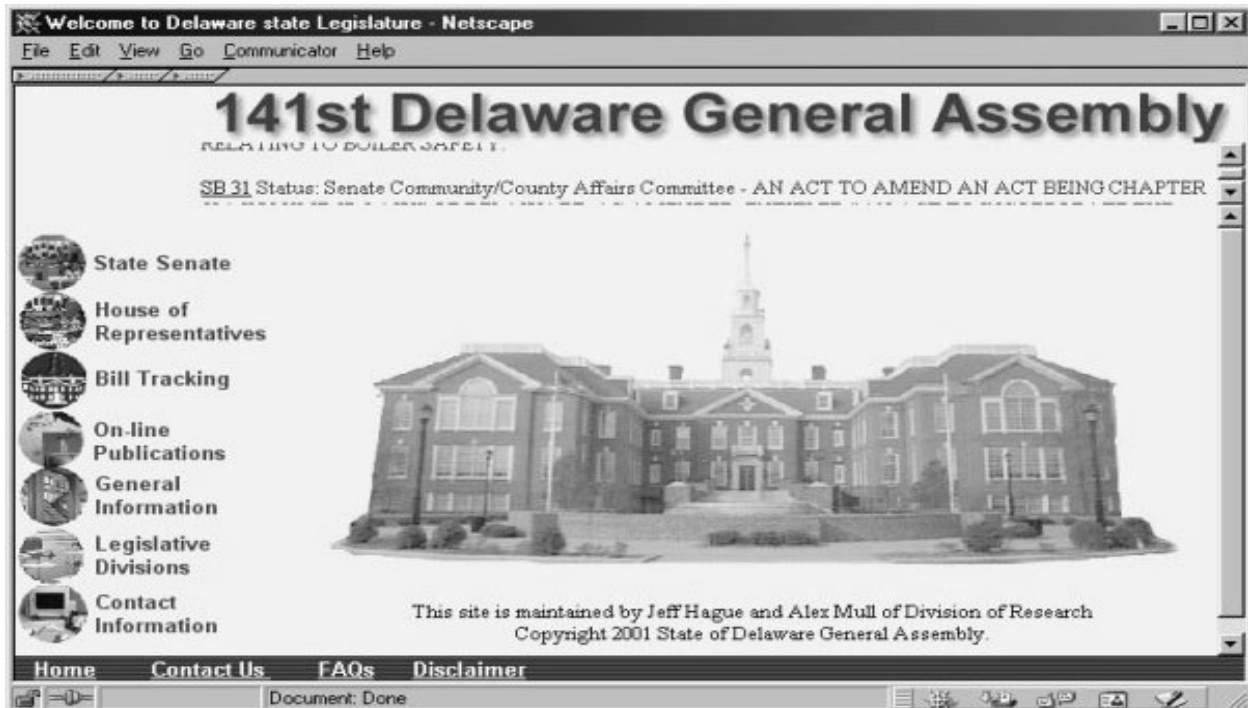
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