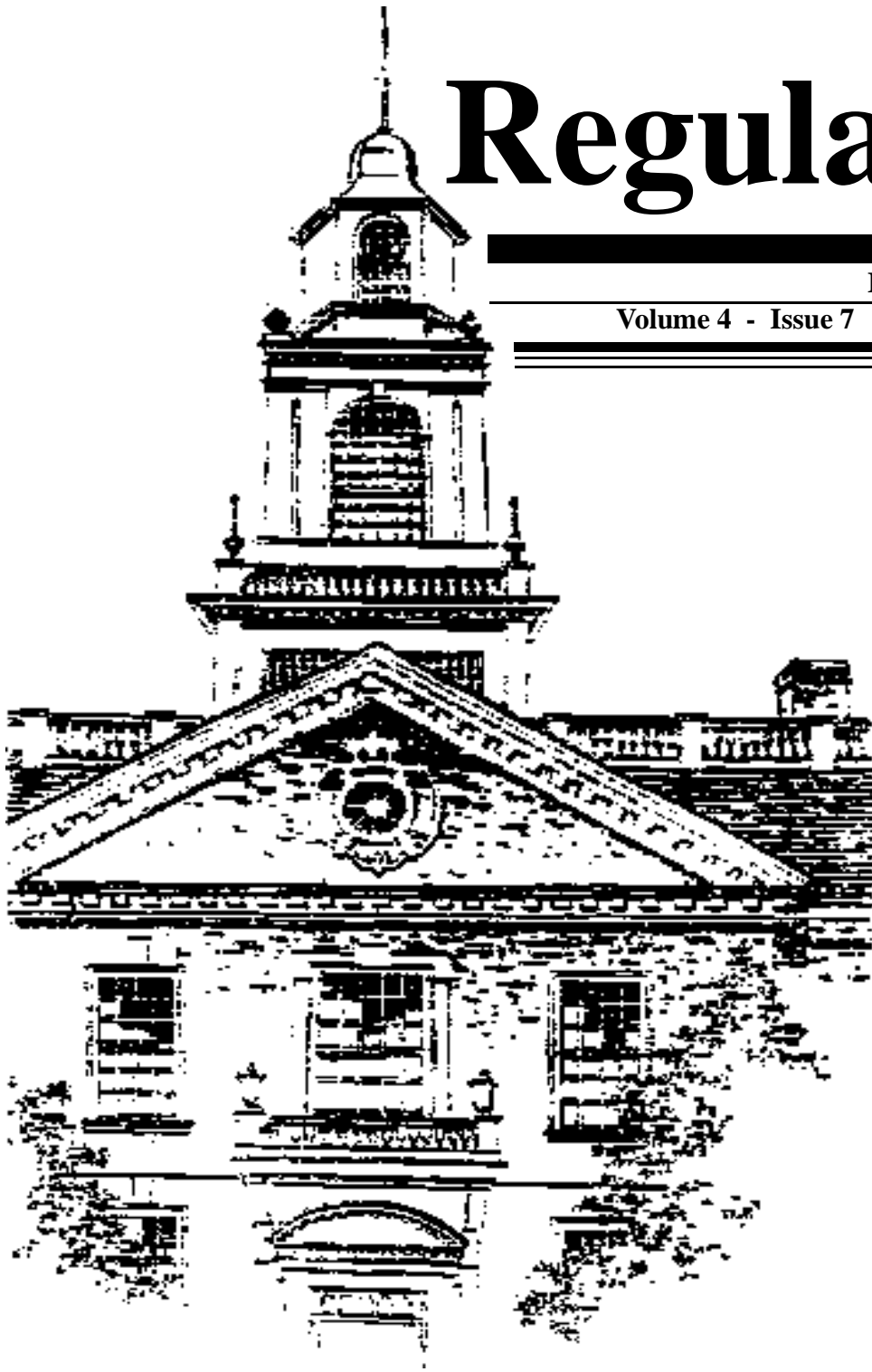

Delaware Register of Regulations



Issue Date: January 1, 2001

Volume 4 - Issue 7

Pages 1058 - 1201

IN THIS ISSUE:

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Proposed

Final

Governor

Executive Order

Appointments

General Notices

Calendar of Events &

Hearing Notices



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 December 15, 2000.

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The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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 - 7775 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 302-739-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

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
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.
JUNE 1	MAY 15	4:30 P.M.

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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
COMMISSION ON ADULT ENTERTAINMENT
ESTABLISHMENTS**

24 DE Admin. Code 1600
Statutory Authority: 24 Delaware Code,
Sections 1604(g), 1618(c)
(24 **Del.C.** §§1604(g),1618(c))

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 1604(g) and 1618(c), the Delaware Commission on Adult Entertainment Establishments proposes to adopt rules and regulations pursuant to its authority under 24 **Del.C.** §1618(c). The proposed regulations (Rule 1.0) will establish various sanctions, which the Commission may impose, for violations of certain provisions of Title 24, Chapter 16 of the **Delaware Code**.

A public hearing will be held on the proposed Rules and Regulations on Thursday, February 1, 2001 at 9:00 a.m. in the ABCC Conference Room, Third Floor, Carvel State Office Building, 820 N. French St., Wilmington, DE. 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 Mary Paskey at Division of Professional Regulation, 861 Silver Lake Blvd., Dover, Delaware 19904. 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 Mary Paskey at the above address or by calling (302) 739-4522.

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

**1600 Commission On Adult Entertainment
Establishments
Proposed Rules and Regulations**

Rule 1.0 Sanctions for Violations

1.1 Pursuant to 24 **Del.C.** §1618(c), the Commission may, following a hearing, impose civil fines and/or license suspensions for violations of the following statutes:

- 1.1.1 24 **Del.C.** §1608
- 1.1.2 24 **Del.C.** §1610
- 1.1.3 24 **Del.C.** §1611
- 1.1.4 24 **Del.C.** §1617
- 1.1.5 24 **Del.C.** §1622
- 1.1.6 24 **Del.C.** §1629

1.2 The Commission may, in its discretion, impose fines of no less than \$250.00 and no more than \$1000.00 and/or license suspensions of no less than one (1) day and no more than sixty (60) days for each violation of the laws set forth at Rule 1.1.

1.3 If a penalty imposed by the Commission, pursuant to this rule, is not complied with pursuant to the terms of the Commission's Order, the Commission shall convene a hearing for the licensee to show cause why the license should not be revoked and/or additional penalties imposed.

1.4 Nothing in this rule shall prohibit the Commission from imposing a license revocation in lieu of or in addition to any penalty established under this rule, if license

revocation is a penalty authorized by statute for the specific offense(s).

DIVISION OF PROFESSIONAL REGULATION**BOARD OF NURSING**

24 DE Admin. Code 1000

Statutory Authority: 24 Delaware Code,
Section 1906 (24 **Del.C.** §1906 (1))

The Delaware Board of Nursing in accordance with 24 **Del.C.**, Subsection 1906(1) and 24 **Del.C.**, Chapter 19A (Article VI(d)) has proposed to amend 6.10.1.1 of the Board's Rules and Regulations.

This proposed rules and regulations change requires that employers submit to the Board by April 15 a list of only the nurses employed with a nursing license from another compact state.

A public hearing will be held on Wednesday, February 14, 2001 at 9:00 a.m. in the second floor Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed change of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 739-4522, ext. 215 or 216. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be February 14, 2001.

6.0 Requirements and Procedures for Licensure

6.1 Examinations

6.1.1 The Board declares that the National Council Licensure Examination-RN (NCLEX-RN) and the National Council Licensure Examination-PN (NCLEX-PN) are the required examinations for licensure in Delaware. The Division of Professional Regulation has the authority to review and approve the content and validity of examinations.

6.1.2 Up to July 1982, the passing score for professional nurse candidates was a standard score of 350 on each test of the State Board Test Pool Examination.

6.1.3 Effective July 1, 1982, the passing score for Registered Nurse candidates was 1600 on the NCLEX-RN and 350 on NCLEX-PN.

6.1.4 Effective July 1, 1988, results are reported and recorded as pass or fail.

6.1.5 The candidate shall take the licensing examination within 90 calendar days following graduation from a Board approved program of professional or practical nursing and not there after without petitioning the Board for specific authorization to test after the 90 day period. Such petitions may be granted by the Board upon a showing of

good cause.

See 3 DE Reg. 1373 (4/1/00)

6.1.6 To be eligible to take the examination for licensure for practical nursing, the applicant must be a graduate of a Board approved program for practical nursing. A graduate of a program for professional nursing will be denied permission to take the examination for licensure as a practical nurse.

6.1.7 The candidate shall file two applications for each examination.

6.1.7.1 The NCLEX application shall be filed with a non-refundable fee.

6.1.7.2 The candidate shall file a completed and notarized Delaware application for licensure by examination, along with the required fee.

6.1.7.3 In addition, the candidate shall file a signed official school transcript indicating the date of graduation or date degree was conferred. If this is not possible, a certifying letter from the director indicating the candidate had completed the program will be accepted until an official transcript is available.

6.1.7.4 The candidate shall present the admission card issued by the Board in order to be admitted to any portion of the examination.

6.1.8 A candidate who has been accepted but is unable to attend the scheduled examination must notify the Board prior to the starting time or during the first day of examination with a specific reason for not attending. If the reason is acceptable to the Board, (e.g. candidate is ill, death in immediate family, accident, etc.) the Delaware application for licensure by examination will be extended to the next examination date.

6.2 Temporary Permits Prior to Examination

6.2.1 Prior to the employment starting date the candidate shall submit a notarized application for a temporary permit on a form provided by the Board.

6.2.2 The temporary permit is a limited license authorizing professional or practical nursing practice only at the institution employing the graduate, and only under supervision and pending the results of the examination.

6.2.3 Any graduate who has completed the requirements of a state board of nursing approved program of professional or practical nursing and who has filed for licensure by examination in Delaware may be employed in professional or practical nursing, working under the direct supervision of a Registered Nurse pending results of the licensing examination.

6.2.4 Direct supervision means supervision by a Registered Nurse on the same assigned unit during the same time period. The term "unit" is defined as one staffed unit of a maximum of forty patients.

6.2.5 In order to practice nursing in Delaware with a temporary permit, a recent graduate of a state board of nursing approved program of nursing in another state must

file an application for licensure before beginning to practice. If the graduate has taken, or is scheduled to take, the NCLEX Examination in the state in which the program is located, the applicant shall file an application for licensure by endorsement in Delaware.

6.2.5.1 Candidates must submit written documentation that they are candidates for the NCLEX in the state in which the examination is being written.

6.2.6 The Board of Nursing will verify employment with the employer and verified documentation will be noted on the application.

6.2.7 Only a candidate approved to take an examination scheduled after graduation from an approved State Board of Nursing program in the United States or its territories may be issued a temporary permit to practice nursing, good until the release of the examination results.

6.2.8 The temporary permit shall terminate forthwith if a candidate fails to take the examination in the time prescribed. The Board will notify the candidate's employer of the termination of the permit. The candidate shall return the permit to the Board.

6.2.9 If extenuating circumstances exist, the candidate may apply to the Board for reissuance of a temporary permit. If the reason is acceptable, the permit may be reissued. (Refer to Section 6.7, Temporary Permits)

6.3 Test Results

6.3.1 In the case of a successful candidate, the results are released in the following order: the candidate, the director of the school of nursing and the news media. In the case of the unsuccessful candidate the results are released in the following order: the candidate, the employer, and the director of the school program.

6.3.2 A successful candidate will receive the test results and a copy of the Law regulating the practice of nursing in Delaware, (24 Del.C. Ch. 19), and a certificate of registration with a permanent license number.

6.3.3 A letter to unsuccessful candidates will accompany the test results to advise them of their status and the procedure to be followed for re-examination.

6.3.4 Candidates for licensure who fail the National Council Licensure Examination may not be employed in nursing, are not permitted to practice nursing as defined in the Law, and must return the temporary permit upon receipt of the failure notification.

See 3 DE Reg. 1373 (4/1/00)

6.3.5 The candidate's employer shall be notified that the temporary permit is not valid, and the candidate may not be employed in nursing until the NCLEX has been passed.

See 3 DE Reg. 1373 (4/1/00)

6.3.6 The applicant shall retake the examination within a one-year period following notification of failure in order to be eligible for re-examination and not there after without petitioning the Board for specific authorization to

retest after the one-year period. Such petitions may be granted by the Board upon a showing of good cause to allow for further examination. There is a fee for each re-examination. Any candidate who graduated following the date of February 1982 may retake NCLEX for an unlimited number of times within a five year period from the date of graduation from an approved nursing education program. Notwithstanding the foregoing, any candidate who graduates from an approved nursing education program after April 30, 2000 may retake NCLEX an unlimited number of times within a two year period from graduation and not there after without petitioning the Board for specific authorization to retest after the two year period. Such petitions may be granted by the Board upon a showing of good cause to allow further examination.

See 3 DE Reg. 1373 (4/1/00)

6.4 Requirements for Applicants Graduating from Foreign Programs

6.4.1 Applicants graduating from programs outside of the United States and not licensed by the State Board Test Pool Examination or NCLEX in another state:

6.4.1.1 Must have been issued a certificate of licensure by the licensing agency in the state, territory, or country where the nursing program is located;

6.4.1.2 Must submit a certificate issued by the Commission on Graduates of Foreign Nursing Schools as evidence of the educational requirements of a curriculum for the preparation of professional nurses which is equivalent to the approved professional schools in Delaware;

6.4.1.3 Must submit official English translations of all required credentials;

6.4.1.4 Must, in instances when completion of a four-year high school course study or its equivalent cannot be verified, take the high school equivalence examination given by a State Department of Education;

6.4.1.5 Must submit evidence that the program from which applicant is a graduate meets the approved standards adopted by the Board (24 Del.C. §§1910, 1914) and Rules and Regulations: 2.5. (If the program does not include the areas specified in the above curricula, the deficiencies must be made up before the applicant is eligible to take NCLEX);

6.4.1.6 Are allowed one year from the date of Board review of the completed application to make up all deficiencies, including the taking of the initial examination;

6.4.1.7 Effective July 1, 1982, professional nurse applicants must have passed the NCLEX examination (with a minimum standard score of 1600) and practical nurse applicants must have passed the NCLEX examination (with a minimum standard score of 350) within four examination opportunities, within a period of two years or original notification of failure.

6.4.1.8 Effective July 1, 1988, results are reported and recorded as pass or fail.

6.4.1.9 May be issued a temporary permit and may be employed in professional or practical nursing if the applicant has met all of the Board's prerequisites for taking the NCLEX in Delaware and is scheduled to do so;

6.4.1.10 May work only at the institution employing the applicant, under the direct supervision of a registered nurse pending results of the first licensing examination.

6.4.1.11 Must meet all other requirements for licensure.

6.4.2 All applications will be reviewed by the Board to determine if the applicant is eligible to take the NCLEX Examination or to determine if applicant's educational qualifications are as Board prescribed and may be eligible for licensure by examination.

6.4.3 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination from 1970 - 1979 are eligible for licensure by endorsement.

6.4.4 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination, first administered August 1980, are eligible for licensure by endorsement with a passing score of 400. (September 15, 1981)

6.4.5 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination after that examination became graded on a pass or fail basis are not eligible for licensure by endorsement and must pass the NCLEX. (June 8, 1996)

6.5 Licensure by Endorsement

6.5.1 All endorsement applicants shall:

6.5.1.1 Submit a completed, signed, and notarized application on a form provided by the Board.

6.5.1.2 Remit the required non-refundable fee.

6.5.1.3 Attach to the application a photocopy of a current license indicating date of expiration.

6.5.1.4 Provide official verification of original licensure in another jurisdiction on a form acceptable to the Board.

6.5.1.5 An applicant for endorsement must have completed high school or must have passed a nationally standardized test, and be otherwise qualified for licensure.

6.5.1.5.1 The Board shall request a reference on a form supplied by the Board from:

6.5.1.5.1.1 the applicant's immediate past employer(s) in the past six months. Such reference(s) should be given by the nursing employer, or if the immediate past employer is not a nursing professional, by the applicant's immediate supervisor (e.g. physician, director, manager). In the case of someone engaged in solo practice or who is self-employed, the reference shall be provided by at least one professional colleague with whom the individual has most recently worked for at least six months in the past five years.

6.5.1.5.1.2 in the event of no previous

nursing employer, the Director of the applicant's approved nursing education program. Any unsatisfactory reference shall be brought to the attention of the Board for review.

6.5.1.5.2 If the applicant has not been employed in nursing a minimum of 1000 hours in the past five years or a minimum of 400 hours of nursing practice within the previous two years, the applicant must give evidence of satisfactory completion of an approved refresher program within a two-year period before licensure by endorsement will be granted. In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional/practical nursing.

6.5.1.5.3 All completed applications for endorsement will be submitted to the Board for consideration of approval.

6.5.1.5.4 Issuance of a license shall be considered as notice of approval of the application.

6.5.1.5.5 All applications will be purged in accordance with Division policy.

6.5.2 Registered Nurses

6.5.2.1 The Board may issue a license to practice professional nursing as a Registered Nurse by endorsement, without a written examination, to an applicant who has been duly licensed as a Registered Nurse under the laws of another state, territory, or foreign country if, in the opinion of the Board, the applicant meets the qualifications for licensure in this state.

6.5.2.2 As of 1950 and thereafter, the State Board Test Pool Examination for professional nursing is the licensing examination authorized for use by all boards of nursing in jurisdictions in the United States. (In July 1982, the examination was re-titled National Council Licensure Examination-RN (NCLEX-RN). Prior to this date, examinations constructed by state boards of nursing are acceptable, providing such examinations include all of the required clinical areas: medicine, surgery, obstetrics-gynecology, pediatrics, psychiatry). Until 1953, the passing score required for each of the tests was 70%.

6.5.2.3 Those applicants graduating as of 1953 and thereafter are required to show evidence of clinical experience in medical nursing, surgical nursing, psychiatric nursing, nursing of children, and obstetrical nursing.

6.5.2.4 An applicant for licensure by endorsement must be a graduate of a State Board of Nursing approved school of nursing, and be otherwise qualified for licensure.

6.5.3 Licensed Practical Nurses

6.5.3.1 Effective October 1, 1963, waiver or equivalency licensure is not acceptable in Delaware. The Board may issue a license to practice nursing as a Licensed Practical Nurse, without a written examination, to an applicant who has been licensed as a Practical Nurse or a person entitled to perform similar services under a different

title under the laws of any state, territory or foreign country if, in the opinion of the Board, the applicant has the qualifications required for the licensing of practical nurses.

6.5.3.2 Candidates for licensure are required to have theory and clinical experience in medical nursing, surgical nursing, psychiatric nursing, obstetrical nursing, and nursing of children.

6.5.3.3 The applicant must be a graduate of a Board approved program for practical nursing.

6.5.3.4 A licensed practical nurse applicant for licensure by endorsement must have passed the NCLEX-PN.

6.5.3.5 An applicant for endorsement must be otherwise qualified for endorsement.

6.6 Licensure: Biennial Renewal and Reinstatement

6.6.1 Biennial Renewal of Licensure

6.6.1.1 In order to practice nursing in Delaware with or without financial compensation, Registered Nurses or Licensed Practical Nurses who are duly licensed under any provision of 24Del.C. Ch. 19 shall renew their licenses biennially, prior to December 31 of the biennium. In the event that applicant for renewal or reinstatement of licensure has not been actively employed in professional or practical nursing in the past five years, the applicant will be required to give evidence of satisfactory completion of a professional or practical nursing refresher program within an approved agency within a two-year period to renewal before licensure will be granted, In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional or practical nursing.

6.6.1.1.1 Registered Nurses - the license shall be valid for two calendar years expiring each odd-numbered year on dates established by the Department of Administrative Services.

6.6.1.1.2 Licensed Practical Nurses - the license shall be valid for two calendar years expiring each even-numbered year on the dates established by the Department of Administrative Services.

6.6.1.2 The applicant shall indicate nursing employment within the past five years before the renewal application will be processed. A minimum of 1000 hours of nursing practice within the past five years or a minimum of four hundred hours of nursing practice within the past two years is required for licensure by renewal or reinstatement. Verification of completion of the practice hours will occur for a minimum of 1% of the total number of licensees with notice of the audit two months prior to the renewal in a biennium. An additional 2% will be audited within six months of renewal of licensure. See 9.0, for Mandatory Continuing Education requirements.

6.6.1.2.1 Upon receipt of such notice, the licensee must submit verification of compliance for the period being audited/verified. Verification will be done on a form supplied by the Board office that includes employer's

name, title, address, telephone number, job title, and dates of employment.

6.6.1.2.2 The employer will submit the completed form directly to the Board office.

6.6.1.2.3 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

6.6.1.2.4 An unsatisfactory verification or audit shall result in Board action.

6.6.1.2.5 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

6.6.1.3 An application for renewal of license will be mailed at least 12 weeks prior to the expiration date of current licensure.

6.6.1.4 Failure to receive the application for renewal shall not relieve the licensee of the responsibility for renewing their license by the expiration date.

6.6.1.5 Renewal application, along with the required fee, shall be returned to the Board office and postmarked no later than the last day of the month before the month of expiration.

6.6.1.6 Licenses that have lapsed may be reinstated by the Board upon satisfactory explanation by the licensee of failure to renew and after payment of a penalty fee.

6.6.1.7 During the month of expiration, the Board may issue a renewal certificate upon receipt of a renewal application, the documentation of nursing employment, the renewal fee and late fee.

6.6.2 Reinstatement of Licensure

6.6.2.1 Registered Nurses or Licensed Practical Nurses who fail to renew their licenses by February 28, May 31, and September 30, of the renewal period shall be considered to have lapsed licenses and shall not practice nursing in the state of Delaware. After February 28, May 31, and September 30 of the current licensing period, any requests for reinstatement of a lapsed licensed shall be presented to the Board for action. All applicants shall have a minimum of 1000 hours of nursing practice within the previous five years or a minimum of four hundred hours of nursing practice within the past two years before licensure by reinstatement will be granted. The practice of nursing can be with or without financial compensation. In the event the applicant has not been actively employed in nursing as described above, the applicant will be required to give evidence of satisfactory completion of a refresher program with an approved agency within two years prior to reinstatement. In the event no refresher course is available, the Board may consider alternate methods of evaluating current knowledge in professional or practical nursing.

6.6.2.2 The applicant shall file a notarized application for reinstatement of licensure. The application shall be accompanied by a satisfactory reference from a

current or previous employer, renewal fee and penalty fee.

6.6.3 It is unprofessional conduct and a violation of Delaware Law to practice without a license. The Board may refuse a license or refuse to renew a license of a professional nurse or a practical nurse who practices without a current license.

6.6.4 Reinstatement Hearings

6.6.4.1 Hearings for consideration of reinstatement licensure may be held for those applicants who file for reinstatements more than 90 days after the renewal period and who have been practicing nursing without a current license, or who have submitted an unsatisfactory explanation for failure to renew.

6.6.4.2 A notice of hearing shall be sent to the Registered Nurse or Licensed Practical Nurse. The hearing shall be conducted in accordance with the Administrative Procedures Act and the Nurse Practice Act.

6.6.4.3 The Board shall make determination for reinstatement of licensure or shall determine that the Registered Nurse or Licensed Practical Nurse shall be subject to the penalties provided for violations of the Nurse Practice Act.

6.6.4.4 Upon determination that licensure shall be reinstated, the Board shall issue a license to practice nursing.

6.7 Temporary Permits

6.7.1 The temporary permit is a limited license authorizing professional, practical or graduate nursing practice only at the employing institution for no longer than an initial 90 day period.

6.7.2 Nurses who produce current evidence of licensure to practice nursing in another state and who have applied for endorsement may be issued a temporary permit to practice nursing for a maximum of 90 days, if they have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours of nursing practice within the past two years.

6.7.3 A temporary permit to practice nursing for a maximum of 90 days may be issued to persons who have requested reinstatement of their licensure, if they have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours of nursing practice in the past two years.

6.7.4 All applicants seeking temporary permits to practice professional, practical or graduate nursing in Delaware must:

6.7.4.1 Prior to employment starting date, submit a notarized application for endorsement or examination, completing the portion for a temporary permit, and indicating employer.

6.7.4.2 Have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours in the past two years, if applying for reinstatement or endorsement, with current evidence of

licensure from another state.

6.7.4.3 Have been accepted as a nurse employee in Delaware. The Board of Nursing will verify employment with the employer and verified documentation will be noted on the application.

6.7.4.4 Have graduated from a State Board of Nursing approved program.

6.7.4.5 Pay a licensure fee which is not refundable.

6.7.5 Upon completion of all requirements, a temporary permit will be issued for no longer than 90 days with subsequent renewal periods of 60 and 30 days sequentially.

6.7.6 The Executive Director shall:

6.7.6.1 Keep a register of permits.

6.7.6.2 Refrain from issuing a temporary permit in any doubtful situation until further evidence is obtained or until the Board has given approval.

6.7.7 In the absence of the Executive Director, the President may issue a temporary permit with the same restrictions.

6.8 Inactive Status

6.8.1 A person previously licensed by the Board and not engaged in the practice of nursing in the state of Delaware, but desiring to maintain the right to use the title Registered Nurse or Licensed Practical Nurse, may apply and be granted inactive status by the Board in accordance with these regulations.

6.8.2 A nurse desiring inactive status shall send a written notice to the Board with fee. Upon receipt of notice and fee the Board shall place the name of the person on an inactive status list and shall issue a certificate. The person shall not practice nursing in this state.

6.8.3 A licensee on inactive status shall use the appropriate title, Registered or Licensed Practical Nurse, followed by (INACTIVE).

6.8.4 A licensee will receive a certificate of inactive status with the term Inactive Registered Nurse or Inactive Licensed Practical Nurse printed across the top.

6.8.5 A notice of inactive status shall be sent to all persons on the inactive list at renewal time. To receive a certificate of inactive status, the licensee shall return the renewal notice with the fee.

6.8.6 All applications from persons on inactive status who decide to resume active status will be presented to the Board for review for reinstatement.

6.8.7 In the event the applicant has not been actively practicing nursing within the previous five years, the applicant will be required to give evidence of satisfactory completion of a refresher program with an approved agency within two years prior to reactivation, or participate in an alternate Board approved method of evaluating current knowledge in professional or practical nursing. All applicants shall have a minimum of 1000 hours of nursing

within the previous five years or a minimum of four hundred hours of nursing practice within the previous two years. See 9.0 for Mandatory Continuing Education requirements.

6.9 Loss of License, Change of Name/address

6.9.1 If a license is lost, stolen or destroyed, the licensee shall submit a letter to the Board explaining the loss. A letter indicating the original number and expiration dates shall be issued by the Executive Director in lieu of a duplicate license.

6.9.2 Licensees who legally change their names and wish to change the name on the license, shall provide notarized copies of evidence, such as marriage licenses or court actions. The maiden name will be retained on the license.

6.9.3 Notice of change of address shall be submitted in writing within 30 days of the change. All notices from the Board will be sent to the last address provided by the licensee or applicant to the Board.

6.9.4 A list of license numbers of lost, stolen or otherwise destroyed licenses shall be kept on file in the Board office.

6.10 Register of Nurses Licensed in Delaware

6.10.1 Licensure Verification

6.10.1.1 Following the official renewal period, the Executive Director shall request each employer or employing agency to submit to the Board by April 15 a list of all nurses employed with a nursing license from another compact state. The list shall include the following information:

See 3 DE Reg. 1373 (4/1/00)

6.10.1.1.1 Name of employee, alphabetized by last name;

6.10.1.1.2 Classification (Registered Nurse, Licensed Practical Nurse, Advanced Practice Nurse or nurse holding temporary permit);

6.10.1.1.3 License number; and

6.10.1.1.4 Expiration date of current license or temporary permit.

6.10.1.2 Individuals submitting the list attest by their signatures that they viewed each current registration of licensure and advanced practice recognition.

6.10.1.3 The list will be checked by the Executive Director. If it is not possible to verify current licensure, the Executive Director will immediately notify the employer by letter.

6.10.1.4 The Executive Director shall prepare a summary of the survey to be presented to the Board.

6.10.2 Release of Information

6.10.2.1 The Executive Director may release to a citizen of Delaware the following information:

6.10.2.1.1 Whether or not the individual was or is currently licensed,

6.10.2.1.2 Date of original licensure,

6.10.2.1.3 Under what condition license

was issued (examination, endorsement, or waiver),

6.10.2.1.4 Whether license was ever suspended or revoked following a hearing.

6.10.2.2 Additional information may be released pursuant to the Freedom of Information Act.

DIVISION OF PROFESSIONAL REGULATION

COUNCIL ON REAL ESTATE APPRAISERS

24 DE Admin. Code 2930

Statutory Authority: 24 Delaware Code,
Section 2934 (24 Del.C. 2934(a))

The Delaware Council on Real Estate Appraisers has proposed to revise provisions of its rules and regulations. The proposals are intended to eliminate the two year limitation on obtaining experience to qualify for licensure, clarify the responsibilities of licensees who collaborate with other licensees and licensees who supervise licensed trainees, and incorporate provisions of the Administrative Procedures Act and the Freedom of Information Act. The regulations provide for a supplement to be made available that explains the requirements for licensure determined by the Appraiser Qualifications Board that are incorporated under Delaware Law. The Inactive Status is eliminated.

A public hearing will be held on February 20, 2001 at 10:00 in Conference Room A on the second floor of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904 where members of the public can offer comments. Anyone wishing to receive a copy of the Proposed rules and regulations may obtain a copy from Dana Spruill, Administrative Assistant, Division of Professional Regulation, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Individuals may submit written comments at the above address. The final date for receipt of written comments will be at the public hearing.

The Council will consider promulgating the proposed rules and regulations at its regularly scheduled meeting following the conclusion of the public hearing.

Council on Real Estate Appraisers

- 1.0 Application for Appraiser License or Certificate
- 2.0 Appraiser Licensing and Certification
- 3.0 Examination
- 4.0 General Appraisal Practice
- 5.0 Temporary Practice & Reciprocity
- 6.0 Qualifying Mass Appraisal Experience
- 7.0 Standards of Appraisal Practice
- 8.0 Complaints; Hearing Procedures; Final Decisions
- 9.0 Public Disclosure
- 10.0 Change and Modification to Rules and Regulations
- 11.0 Severability

12.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**1.0 Application for Appraiser License or Certificate****1.1 Application**

1.1.1 A person who wishes to file an application for a real property appraiser license or certificate may obtain the required form upon request to the Council. In general, the form calls for information such as the applicant's name and address, the applicant's social security number, places of residence and employment, experience, education, and other information as may be necessary to identify the applicant and review the applicant's qualifications for licensure or certification.

1.2 Filing and Fees

1.2.1 Properly completed applications together with the appropriate fee(s) must be received in the Council's office prior to scheduling the examination.

1.2.2 A fee set by the Division of Professional Regulation will be charged for the following:

1.2.2.1 Initial application and licensure for appraiser trainee license

1.2.2.2 Initial application and licensure for licensed real property appraiser license

1.2.2.3 Initial application and certification for certified residential real property appraiser certificate

1.2.2.4 Initial application and certification for certified general real property appraiser certificate

1.2.2.5 Renewal fee

1.2.2.6 Duplicate license and certificate fee

~~1.2.2.7 Inactive status fee~~

1.2.2.8 Roster fee

~~1.2.2.9 Printing fee~~

1.2.2.10 Federal Appraiser Registry fee

1.2.2.11 Letter of Good Standing

12.2.12 Copies of the Uniform Standards of Professional Appraisal Practice

1.2.3 Fees shall be made payable to the "State of Delaware," and mailed to the Delaware Council on Real Estate Appraisers, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904. For further information, please contact the Administrative Assistant to the Council at (302) 739-4522.

2.0 Appraiser Licensing and Certification

2.1 Qualifications for Appraiser Licensure and Certification

2.1.1 Applicants for certification as a state certified general or residential real property appraiser ~~and for licensed real property appraiser must~~ shall satisfy the qualification requirements stated in 24 Del.C. §2934, which adopts by reference "Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, and any subsequent amendments thereto or any

regulations promulgated thereunder" and "qualification criteria established by the Appraiser Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto." A summary of the criteria set by the Appraiser Qualification Board (AOB) is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from the AOB whose address and website are provided on the Supplement.

2.1.2 Applicants for licensure as a State licensed real property appraiser shall satisfy the qualification criteria established by the Appraisal Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto. A summary of the criteria set by the Appraiser Qualification Board (AOB) is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from the AOB whose address and website are provided on the Supplement.

~~2.1.2~~ 2.1.3 Applicants for licensure as a state licensed appraiser trainee shall have successfully completed a minimum of 45 classroom hours of education on real estate matters satisfactory to the Council, of which fifteen (15) classroom hours shall be on the topic of the Code of Professional Ethics and Uniform Standards of Professional Appraisal Practice. satisfy the qualification criteria established by the Appraisal Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto. A summary of the criteria set by the Appraiser Qualification Board (AOB) is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from the AOB whose address and website are provided on the Supplement.

2.2 License and Certificate Renewal

2.2.1 In September of each odd numbered year, the Division of Professional Regulation will send renewal notices to the mailing address on file of all licensed and certified appraisers. Certificates and licenses will expire on October 31st of each odd numbered year.

2.2.2 As a condition of renewal, all licensees and certificate holders, either ~~active or inactive~~, resident or reciprocal, shall be required to satisfy the continuing education requirements set forth in rule 2.3 of this Section.

~~2.2.3 Any person who acts or professes to be a state licensed or state certified real property appraiser while their appraiser license or certificate has expired will be subject to disciplinary action and penalties as described in 24 Del.C. Ch. 29.~~

2.3 Continuing Education

2.3.1 As a prerequisite to renewal of a real property

appraiser license or certificate, the licensee or certificate holder shall present evidence satisfactory to the Council of having completed during the immediately preceding two (2) years, the number of classroom hours of instruction, approved by the Council as set by the Appraiser Qualifications Board (AQB) as from time-to-time amended, as provided by 24 Del.C. §2934(c).

2.3.2 As a prerequisite to renewal of a license, certificate and trainee license, a seminar dealing with updating of Uniform Standards of Professional Appraisal Practice (USPAP) or a seminar dealing with USPAP shall be required in each license period. A minimum of four (4) hours will be required. The seminars must be approved by the Council.

2.4 Inactive Status

~~2.4.1 A licensee or certificate holder may request to be placed on inactive status for a period not to exceed two (2) years. Such request shall be directed to the Council and shall be in writing. Upon written request to the Council, a licensee or certificate holder shall be placed on inactive status for a period not to exceed two (2) years. The Council may grant extensions if the licensee or certificate holder shows due cause.~~

~~2.4.2 A licensee or certificate holder on inactive status shall not be entitled to act as a state licensed or state certified real property appraiser. However, in order to continue to hold an appraiser license or certificate, a licensee or certificate holder on inactive status must renew his/her license or certificate, including payment of the prescribed renewal fee and completion of all continuing education.~~

~~2.4.3 A licensee or certificate holder on inactive status may request to be returned to active status at any time. Such request shall be directed to the Council and shall be in writing. Upon written request to the Council and payment of all necessary fees, a licensee or certificate holder on inactive status shall be returned to active status.~~

2.5 Expired License or Certificate

~~2.5.1 Expired real property appraiser licenses and certificates may be reinstated within twelve (12) months after expiration upon proper application and payment of the renewal fee plus a late filing fee as set by the Division of Professional Regulation.~~

~~2.5.2 Licenses and certificates expired for more than twelve (12) months may be considered for reinstatement upon proper application, payment of the renewal fee plus late filing fee, provision of proof of having obtained continuing education equal to the total number of classroom hours that would have been required had the license or certificate been continuously renewed, and successful completion of the examination as required in Section 3 herein. Further, the reinstatement application must meet the current requirements of the AQB for education and experience.~~

2.6 Payment of License and Certificate Fees

~~Checks in payment of real property appraiser license and certificate fees which are returned unpaid shall be considered cause for license or certificate denial, suspension, or revocation.~~

~~2.7~~ 2.4 Duplicate License or Certificate Fee

2.4.1 By submitting a written request to the Council and paying the appropriate fee as set by the Division of Professional Regulation, a licensee or certificate holder may obtain a duplicate real property appraiser license, certificate or pocket card to replace an original license, certificate or pocket card which has been lost, damaged, destroyed, or if the name of the licensee or certificate holder has been lawfully changed. An official copy (notarized) of a marriage license, divorce decree or court order of a name change must accompany a request for a change of name.

~~2.8~~ 2.5 Federal Appraiser Registry

Licensees and certificate holders are required to be enrolled in the federal roster or registry of state licensed and state certified real property appraisers. The fee established for that purpose shall be paid ~~annually~~ biennially by the licensee or certificate holder to the State of Delaware.

3.0 Examination

3.1 Examination

3.1.1 The Council shall review each application to determine whether the applicant is qualified to sit for the examination. Such review shall consider the applicant's education and whether the applicant has been convicted of a felony, substance abuse or fraud within the last five years preceding the date of application. If the applicant meets the education requirement for the license or certificate applied for and has not been convicted of a felony, substance abuse or fraud within the last five years preceding the date of application, the applicant shall be entitled to take the appropriate examination.

3.1.2 Applicants for licensure as a state licensed real property appraiser and for certification as a state certified residential or general real property appraiser shall successfully complete the examination as endorsed by the AQB and approved by the Council on Real Estate Appraisers. The prerequisites to sit for the applicable examination are completion of the education/classroom hour requirement and not having been convicted of a felony, substance abuse or fraud within the five years preceding the date of the application.

~~3.1.3 For the examination to be considered valid, the experience requirement must be satisfied within two (2) years of the date of successful completion of the examination. Should the experience requirement not be met within the two (2) year period, the examination will be considered invalid and it will be necessary to re-apply and pay the required fee as if no examination had been taken.~~

~~3.1.4~~ 3.1.3 The passing scores on the examinations shall be the scores recommended as passing by Assessment

Systems, Inc., the successor agency or company then contracted by the Division of Professional Regulation for administering the examination as endorsed by the Council on Real Estate Appraisers.

4.0 General Appraisal Practice Duties and Responsibilities of State Licensed Appraiser Trainees; Supervision of State Licensed Appraiser Trainees; Trainee License Renewals

4.1 Appraisal Office Administration Administrative Responsibilities

~~4.1.1 A certified or licensed appraiser shall be designated as the supervisory appraiser by each appraisal firm, each combined real estate brokerage and appraisal firm, and each branch office of such firms for which real estate appraisals are performed by:~~

~~4.1.1.1 Two (2) or more state licensed or state certified real property appraisers who are employed by or associated with the firm; or~~

~~4.1.1.2 Licensed appraiser trainees who are employed by or associated with the firm and who assist a state licensed or state certified real property appraiser in the performance of real estate appraisals.~~

~~4.1.2 The certified or licensed appraiser so designated shall be responsible for:~~

~~4.1.2.1 The proper display of licenses and certificates of all state licensed and state certified real property appraisers employed by or associated with that office of the firm, and ascertaining whether each licensee or certificate holder employed by or associated with the firm has complied with Rule 2.2 of these Rules and Regulations;~~

~~4.1.2.2 The proper notification to the Council of any change of business address or trade name of that office of the firm and the registration of any assumed business name adopted by the firm for its use;~~

~~4.1.2.3 The proper conduct of advertising of appraisal services by or in the name of the firm;~~

~~4.1.2.4 The property retention and maintenance of records relating to appraisals conducted by or on behalf of the firm;~~

~~4.1.2.5 The maintenance of a record for each of the firm's state licensed appraiser trainees that generally describes the nature and extent of assistance rendered in connection with each appraisal; and~~

~~4.1.2.6 The maintenance of a record for each of the firm's state licensed and state certified residential real property appraisers that generally describes the nature and extent of assistance rendered by the state licensed real property appraiser when assisting a state certified residential or general real property appraiser and any assistance rendered by the state certified residential real property appraiser when assisting a state certified general real property appraiser in performing an appraisal.~~

~~4.1.3 No licensee or certificate holder shall be so designated for more than one appraisal firm, combined real~~

~~estate brokerage and appraisal firm, or branch office of such firms.~~

~~4.1.4 Each certified or licensed appraiser so designated shall notify the Council in writing of any change in his/her status of the certified or licensed appraiser so designated within ten (10) days following the change.~~

~~4.1.5 Each certified or licensed appraiser so designated shall be located at the office for which he/she is responsible for direct and personal supervision thereof.~~

~~4.1.1 A State licensed real property appraiser shall utilize the term "State licensed real property appraiser"; a State certified residential real property appraiser shall utilize the term "State certified residential real property appraiser"; and a State certified general real property appraiser shall utilize the term "State certified general real property appraiser" when performing and signing appraisals. The terms "certified" or "licensed" shall not be used in connection with appraisals or appraisers in any other form. A State licensed appraiser trainee shall use the term "State licensed appraiser trainee" and shall only co-sign appraisals along with a State licensed or State certified real property appraiser. Approved abbreviations are as follows:~~

~~DE Cert Gen followed by the certification number,~~

~~DE Cert Res followed by the certification number,~~

~~DE Lic Appr followed by the license number,~~

~~DE Appr Trainee followed by the license number.~~

~~4.1.2 The real property appraiser license or certificate of a State licensed or State certified real property appraiser shall be prominently displayed at the appraiser's place of business.~~

~~4.1.3 The biennial license or certificate renewal pocket card issued by the Council to each State licensed or State certified real property appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification.~~

~~4.1.4 When advertising or otherwise holding himself/herself out as a real property appraiser, a State licensed real property appraiser shall identify himself/herself as a "State licensed real property appraiser." A State certified residential real property appraiser shall identify himself/herself as a "State certified residential real property appraiser". A State certified general real property appraiser shall identify himself/herself as a "State certified general real property appraiser."~~

~~4.1.5 Licensure or certification as a real property appraiser is granted only to persons and does not extend to a business entity. A State licensed or State certified real property appraiser doing business as a partnership, association, corporation, or other business entity shall not represent in any manner to the public that the partnership, association, corporation, or other business entity is either licensed or certified by the State of Delaware to engage in the business of real estate appraising.~~

~~4.1.6 All licensees and certificate holders shall~~

notify the Council in writing of each change of business address, residence address, or trade name within ten (10) days of said change. The address shall be sufficiently descriptive to enable the Council to correspond with and locate the licensee or certificate holder.

4.1.7 Each written appraisal report prepared by or under the direction of a State licensed or State certified real property appraiser shall bear the signature of the State licensed or State certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the appropriate title such as "State licensed appraiser trainee" (as co-signer only), "State licensed real property appraiser," "State certified residential real property appraiser," or the designation "State certified general real property appraiser," or the approved abbreviations as specified in Rule 4.1.1. Said certified or licensed appraiser shall be fully responsible for the content of the report prepared under his or her direction. Where applicable, each appraisal report shall also indicate whether or not the State licensed or State certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

4.1.8 Each State certified or State licensed appraiser shall be responsible for the proper maintenance and retention of the appraisal records.

4.2 ~~Supervision of State Licensed Appraiser Trainees~~ Responsibilities of Supervisors of State Licensed Trainees

4.2.1 A state licensed appraiser trainee may assist in the completion of an appraisal report, including an opinion of value, and may co-sign an appraisal, provided that he/she is actively and personally supervised by a state certified or licensed real property appraiser, provided that the appraisal report is reviewed and signed by the state certified or licensed real property appraiser, and provided that the licensed or certified appraiser accepts total responsibility for the appraisal report.

4.2.2 A state licensed or state certified real property appraiser may employ a person(s) as a state licensed appraiser trainee(s) to assist in the performance of real estate appraisals, provided that the state licensed or state certified real property appraiser:

4.2.2.1 ~~Actively and personally supervises~~
Provides direct supervision of the State licensed appraiser trainee as defined in the Uniform Standards of Professional Appraisal Practice (USPAP); "Direct Supervision" means to:

~~4.2.5.1.1~~ 4.2.2.1.1 personally inspect with the trainee the interior and exterior of each property appraised;

~~4.2.5.1.2~~ 4.2.2.1.2 personally review each appraisal report prepared by the trainee;

~~4.2.5.1.3~~ 4.2.2.1.3 accept full responsibility for the report;

~~4.2.5.1.4~~ 4.2.2.1.4 assign work to the trainee only if the trainee is competent to perform such work; and

~~4.2.5.1.5~~ 4.2.2.1.5 approve and sign the report as being independently and impartially prepared and in compliance with USPAP, these rules and regulations, and applicable statutory requirements;

4.2.2.2 Reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a state licensed appraiser trainee is utilized;

4.2.2.3 Complies with all provisions of ~~Rule 4.8 of this Section~~ 4.1.7 regarding appraisal reports; ~~and if applicable,~~

~~4.2.2.4 Prepares and furnishes to the certified or licensed appraiser designated under 4.1, and to each state licensed appraiser trainee whose services were utilized in connection with the appraisal, a report on a form prescribed by the Council describing the nature and extent of assistance rendered by the state licensed appraiser trainee and places a copy of such report in the supporting file for the appraisal. Reviews and approves an trainee's experience log maintained pursuant to 4.3.2.2. The supervisor shall make available to the trainee a copy of any appraisal report that the trainee signed that is requested for review by the Council;~~

~~4.2.5.5~~ 4.2.2.5 Supervises no more than three (3) trainees whose application for exemption has not been approved by the Council pursuant to Rule ~~4.2.5.1.1~~ 4.2.3;

~~4.2.5.6~~ 4.2.2.6 Signs an affidavit affirming that he/she is a State licensed or certified Real Property Appraiser and that he/she shall comply with all rules and policies regarding supervisory appraisers; and

4.2.2.7 Immediately advises the Council in writing when the certified or licensed appraiser is no longer supervising the trainee. The writing shall include the last known address of the appraiser trainee along with a copy of the letter from the supervisor to the trainee advising the trainee that his/her employment has been terminated or the letter of resignation from the trainee to the supervisor, whichever is applicable.

4.2.3 After the trainee successfully completes seventy-five (75) hours of education on real estate matters satisfactory to the Council, and has obtained two hundred fifty (250) hours of residential appraising or one thousand (1,000) hours of non-residential appraising experience as defined by the Appraisal Qualifications Board in its appraisal qualifications criteria, the supervisor and the trainee may jointly apply to the Council on a form provided by the Council, for an exemption that would allow the supervisor to sign the report without inspecting the property as provided by Rule ~~4.2.2.1~~ 4.2.2.1.1, provided the trainee is competent to perform the inspection.

4.3 ~~Responsibilities of State Licensed Appraiser Trainees~~

~~4.2.3~~ 4.3.1 All appraiser trainees must be licensed

as required under 24 Del.C. Ch. 29.

~~4.2.4 The holder of a real property appraiser trainee license issued pursuant to 24 Del.C. §2934(d) and Rule 2.1.2 shall have the following duties and responsibilities:~~

~~4.3.2 A State licensed trainee may assist in the performance of real estate appraisals provided that:~~

~~4.2.4.1 4.3.2.1 The trainee shall only work under the direct supervision of one or more a State licensed or State certified real property appraiser(s); an individual who is no longer supervised shall not engage in the act of appraising until a new license is issued showing a new supervisor;~~

~~4.2.4.2 4.3.2.2 The trainee shall maintain an appraisal experience log on a form provided by the Council and certified by the supervising appraiser;~~

~~4.2.4.3 4.3.2.3 The trainee shall inspect the property and participate in the appraisal process in order to sign the report appraisal and to receive experience credit for the hours spent. The report appraisal shall be signed by the trainee as follows:~~

Assisted by:

_____, Trainee

Name: _____

License Number: _____

~~4.2.4.4 4.3.2.4 The trainee shall ensure that the experience log is available at all times for inspection by the Council; and~~

~~4.2.4.5 4.3.2.5 When performing appraisal assignments, the trainee shall carry on his/her person the license issued by the Council.~~

~~4.2.5 A supervising appraiser must be a State licensed or state certified real property appraiser, and shall have the following duties and responsibilities:~~

~~4.2.5.1 The supervisor shall at all times be responsible for and provide direct supervision of the work performed by the trainee in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). "Direct Supervision" means to:~~

~~4.2.5.1.1 personally inspect with the trainee the interior and exterior of each property appraised;~~

~~4.2.5.1.2 personally review each appraisal report prepared by the trainee;~~

~~4.2.5.1.3 accept full responsibility for the report;~~

~~4.2.5.1.4 assign work to the trainee only if the trainee is competent to perform such work; and~~

~~4.2.5.1.5 approve and sign the report as being independently and impartially prepared and in compliance with USPAP, these rules and regulations, and applicable statutory requirements.~~

~~4.2.5.2 At least once a month, the supervisor shall sign the experience log required to be kept by the trainee and shall affix his/her license or certification number.~~

~~4.2.5.3 The supervisor shall make available to the trainee a copy of any appraisal report that the trainee signed that is requested for review by the Council.~~

~~4.2.5.4 After the trainee successfully completes seventy five (75) hours of education on real estate matters satisfactory to the Council, and has obtained two hundred fifty (250) hours of residential appraising or one thousand (1,000) hours of non-residential appraising experience as defined by the Appraisal Qualifications Board in its appraisal qualifications criteria, the supervisor and the trainee may jointly apply to the Council on a form provided by the Council, for an exemption that would allow the supervisor to sign the report without inspecting the property as provided by Rule 4.2.2.1, provided the trainee is competent to perform the inspection.~~

~~4.2.5.5 The supervisor shall not supervise more than three (3) trainees whose application for exemption has not been approved by the Council pursuant to Rule 4.2.5.1.1.~~

~~4.2.5.6 The supervisor must sign an affidavit affirming that he/she is a state licensed or certified Real Property Appraiser and that he/she shall comply with all rules and policies regarding supervisory appraisers.~~

~~4.2.5.7 The supervisor shall comply with all provisions of Rule 4.8 regarding appraisal reports.~~

~~4.2.6 Pursuant to Rule 2.3 a Real Property Appraiser Trainee's licenses may be renewed only two (2) times.~~

~~4.2.7 When an appraiser trainee is discharged or terminates his/her employment with a licensed or certified real estate appraiser by such licensed or certified real estate appraiser shall immediately notify the Council in writing of such termination. At the time of the written notification to the Council, the licensed or certified appraiser shall address a communication to the last known address of such appraiser trainee, which communication shall advise the appraiser trainee that his/her employment has been terminated. A copy of the communication to the appraiser trainee shall accompany the notification to the Council. No such appraiser trainee shall perform any of the acts contemplated by this Chapter or engage directly or indirectly in the business of an appraiser trainee until the Council shall issue a new license showing change of employment and business location.~~

~~4.3 Supervision of Licensed or Certified Residential Appraisers and Trainees~~

~~4.3.1 When a state licensed real property appraiser assists a state certified residential or general real property appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state certified real property appraiser, the state certified real property appraiser shall:~~

~~4.3.1.1 Actively and personally supervise the state licensed real property appraiser;~~

4.3.1.2— Review the appraisal report and supporting data used in connection with the appraisal;

4.3.1.3— Comply with all provisions of Rule 4.8 of this Section regarding appraisal reports; and if applicable,

4.3.1.4— Prepare and furnish to the certified or licensed appraiser designated under 4.1, and to each state licensed real property appraiser whose services were utilized in connection with the appraisal, a report on a form prescribed by the Council describing the nature and extent of assistance rendered by the state licensed real property appraiser and place a copy of such report in the supporting file for the appraisal.

4.3.2— When a state certified residential real property appraiser assists a state certified general real property appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state certified general real property appraiser, the state certified general real property appraiser shall perform those supervisory acts set forth in 4.2.1 of this Rule with regard to the activities of the state certified residential real property appraiser.

4.4 Use of Titles

4.4.1— Licensure or certification as a real property appraiser is granted only to persons and does not extend to a business entity.

4.4.2— A state licensed real property appraiser shall utilize the term “state licensed real property appraiser”; a state certified residential real property appraiser shall utilize the term “state certified residential real property appraiser”; and a state certified general real property appraiser shall utilize the term “state certified general real property appraiser” when performing and signing appraisals. The terms “certified” or “licensed” shall not be used in connection with appraisals or appraisers in any other form. A state licensed appraiser trainee shall use the term “state licensed appraiser trainee” and shall only co-sign appraisals along with a state licensed or state certified real property appraiser. Approved abbreviations are as follows:

DE Cert Gen followed by the certification number,

DE Cert Res followed by the certification number,

DE Lie Appr followed by the license number,

DE Appr Trainee followed by the license number.

4.5 Display of Licenses and Certificates

4.5.1— The real property appraiser license or certificate of a state licensed or state certified real property appraiser shall be prominently displayed at the appraiser’s place of business. Pursuant to Rule 4.1 the license or certificate of the supervisory appraiser and the license or certificate of each licensee or certificate holder engaged in real estate appraisal activities at the office of the supervisory appraiser shall be prominently displayed at such office.

4.5.2— The biennial license or certificate renewal pocket card issued by the Council to each state licensed or state certified real property appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification.

4.6 Advertising

4.6.1— When advertising or otherwise holding himself/herself out as a real property appraiser, a state licensed real property appraiser shall identify himself/herself as a “state licensed real property appraiser.” A state certified residential real property appraiser shall identify himself/herself as a “state certified residential real property appraiser.” A state certified general real property appraiser shall identify himself/herself as a “state certified general real property appraiser.”

4.6.2— A state licensed or state certified real property appraiser doing business as a partnership, association, corporation, or other business entity shall not represent in any manner to the public that the partnership, association, corporation, or other business entity is either licensed or certified by the State of Delaware to engage in the business of real estate appraising.

4.7 Change of Name or Address

4.7.1— All licensees and certificate holders shall notify the Council in writing of each change of business address, residence address, or trade name within ten (10) days of said change. The address shall be sufficiently descriptive to enable the Council to correspond with and locate the licensee or certificate holder.

4.8 Appraisal Reports

4.8.1— Each written appraisal report prepared by or under the direction of a state licensed or state certified real property appraiser shall bear the signature of the state licensed or state certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation “state licensed appraiser trainee” (as co-signer only), “state licensed real property appraiser,” “state certified residential real property appraiser,” or the designation “state certified general real property appraiser,” or the approved abbreviations as specified in Rule 4.1. Where applicable, each appraisal report shall also indicate whether or not the state licensed or state certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

4.8.2— When a state licensed or certified real property appraiser signs an appraisal report prepared by another person, including a subcontractor acting under the direction or supervision of the appraiser, such appraiser shall be fully responsible for the content of the report.

5.0 Temporary Practice & Reciprocity

5.1 Temporary Practice

The Council may grant temporary licensing or certification privileges in accordance with 24 Del.C. §2935(a).

5.2 Reciprocity

The Council may grant a reciprocal license in accordance with 24 Del.C. §2935(b) to applicants certified or licensed in another state whose requirements for certification or licensure are substantially equivalent to the State of Delaware without being registered with and duly licensed or certified by the Council on Real Estate Appraisers.

6.0 Guidelines for Qualifying Mass Appraisal Experience

6.1 Qualifying Mass Appraisal Experience

6.1.1 The Delaware Council on Real Estate Appraisers (“Council”) has developed an application for ad valorem tax assessors to apply mass appraisal experience toward licensure or certification. The application is different from the application for independent fee appraisers, and, therefore, the Council has prepared this document as supplemental explanation of the mass appraisal experience guidelines set forth in the Tax Assessor’s Application for Real Estate Appraiser License or Certificate. The State of Delaware under 24 Del.C. §~~2932~~ 2934(c), sets forth specifically:

~~6.1.1.1~~ “(c) The Council on Real Estate Appraisers is required to include in its regulations educational experience and testing requirements for licensure and certification of real estate appraisers that ensure protection of the public interest. Educational experience and testing requirements for certified and licensed appraisers must specifically meet the criteria established under Title XI of the Financial Institutions Reform Recovery Act of 1989, public Law 101-73 ~~42~~ U.S.C. & ~~1833 a et seq.~~, and any subsequent amendments thereto or any regulations promulgated thereunder. (67 Del Laws, C. 381 ss1; 68 Del. Laws, c. 140, ss 5-7, 15.)”

6.1.2 Further, The Appraiser Qualifications Board of the Appraisal Foundation has issued as additional explanation “Interpretations/Clarifications” to accompany the qualifying criteria for appraiser licensure and certification, which specifically sets forth:

~~6.1.2.1~~ “Experience credit should be awarded to ad valorem appraisers who demonstrate that they (1) use techniques similar to those used by appraisers to value properties and (2) effectively use the appraisal process.

6.1.3 Components of the mass appraisal process that should be given credit are highest and best use analysis, model specification (developing the model), and model calibration (developing adjustments to the model). Other components of the mass appraisal process, by themselves, shall not be eligible for experience credit.

6.1.4 Mass appraisals shall be performed in

accordance with USPAP Standard 6.” In order to evaluate the experience qualifications of ad valorem tax assessors with mass appraisal experience, the Council will review such applications considering the above - mentioned criteria, and shall review work samples for compliance with USPAP Standard 6. It is important to note that any individual appraisal reports prepared in conformity with USPAP Standards 1 and 2 are fully creditable as appraisal experience using the hourly scheme set forth in the category for Full Appraisals in the Real Property Tax Assessor’s Application for Real Estate Appraiser License or Certificate. Such reports are often prepared by ad valorem appraisers for defense of value work. Ad valorem appraisers are encouraged to apply for experience credit for full appraisals as well as for mass appraisal experience. An hour of experience is defined as actual verifiable time spent performing tasks in accordance with the Council Rules and Regulations. USPAP Standard 6 sets forth in detail the required work and the reporting of that work for ad valorem tax purposes. Unlike the fee appraiser who prepares and signs a report for each value estimate, the ad valorem appraiser typically prepares analyses and reports that support the appraisals for groups of properties. These efforts are focused on the specification and calibration of models (validation schedules) for these groups of properties.

6.1.5 Mass appraisal experience hours are awarded for completing appraisals pursuant to the USPAP Standard 6. Currently, a minimum of 2,000 hours ~~over a two (2)-year period~~ is required for all applicants for licensure ~~or certification~~. A minimum of 1,000 a minimum of 2,500 hours is required for all applicants for certified residential, and a minimum of 3,000 hours is required for all applicants for certified general, of which a minimum of 1000 hours must be obtained in non-residential valuation if applying for the General Certification. The State of Delaware has the same qualification criteria as published by the Appraiser Qualifications Board of the Appraisal Foundation.

6.1.6 As stated in the Real Property Tax Assessor’s Application for Real Estate Appraiser License or Certificate, applicants seeking mass appraisal experience credit must demonstrate their experience using one of the following options:

6.1.6.1 Develop the mass appraisal system (model specification and calibration that includes highest and best use analysis) or;

6.1.6.2 Adjust an existing mass appraisal system to local market conditions (model calibration that includes highest and best use analysis).

~~6.1.7~~ ~~6.1.6.2.1~~ Data collection for purposes of mass appraisal, defined as the on-site collection of property characteristics, is not by itself creditable as appraisal experience. However, as part of mass appraisal model specification and/or calibration, the applicant accepts responsibility for the accuracy of market (sales) data used to

develop and/or calibrate the models. Therefore, it is important that the applicant have a working familiarity with the range of properties in the sales sample and thus creditable experience is allowed for sales verification work in conjunction with the mass appraisal model specification/calibration process.

~~6.1.8~~ ~~6.1.6.2.2~~ The applicant must have a documented data collection manual that specifies how each property characteristic was measured. For each property characteristic that influences the final value for any property, a complete specification of the variable must be available in the mass appraisal model (schedule) documentation. This documentation must detail how each property characteristic influences value and it must provide a basis in terms of market evidence for using these characteristics.

~~6.1.9~~ ~~6.1.6.2.3~~ If the applicant is using an existing mass appraisal system, either mass appraisal vendor supplied or a commercial cost service, documentation must exist which supports how the valuation system was calibrated to local market conditions. If the cost approach is used, documentation must exist which illustrates the extraction of depreciation schedules from local market analysis.

~~6.1.10~~ ~~6.1.6.2.4~~ If the applicant develops the mass appraisal model (schedule) specification, evidence derived directly from the local market must be available that supports the use of each property characteristic. For property characteristics included in the model that have a marginal influence on value (items generally included for public relations purposes), such items should be specifically identified and their contribution to value detailed.

6.2 Mass Appraisal Experience Log

6.2.1 Applicants seeking mass appraisal experience credit must complete the ~~attached~~ Mass Appraisal Experience Log on a form approved by the Council. Use the key on the Mass Appraisal Experience Log form for creditable experience. The information included in each column is as follows:

~~6.2.1.1~~ ~~Date of Activity~~ State the specific dates of the activity. If a range of dates is appropriate, be sure that the activity occurred continuously over that period. (Example: March 23-24, 1992)

~~6.2.1.2~~ ~~Value Date~~: Applicants applying for ad valorem, mass appraisal experience completed in Delaware must list the month and year of the valuation date.

~~6.2.1.3~~ ~~Property Class~~: Use the key on the form for identifying the property type.

~~6.2.1.3.1~~ ~~Residential (less than 5 units)~~

~~6.2.1.3.2~~ ~~Multi-Family (2-4 units)~~

~~6.2.1.3.3~~ ~~Commercial~~

~~6.2.1.3.4~~ ~~Industrial~~

~~6.2.1.3.5~~ ~~Special purpose properties~~

~~6.2.1.4~~ ~~City/Town~~: Municipality where the mass appraisal work was used to generate appraisals.

~~6.2.1.5~~ ~~Type of Activity~~: Use the key on the

form for identifying the property type. The creditable types of activity are listed as follows:

~~6.2.1.5.1~~ ~~Highest and Best Use Analysis~~—Detail analysis used to determine highest and best use of a site both as if vacant and as developed.

~~6.2.1.5.2~~ ~~Model Specification~~—Development of the valuation schedules. Such documentation should include the approach to value (cost, market or income), identification of how factors (property characteristics) were selected, the quantification of these factors (dollar or percentage adjustments) and how the relationship among the factors was determined.

~~6.2.1.5.3~~ ~~Model Calibration~~—Adjusting the valuation schedules using the generally accepted techniques, such documentation should include any statistical analyses employed to set unit prices and percentage adjustments.

~~6.2.1.6~~ ~~Hours~~: Only the actual working hours on the associated activity are creditable. Only time specifically spent on the activity is creditable. Working full-time on a revaluation project does not automatically translate into 40 hours per week of creditable appraisal experience. The applicant must be precise in detailing the activities and when they took place. In evaluating the number of hours of credit requested, any unusual number of hours claimed for a particular activity may result in further review of the supporting documentation. Note That Data Collection and Field Review Activities by Themselves Are Not Creditable Experience.

~~6.2.1.7~~ ~~Position Title~~: List your position at the time of activity.

~~6.2.1.8~~ ~~Documentation Location~~: State the physical location of the documentation which details each activity for which experience credit is requested. It is advisable to secure copies of any documentation not in your possession prior to applying for experience credit. The Applicant Is Responsible for the Production of this Documentation. Therefore, it is important that the applicant claim credit only for the activities for which documentation can be immediately produced.

~~6.2.1.9~~ Upon request the applicant may be asked to submit sworn statements from witnesses who can verify his/her claimed experience.

7.0 Standards of Appraisal Practice

7.1 Appraisal Standards

7.1.1 In performing the acts and services of a state licensed or state certified real property appraiser, every appraiser trainee, state licensed and state certified real property appraiser shall comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" and any subsequent amendments thereto, promulgated by the Appraisal Standards Board of the Appraisal Foundation or its successor organization, which

standards are hereby adopted by reference.

7.1.2 Copies of the "Uniform Standards of Professional Appraisal Practice" are available upon request to The Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900 Washington, D.C. 20005-3517 and are made available by the Council from time-to-time.

8.0 Complaints and Hearing Procedures; Final Decisions

8.1 Complaints

8.1.1 The Council incorporates by reference the procedures for investigation of complaints by the Division of Professional Regulation as set forth in 29 Del.C. §8810 8807.

8.2 Hearing Procedures

8.2.1 All hearings shall be in accordance with the Administrative Procedures Act, 29 Del.C. §§10121-10129.

8.2.2 ~~At least 30 days before the date fixed for the hearing, the Council shall cause a copy of the complaint, together with a notice of the time and place fixed for the hearing, to be personally delivered or served upon the accused real estate appraiser. In cases where the accused real estate appraiser cannot be located or where personal service cannot be effected, substitute service shall be effected in the same manner as with civil litigation. The accused real estate appraiser shall also be advised of his/her rights, as follows:~~

8.2.2.1 ~~That he/she has the right to appear personally and to be represented by counsel;~~

8.2.2.2 ~~That he/she has the right to cross-examine any witness who may appear against him/her and produce witnesses and evidence in his/her own defense; and~~

8.2.2.3 ~~That he/she is entitled to the subpoena power of the Council to ensure the attendance of any witnesses he or she intends to call. If the accused wishes to avail himself/herself of the Council's subpoena power, he/she must submit to the Council, in writing and no later than fifteen (15) days prior to the date of the hearing, the names and addresses of the witnesses whose attendance he/she wishes the Council to compel.~~

8.2.3 ~~All hearings shall be informal and shall not be bound by the formal rules of evidence. All testimony shall be taken under oath. All testimony which the Council determines to be relevant, reliable, and probative and not unduly repetitious, shall be admissible. Objections to the admission or exclusion of evidence shall be brief and shall state the grounds for objection. Any offer of proof which is made in connection with the objection to the admission of evidence shall consist of a statement of that which the offeror contends would be abused by such evidence. Where the offered evidence concerns a document, a copy of the same shall be marked for identification.~~

8.2.4 ~~All testimony shall be recorded either by a court reporter or by means of an electronic recording device. In the event electronic means are used, the electronic record~~

~~shall be preserved until after the time for appeal of the Council's decision has expired with no appeal being taken. The Council shall maintain a permanent written record of all hearings in the form of official minutes.~~

8.2.5 ~~Hearings shall be conducted in the following manner:~~

8.2.5.1 ~~The Council shall open the hearing with a brief statement of the purpose of the hearing.~~

8.2.5.2 ~~The Council shall then receive the evidence which is offered to support the charges which have been proffered against the accused real estate appraiser.~~

8.2.5.3 ~~The accused real estate appraiser shall be afforded an opportunity to cross-examine any witness who may testify against him/her.~~

8.2.5.4 ~~After all of the evidence which supports the charges has been received, the accused real estate appraiser may present a brief statement of that which he/she intends to establish.~~

8.2.5.5 ~~The accused real estate appraiser may then testify in his/her own behalf and present witnesses and evidence in his/her defense.~~

8.2.5.6 ~~All witnesses who appear before the Council shall be subject to examination by the Council.~~

8.3 Transcripts

~~Transcripts of the proceedings may be obtained by the accused real estate appraiser or any other person interested in the hearing upon written request and payment of the costs involved in preparing the same.~~

8.4 Return of Documentary Evidence

~~Any documentary evidence which is submitted to the Council shall be returned to the owner thereof upon written request for the return of such documents within 120 days of the Council's final decision. Otherwise, the Council may dispose of such evidence at its discretion.~~

8.5 Final Decision

8.5.1 ~~If, on the basis of the evidence presented at the hearing, the Council finds, by a majority vote of all members, that the complaint has merit, the Council shall take such action permitted under Subchapter II, 24 Del.C. Ch. 29 as it deems necessary. The Council's decision shall be in writing and shall include:~~

8.5.1.1 ~~A brief statement of the evidence presented;~~

8.5.1.2 ~~The Council's findings of fact;~~

8.5.1.3 ~~What record evidence these findings are based upon, and~~

8.5.1.4 ~~The Council's conclusions of law.~~

8.5.2 ~~A copy of the Council's decision shall be mailed immediately by certified mail, return receipt requested, to the accused real estate appraiser. The Council's decision shall become effective on the 30th day after the date it is mailed or served on the accused real estate appraiser, unless there is a stay pending appeal by the accused real estate appraiser ordered by the Superior Court.~~

9.0 Public Disclosure

9.1 Public Notice

9.1.1 All meetings shall be convened in compliance with the Freedom of Information Act (FOIA) in 29 Del. C. Chapter 100.

~~Public notice of all meetings shall be given seven (7) days prior to all meetings.~~

~~9.1.1 The notice will be posted at the Division of Professional Regulation Office in Dover, Delaware, according to the Freedom of Information Act.~~

~~9.1.2 Said notice shall include the agenda, as well as the date, time, and location of each meeting.~~

9.2 Meeting Minutes

Minutes shall be kept of all meetings in accordance with the Freedom of Information Act.

9.2.1 Said minutes shall include a record of those present.

9.2.2 The minutes shall also include a record by individual members, on each vote taken, as well as any action agreed upon.

9.2.3 It shall be the responsibility of the Council's Administrative Assistant to prepare said minutes and keep a copy on file with the Division of Professional Regulation.

9.3 Council Records

9.3.1 It shall be the responsibility of the Council's Administrative Assistant to ~~safeguard~~ maintain the Council's records and to make them accessible to the general public.

9.3.2 No citizen of the State of Delaware shall be denied reasonable access to the public records of the Council. Copies of records may be obtained from the Administrative Assistant at a cost per page as established by the Division.

9.3.3 The Council shall not be obligated to disclose to the general public any matter which intrudes upon an individual's personal or private affairs which is not a public record in which the public has not legitimate interest. Records will be open to the public in reference to the Freedom of Information Act.

10.0 Change and Modification to Rules and Regulations

10.1 ~~Changes/Modifications~~ The Council may, change or modify these Rules and Regulations ~~as dictated by the evolution of appraisal practice after providing for the Public Notice/Hearing as required, if any.~~ as provided in 29 Del. C. §§10111-10119.

11.0 Severability

11.1 ~~Severability~~ If any part of these rules and regulations is held invalid, unconstitutional or otherwise contrary to law, then it shall be severable and the remaining portions hereof shall remain and continue in full force and effect.

12.0 Voluntary Treatment Option for Chemically

Dependent or Impaired Professionals

12.1 If the report is received by the chairperson of the regulatory ~~Board~~ Council, 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~~ Council, or that chairperson's designate or designates.

12.2 The chairperson of the regulatory ~~Board~~ Council 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.

12.3 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~~ Council chairperson or that chairperson's designate(s).

12.4 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~~ Council 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~~ Council.

12.5 Failure to cooperate fully with the participating ~~Board~~ Council 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~~ Council 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.

12.6 The Voluntary Treatment Option may require a

regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

12.6.1 Entry of the regulated professional into a treatment program approved by the participating Board Council. Board Council approval shall not require that the regulated professional be identified to the Board Council. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

12.6.2 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 Council 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 Council 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.

12.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

12.6.4 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 Council as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board Council in addition to the administrative costs associated with the Voluntary Treatment Option.

12.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's Council'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.

12.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

12.7 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 Council 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.

12.8 The participating Board's Council'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.

12.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

12.10 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 Council shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

12.11 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.

12.12 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 Council'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 EXAMINERS OF PSYCHOLOGISTS**

24 DE Admin. Code 3500

Statutory Authority: 24 Delaware Code,
Section 3506(a) (24 **Del.C.** §3506(a))

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 3506(a)(1) and (4), the Delaware Board of Examiners of Psychologists proposes to revise its rules and regulations. These revisions are to clarify the acceptable passing score on the EPPP examination for various examination administrations, and to implement new computer based testing procedures established by the Association of State and Provincial Psychology Boards for administration of the Examination for Professional Practice in Psychology.

A public hearing will be held on the proposed Rules and Regulations on **Monday, February 5, 2001 at 9:00 a.m.** in the Second Floor Conference Room A 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 Gayle Franzolino 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 Gayle Franzolino at the above address or by calling (302) 739-4522, extension 220.

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

Board of Examiners of Psychologists

- 1.0 General Rules and Regulations
- 2.0 Official Board Office
- 3.0 Meetings of the Board
- 4.0 Officers of the Board
- 5.0 Procedures for Licensure
- 6.0 Evaluation of Credentials
- 7.0 Supervised Experience
- 8.0 Failure to Pass Examination
- 9.0 Psychological Assistants
- 10.0 Continuing Education
- 11.0 Professional Conduct
- 12.0 Complaint Procedures
- 13.0 License Renewal
- 14.0 Procedures for Licensure Applicable to Full-Time Faculty Members in a Nationally Accredited Doctoral Level Clinical Training Program in the State of Delaware.
- 15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 General Rules and Regulations

The Board of Examiners of Psychologists has been established under the 24 **Del.C.** Ch. 35, and current amendments to that Law. Within the framework of the Law, the Board has the responsibility for interpreting and implementing the legal provisions and requirements of the Law through the establishment of operating Rules and Regulations. The Board and the public may propose changes in the Rules and Regulations in accordance with the Administrative Procedures Act, 29 **Del.C.** Ch. 101.

2.0 Official Board Office

The official office of the Board of Examiners shall be in Dover in the Division of Professional Regulation and all correspondence must be addressed to this office in written form before official action can be taken. In addition, the

Division of Professional Regulation will provide an Administrative Assistant who will take notes at Board meetings, keep the records for the Board, and serve as a liaison between the Board and members of the public who have questions for the Board. The Division of Professional Regulation will also set fees to defray the cost of regulation.

3.0 Meetings of the Board

The Board will hold such meetings during the year as it may deem necessary to review licensure applications and psychological assistant applications, evaluate continuing education, hold disciplinary hearings, or conduct other Board business. Either the President, or the majority of the Board may call a Board meeting. The Division of Professional Regulation, Board members, and the public shall be notified of the meeting agenda, time and location in accordance with the Freedom of Information Act.

4.0 Officers of the Board

The Board elects its own officers at the first meeting of each calendar year. The President of the Board sets the agendas of the meetings, chairs meetings, and represents the Board at state regulatory meetings, the American Association of State and Provincial Psychology Boards, and other organizations that may interface with the Board unless someone else is designated to attend in place of the President. The Vice President or Secretary acts for the President in the President's absence. The Secretary of the Board, in conjunction with the Administrative Assistant from the Division of Professional Regulation, is responsible for taking care of Board correspondence.

5.0 Procedures for Licensure

5.1 Application - Initial Licensure

An applicant who is applying for licensure as a psychologist shall submit evidence showing that he/she meets the requirements of 24 **Del.C.** §3508. The applicant must submit the following:

5.1.1 An application for licensure, which shall include:

5.1.1.1 Academic credentials documented by official transcripts showing completion of an educational program meeting the requirements of 24 **Del.C.** §3508(a)(1).

5.1.1.2 Supervised experience documented by having each supervisor complete a Supervisory Reference Form.

5.1.1.3 Evidence that the applicant passed the written "Examination for Professional Practice in Psychology", developed by the Association of State and Provincial Psychology Boards (ASPPB), by achieving the passing score recommended by the ASPPB ~~at the time of the application for licensure.~~ for that particular examination (computer or paper) administration. Candidates who are not licensed in any other state must have passed the written

examination within five (5) years of application for licensure in Delaware. Applicants who have not taken the examination must submit all other required documents to the Board for review prior to sitting for the examination. Only those applicants the Board determines are otherwise eligible for Delaware licensure shall be approved to sit for the examination, subject to the administration policies and procedures of the ASPPB. After sitting for the examination, applicants must supplement their application materials by submitting evidence of their passing score as recommended by the ASPPB.

See 3 DE Reg 1067 (2/1/00)

5.1.1.4 Verification that the applicant has no past or pending disciplinary proceedings. [24 Del.C. §3508(a)(4)]

5.1.1.5 The application shall not be considered complete until all materials are received by the Board for review at an officially scheduled meeting. The applicant will have twelve (12) months from the date of initial submission of the application and fee to complete the application process.

5.1.2 Completed certification form. The applicant will be notified, once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

5.2 Application - By Reciprocity

An applicant who is applying for licensure as a psychologist by reciprocity, as defined in 24 Del.C. §3511, shall submit evidence that he/she meets the following requirements:

5.2.1 An application for licensure, which shall include:

5.2.1.1 Evidence that the applicant is licensed or certified in another state and that the applicant has practiced continuously, as a doctoral-level psychologist, in good standing in that jurisdiction for two (2) years.

5.2.1.2 Evidence that the applicant passed the written Examination for Professional Practice of Psychology (EPPP). The Board shall accept the passing score recommended by the ASPPB for that particular examination (computer or paper) administration, a score of 70% or better, or, for examinations taken prior to 1992, the Board shall accept either the ASPPB recommended passing score or the minimum passing score accepted by the Delaware Board in the year the examination was take, whichever was lower.

See 4 DE Reg. 979 (12/1/00)

5.2.2 Completed certification form. The applicant will be notified once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

5.3 Computer Based Testing Procedures¹

5.3.1 The EPPP will be offered by computerized delivery beginning in 2001. An applicant for examination

shall complete an application for computer based-testing, available from the Board.

5.3.2 Once a candidate has been approved to sit for the EPPP by the Board, the Board shall forward a notice of approval to the examination service, which will then forward instructions to the examination candidate.

5.3.3 It shall be the responsibility of the applicant to schedule his or her EPPP administration with a test delivery site pursuant to the instructions given by the examination service.

5.3.4 The examination service will forward test results directly to the Board. Test results will not be available to the candidate at the testing center, nor will test results be given over the phone.

5.3.5 The Board shall notify the applicant of his or her examination score, and pass/fail status upon receipt of this information from the testing service.

5.3.6 If an applicant has been approved to sit for the EPPP by a jurisdiction other than Delaware, it shall be the responsibility of the applicant to arrange to have the score transferred to the Delaware Board.

5.3.7 An applicant who fails the examination may re-take the exam no sooner than 60 days after the prior examination date. An applicant may take the examination a maximum of four (4) times in any 12 month period. [24 Del. C. §§ 3506(a)(4).]

6.0 Evaluation of Credentials

6.1 Candidates for licensure as psychologists in the State of Delaware shall:

6.1.1 Have received a doctoral degree based on a program of studies which is psychological in content and specifically designed to train and prepare psychologists. The doctoral degree must be from a college or university, accredited as required by 24 Del.C. §3508(a)(1) having a graduate program which states its purpose to be the training and preparation of psychologists. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service approved by the National Association of Credential Evaluation Services, to determine equivalency to the accreditation requirements of §3508(a)(1) and equivalency of psychological content and training. The Board will consider programs to be psychological in content by the criteria established by the joint designation project of the Association of State and Provincial Psychology Boards and the Council for the National Register of Health Service Providers in Psychology, as follows:

See 2 DE Reg. 776 (11/1/98)

1. This rule shall take effect upon implementation of the computer-based EPPP by ASPPB. The expected implementation date is April 2001.

See 4 DE Reg. 980 (12/1/00)

6.1.1.1 Programs that are accredited by the American Psychological Association are recognized as meeting the definition of a professional psychology program. The criteria for accreditation serves as a model for professional psychology training.

6.1.1.2 Or, all of the following criteria, (1) through (9):

6.1.1.2.1 Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.

6.1.1.2.2 The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

6.1.1.2.3 The psychology program must stand as a recognizable, coherent organizational entity within the institution.

6.1.1.2.4 There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

6.1.1.2.5 The program must be an integrated, organized sequence of study.

6.1.1.2.6 There must be an identifiable psychology faculty and a psychologist responsible for the program.

6.1.1.2.7 The program must include a body of students who are matriculated in that program for a degree.

6.1.1.2.8 The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

6.1.1.2.9 The curriculum shall encompass a minimum of three (3) academic years of full time graduate study. In addition to instruction in scientific and professional ethics and standards research design and methodology, statistics, and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (5 or more graduate quarter hours) in each of these 4 substantive content areas:

6.1.1.2.9.1 Biological bases of behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

6.1.1.2.9.2 Cognitive-affective bases of behavior: Learning, thinking, motivation, emotion.

6.1.1.2.9.3 Social bases of behavior: Social psychology, group processes, organizational and systems theory.

6.1.1.2.9.4 Individual differences: Personality theory, human development, abnormal

psychology.

6.1.1.3 In addition, all professional education programs in psychology will include course requirements in specialty areas.

6.2 Have had, after receiving the doctoral degree, at least 2 years of supervised experience in psychological work satisfactory to the Board; and

6.3 Have achieved the passing score on the written standardized Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB) or its successor; or

6.4 The Board will qualify for licensing without examination any person who applies for licensure and who is a Diplomate of the American Board of Professional Psychology. All such applicants must meet all other requirements for licensure.

See 2 DE Reg. 776 (11/1/98)

7.0 Supervised Experience

The types of supervision pertinent to licensure as a psychologist or registration as a psychological assistant are comprised of three types of supervisory experiences:

7.1 Predoctoral internship supervision as required by doctoral programs in psychology. The predoctoral internship consists of a minimum of 1,500 hours of actual work experience completed in not less than 48 weeks, nor more than 104 weeks. At least 50% of the predoctoral supervised experience must be in clinical services such as treatment, consultation, assessment, and report writing, with at least 25% of that time devoted to face-to-face direct patient/client contact. No more than 25% of time shall be allocated for research.

7.2 Postdoctoral supervision is required for initial licensure as a psychologist. Postdoctoral experience must consist of 3,000 hours of actual work experience. This experience is to be completed in not less than two years and not more than three calendar years, save for those covered under 24 Del.C. §3519(e). For those individuals the accrual of 3,000 hours of supervised postdoctoral experience must take place within six calendar years from the time of hire. There is to be one hour of face-to-face supervision for every 1-10 hours of clinical work. This experience shall consist of at least twenty-five percent and not more than sixty percent of the time devoted to direct service per week in the area of the applicant's academic training. "Direct service" consists of any activity defined as the practice of psychology or the supervision of graduate students engaging in activities defined as the practice of psychology. Not more than 25% of this supervision can be done by other licensed mental health professionals besides psychologists.

The purpose of the postdoctoral supervision is to train psychologists to practice at an independent level. This experience should be an organized educational and training

program with explicit goals and a clear plan to meet those goals. There should be regular written evaluations based on this program.

7.3 Supervision of psychological assistants is required at the frequency of one hour of face-to-face supervision for every 1-10 hours of clinical work by the psychological assistants, as required by Section 9 of the Rules and Regulations. An individual registered as a psychological assistant may or may not be receiving supervision in pursuit of independent licensure as a psychologist.

7.4 A psychologist providing either postdoctoral supervision or supervision of psychological assistants must have been in practice for two years post licensure in this or any other state without having been subject to any disciplinary actions. He/she must provide 24-hour availability to both the supervisee and the supervisee's clients, or ensure that adequate alternative coverage is provided in the supervisor's absence. The supervising psychologist shall have sufficient knowledge of all clients including face-to-face contact when necessary and must be employed or under contract in the setting where the clinical service takes place and the supervision must occur within that setting.

See 2 DE Reg. 776 (11/1/98)

8.0 Failure to Pass Examination

Applicants may take the Examination for the Professional Practice in Psychology as many times as they choose. Intervals between testing will be determined by the testing agency and the ASPPB.

9.0 Psychological Assistants

9.1 A psychological assistant is an individual who meets the requirements of 24 **Del.C.** Section 3509(2a-2e). This individual may be registered as a psychological assistant in order to receive supervision to be eligible for later licensure to practice independently as a psychologist and/or for any other reason as recognized by law.

9.2 Psychological assistants are supervised, directed, and evaluated by a Delaware licensed psychologist who assumes professional and legal responsibility for the services provided.

9.2.1 Any Delaware licensed psychologist who has had a least two (2) years of experience following the granting of licensure in this or in any other state may supervise a maximum of seven (7) psychological assistants.

9.2.2 It is the responsibility of the supervising psychologist in conjunction with the psychological assistant to diagnose and form treatment plans for patients seen by the psychological assistant and to file such plan in the patient/client's chart.

9.2.3 The patient/client must be informed that services are being delivered by a psychological assistant and that the licensed psychologist is responsible for the

treatment.

9.2.4 The patient/client shall sign a statement of informed consent attesting that he/she understands that the services are being delivered by a psychological assistant and that the licensed psychologist is ultimately responsible for his/her treatment. This document shall include the supervising psychologist's name and the telephone number where he/she can be reached. One copy shall be filed with the patient/client's record and another given to the patient.

9.3 The Delaware licensed psychologist is identified as the legally and ethically responsible party in all advertising, public announcements, and billings. In addition, billings and advertisements will clearly indicate that the service is being provided by a psychological assistant. All treatment and evaluation reports prepared by the psychological assistant must be signed by the psychologist and the psychological assistant.

9.4 The Delaware licensed psychologist who accepts the responsibility of using a psychological assistant shall develop and maintain a current, written job description delineating the range and type of duties, educational practicum and clinical experience to be assigned to the psychological assistant, limits of independent action, emergency procedures for contacting the supervising psychologist, and the amount and type of supervision to be provided. This job description must be signed by the psychologist and the psychological assistant and will be filed in the Division of Professional Regulation, along with an official copy of the psychological assistant's college transcript, and proof of a 450-hour clinical practicum supervised by a licensed psychologist or by a faculty member in a nationally accredited doctoral level clinical training program in the State of Delaware who is actively pursuing licensure. The psychological assistant will also provide a statement under oath as outlined in 24 **Del.C.** §3509(b1 - b3).

9.5 The Board will then review credentials, job description and supervisory arrangements, and if the arrangements are acceptable, will inform the psychologist in writing that the psychological assistant can begin work. No psychological assistant shall begin work until the Board has approved the application. Registration for psychological assistants expires biennially and continued performance of the duties of a psychological assistant requires proof of twenty (20) hours of continuing education and payment of the renewal fee.

9.6 Supervision of the psychological assistant by the Delaware licensed psychologist is to be a regular and formal process. It is required that the licensed psychologist and the psychological assistant have weekly one-on-one, face-to-face supervision with review of each case served by the psychological assistant. The supervising psychologist should be familiar with each patient/client seen by the psychological assistant and with the ongoing progress of

treatment. One hour of supervision for every ten hours, or fraction thereof, of direct clinical work by the psychological assistant is required as a minimum. For example, if a psychological assistant provides eight (8) hours of direct clinical service, he or she must receive a minimum of one (1) hour of supervision. Likewise, a psychological assistant, who has fifteen (15) hours of direct clinical contact, must receive at least two (2) hours of supervision. This supervision must be documented in writing on patient records. In addition, the supervising psychologist shall submit at the time of relicensure and at the termination of the supervision relationship a supervision report on a form provided by the Board which will become a part of the public record. It will contain information describing the date and amount of supervision and any unscheduled supervisory contact, as well as a brief assessment of the psychological assistant's functioning. The Board will consider requests to substitute group supervision for some portion of the one-to-one, face-to-face supervision requirement. A supervising psychologist must petition the Board and show good cause for this substitution. If the supervising psychologist's request is granted, no more than five (5) psychological assistants may meet with the supervising psychologist at one time and there must be two (2) hours of group supervision in place of every one (1) hour of individual supervision. All psychological assistants must have at least one (1) hour of individual supervision per week. The Board reserves the right to withdraw their permission for the substitution at any time.

9.7 Psychological Assistants are to work in the office of the licensed psychologist so as to have regular and continued supervision. When the licensed psychologist is not in the office, he or she is expected to provide clear contingency plans for consultation for the psychological assistant. It is assumed that the psychologist will be available to the psychological assistant under most circumstances; therefore, arrangements in which the supervising psychologist is employed full time elsewhere will not be approved, unless it can be demonstrated that there will be adequate supervision and contingency coverage of the psychological assistant. Supervising psychologists will be expected to describe in their application for the psychological assistant how much supervision they will provide and how that supervision will be provided.

9.8 Psychological assistants who work for agencies must be supervised by a psychologist employed by or under contract to the agency. Supervision must occur on site, and the agency must have clearly spelled out plans for providing consultation and backup when the supervising psychologist is not on site. A psychological assistant, who provides services that are under the direction of different psychologists, must be registered as a psychological assistant by all of the psychologists who are directly supervising the clinical work.

9.9 When there is a complaint of incompetent, improper, or unethical behavior on the part of the psychological assistant, in addition to the disciplinary action against the psychological assistant, disciplinary action may be taken against the supervising psychologist for failing to provide adequate supervision of the psychological assistant. The Board reserves the right to suspend or revoke the Delaware licensed psychologist's privilege of hiring a psychological assistant when just cause has been established through a formal hearing. Violation of this regulation may constitute cause for suspending or revoking the future privilege of hiring a psychological assistant.

9.10 Patients/clients are always the responsibility of the supervising psychologist. Termination or transfer plans must be worked out with the approval of the supervising psychologist. A psychological assistant will be considered to be working for the supervising psychologist until the Board of Examiners is notified in writing of the change in arrangements. The letter terminating a psychological assistant arrangement must also specify when the supervising psychologist is terminating the arrangement because of concerns about the ethical or professional behavior of the psychological assistant.

See 2 DE Reg. 776 (11/1/98)

10.0 Continuing Education

10.1 Psychologists must obtain 40 hours of continuing education every two years in order to be eligible for renewal of license. Psychologists will be notified in January that they may submit their documentation beginning March 1st. Continuing education credit must be submitted for the period of August 1st of the year of renewal to July 31st of the second year. Individuals licensed within the two year period will be notified by the Board of the prorated amount to submit.

10.2 Psychological assistants must obtain 20 hours of continuing education every two years for re-registration. Psychological assistants may submit their documentation beginning March 1st. The appropriate period for credits to be accrued is from August 1st of the year of renewal to July 31st of the second year. Psychological assistants registered within the two year period will be notified by the Board of the prorated amount to submit.

10.3 Psychologists or psychological assistants who have not submitted their material by July 31st will be allowed to reapply for licensure or registration until August 31st. In the situation where the appropriate amount of documentation has been submitted in a timely fashion and in good faith and with reasonable expectation of renewal, but has been found to be inadequate, the practitioner has 30 days from the notification of inadequacy to submit valid continuing education credit in the amount specified, or until August 31st of that year, whichever is later.

Hardship. An applicant for license renewal or

registered psychological assistant may be granted an extension of time in which to complete continuing education hours upon a showing of good cause. "Good cause" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. No extension shall be granted for more than 120 days after the end of the licensing period. A license shall be renewed upon approval of the hardship extension by the Board, but the license shall be subject to revocation if the licensee does not complete the requisite continuing education pursuant to the terms of the extension.

See 4 DE Reg. 983 (12/1/00)

10.4 It is the responsibility of the psychologist or psychological assistant to file a record of his/her continuing education. Documentation of continuing education will consist of letters/certificates of attendance from the sponsoring entity.

10.5 The subject of the continuing education must contribute directly to the professional competency of a person licensed to practice as a psychologist or registered as a psychological assistant. The activity must have significant intellectual or practical content and deal with psychological techniques, issues or ethical standards relevant to the practice of psychology.

10.6 Activities from APA-approved continuing education sponsors will be automatically accepted. The following may be eligible:

10.6.1 Other programs which are not APA-approved sponsors but where the material is relevant to professional practice and provides the equivalent of APA-defined credit. An applicant must provide a brochure or other documentation that supports the following criteria: relevance, stated objectives, faculty and educational objectives. To document attendance and completion, a certificate of attendance is required. In these circumstances, hours will be accrued on the basis of clock hours involved in the training.

10.6.2 Graduate courses relevant to professional practice taken for educational credit offered by a regionally accredited academic institution of higher education. Each credit hour of a course is equivalent to 5 CE hours.

10.6.3 Teaching an undergraduate or graduate level course in applied psychology at an accredited institution. Teaching a 3 hour semester or quarter course is considered the equivalent of 5 CE credits. No more than 5 CE credits may be completed in this manner for any renewal period and can be submitted only for the first time that a course is presented. Appropriate documentation of teaching must include the listing of the course in the school catalog and a letter from the academic institution stating that the course was taught.

10.6.4 Teaching of a workshop or conduction of a seminar on a topic of pertinence to the practice of psychology. Credit earned for one day is a maximum of 2 credits, two days is a maximum of 3 credits, and three days or more is a maximum of 5 credits. However, credit can be earned only once for teaching a particular seminar or workshop and not be eligible for re-submission at any time. Appropriate documentation is considered to be the brochure and demonstration of the workshop being held by the sponsoring entity.

10.6.5 Authorship, editing or reviewing of a publication. Credit may be earned only in the year of the publication and is limited to the following:

10.6.5.1 Author of a book (maximum of 40 CE hours)

10.6.5.2 Author of a book chapter or journal article (maximum of 15 CE hours)

10.6.5.3 Editor of a book (maximum of 25 CE hours)

10.6.5.4 Editor of or reviewer for a scientific or professional journal recognized by the Board (maximum 25 CE hours)

10.6.5.5 Proof of the above (10.6.5.1 - 10.6.5.4) must include the submission of the work or documentation of authorship by copy of title pages.

10.6.6 Preparing and presenting a scientific or professional paper or poster at a meeting of a professional or scientific organization. Up to 2 hours may be claimed for a poster presentation. Up to 3 hours of credit may be claimed for each hour of paper presentation, with a maximum of 8 CE hours per paper. Listing within the program and certificate letters of attendance at the meeting is appropriate documentation for both a paper or poster presentation.

See 2 DE Reg. 776 (11/1/98)

10.7 The Board reserves the right to reject any CE program, if it is outside the scope of the practice of psychology.

10.8 The following will not be considered for credit: service to organizations; attending business meetings of professional organizations; business management or office administration courses; group supervision; or case conferences.

11.0 Professional Conduct

Psychologists and psychological assistants may be disciplined for violations of provisions of 24 Del.C. §3514.

12.0 Complaint Procedures

12.1 Complaints against psychologists and psychological assistants will be investigated as provided by 29 Del.C. §8807 and all hearings shall be conducted in accordance with the Administrative Procedures Act, 29 Del.C. Chapter 101.

12.2 Complaints must be filed, in writing, with the

Division of Professional Regulation.

13.0 License Renewal

13.1 Renewal notices will be mailed to the current address on file in the Board's records in a timely fashion to all psychologists and psychological assistants who are currently licensed or registered. It shall be the responsibility of each psychologist and psychological assistant to advise the Board, in writing, of a change of name or address.

13.2 Continuing education requirements must be fulfilled as detailed in Section 10.0 of the Rules and Regulations and submitted along with the established fee for renewal to be approved. The Board may, in its discretion, grant a license renewal under the terms of a continuing education hardship extension pursuant to rule 10.3 Should any psychologist fail to renew or obtain a hardship extension and continue to make representation as a licensed psychologist beyond July 31st, that individual is practicing without a license. Should any psychological assistant fail to renew or obtain a hardship extension and continue to make representation as a registered psychological assistant beyond July 31st, that individual is considered no longer to be registered, and his/her supervising psychologist is in violation of the law.

See 4 DE Reg. 984 (12/1/00)

14.0 Procedures for Licensure Applicable to Full Time Faculty Members in a Nationally Accredited Doctoral Level Clinical Training Program in the State of Delaware

14.1 University faculty employed full time in a nationally accredited doctoral level clinical training program in the State of Delaware, as specified in 24 **Del.C.** §3519(e), who are not licensed, are subject to the following rules and regulations:

14.1.1 Notification. Such individuals must notify the Board of Examiners of Psychologists no later than 30 days after the commencement of employment, indicating employer, position and date employment began. At that time they will receive a copy of the statute and Rules and Regulations which detail the exemption under which they operate.

14.1.2 Professional Activities. These individuals may participate in activities defined by statute as the practice of psychology (including the supervision of matriculated graduate students) only within the context of a clinical training program. They may conduct any research and teaching activities related to the activities of such a program.

14.1.3 Education. Such individuals must have completed the doctoral degree at the time employment commences consistent with 24 **Del.C.** §3508(a).

14.1.4 Active Pursuit of Licensure. Such individuals are required to be in active pursuit of licensure for a period not to exceed six (6) years. The six year time frame for the completion of licensure requirements commences with the initial date of employment. The six-

year time frame for individuals employed as of June 12, 1995 commenced on that date.

14.1.5 Supervision. The supervised experience required for licensure of such individuals is described in Section 7.0 of the Rules and Regulations.

See 2 DE Reg. 776 (11/1/98)

15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

15.1 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.

15.2 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.

15.3 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).

15.4 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.

15.5 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.

15.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

15.6.1 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.

15.6.2 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.

15.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

15.6.4 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.

15.6.5 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.

15.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

15.7 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.

15.8 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.

15.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

15.10 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.

15.11 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.

15.12 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.

APPENDIX A

"Professional psychology" refers to psychology as a profession. The term is not intended in the more restrictive sense of applied or practice areas of psychology since the intent is for a generic designation system.

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6.1.1.2.1 refers to an institution with regional

accreditation in the United States, an institution with provincial authorization in Canada, or in other countries, or an institution that is accredited by a body which was deemed by the ASPPB/National Register Joint Designation Committee to be performing a function equivalent to U.S. regional accrediting bodies.

In reference to "instruction in scientific and professional ethics and standards" rule 6.1.1.2.9, it is understood that a course of three or more graduate semester hours (five or more graduate quarter hours) or its equivalent is highly desirable; substantial instruction in these issues is required.

It is understood that rule 6.1.1.2.9 includes the requirement of a minimum of one year's residency at the educational institution granting the doctoral degree.

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

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

The Harness Racing Commission is proposing, pursuant to 3 Del.C. 10027, to amend Rule 6.3.3.13 of its rules. The proposed amendment would permit the testing of claimed horses at the request of the claimant. This proposal supercedes a proposal published in the November, 2000 Register of Regulations. At its November 28, 2000 meeting, the Commission voted not to adopt that rule and to propose another amendment.

The Commission will hold a public hearing on the proposed rule amendment on January 23, 2001 at 10:00 a.m. at the Dover Downs, Dover DE. The Commission will accept written comments from January 1, 2001 through January 30, 2001. Written comments should be sent to John Wayne, Administrator of Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover DE19901.

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

2 DE Reg. 1240 (01/01/99)

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.

6.2.1.5.3 However, where necessary to fill a card, not more than one race per day may be divided into not more than two 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;

2 DE Reg. 1243 (01/01/99)

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

2 DE Reg. 1241 (01/01/99)

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.

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

2 DE Reg. 1243 (01/01/99)

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. 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.

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.

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

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.

4 DE Reg 336 (8/1/00)

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.

3 DE Reg 1520 (5/1/00)

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.

2 DE Reg. 1765 (1/1/98)

3 DE Reg 1520 (5/1/00)

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;

2 DE Reg. 1243 (01/01/99)

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.

2 DE Reg. 1243 (01/01/99)

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.

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.

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

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 no 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.

2 DE Reg. 1241 (1/1/99)

DEPARTMENT OF EDUCATION

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

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

543 PHYSICAL EDUCATION

A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Secretary of Education seeks the approval of the State Board of Education to repeal the regulations D.5 Physical Education in Section II Elementary Education and 2.e. Physical Education in Section III Middle Level Education and to amend 3.f. Physical Education in Section IV Secondary Education from the Handbook for K-12 Education.

The Elementary Physical Education Section is repealed because it is simply technical assistance information and content standards now define the elementary program. The Middle Level Education Section is repealed since content standards now define the physical education program. The Secondary Section is amended to remove the technical assistance information in (3) and (4), reformat the regulation and reword the waiver statement in (5) for clarity. A credit in physical education is required for graduation in regulation 511 Credit Requirements for High School Graduation. This Physical Education regulation as amended places some parameters around the high school physical education program and clarifies the wording on the waiver that applies to elementary, middle/junior high and high school programs. The high school program is also defined by the content standards.

C. Impact Criteria

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

The amended regulation clarifies student program requirements at the high school level.

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

The amended regulation addresses student program requirements, not equity issues.

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

The amended regulation addresses physical education requirements which do affect health and safety issues.

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

The amended regulation addresses student program requirements, not students' legal rights.

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

The amended regulation 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 be placed in the same entity?

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

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

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

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

The amendment is necessary to clarify the existing regulation.

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

There is no cost to the state and to the local school boards of compliance with the amended regulation.

AS APPEARS IN THE HANDBOOK FOR K-12 EDUCATION

H. ELEMENTARY EDUCATION

5. PHYSICAL EDUCATION

a. The primary goal of the elementary physical education program is to have students acquire the fundamental skills necessary for their participation in team or group activities, free play, and health-related physical fitness.

b. Classes should be learning laboratories in which students are involved in the important task of learning about themselves and others through movement.

c. The program should be student centered, with a special focus on problem-solving and exploratory methods applied to a wide range of activities.

d. Students should have freedom of choice, but be guided by the teacher toward predetermined goals.

e. This suggested time allotment will serve as a basis in the formulation of the daily or weekly schedule depending on the school organization:

Vigorous Physical Activity--

1st and 2nd grade 30 minutes daily

3rd, 4th, 5th and 6th grade 30 minutes

daily

f. A major part of physical education should be directed play involving team or group activities, while 30 minutes per week may be supervised free play. Directed play involves selected activities to teach desirable skills while free play is permitting the children a choice of activities under the supervision of the teacher.

III. MIDDLE LEVEL EDUCATION

e. Physical Education

Physical education must be offered at least two class periods per week for a year or five days a week for a semester in both grades 7 and 8. (State Board Approved February 1985)

IV. HIGH SCHOOL

f. Physical Education

(1) Physical education shall be a requirement for any two years during grades nine through twelve with a maximum of 1/2 unit of credit earned per year. Provision for makeup and accumulation of required credit should be provided at the ninth through twelfth grade levels.

(2) Physical education should be offered

as an elective for ninth through twelfth grade students.

(3) The high schools may establish their physical education program of instruction within these guidelines:

(a) providing instruction on a five-day week basis for a full semester;

(b) providing instruction for a minimum of three days per week for the entire school year;

(c) providing instruction on a flexible basis equivalent to three instructional periods per week or rotating two periods one semester and three the next semester; and

(d) providing instruction on a variable basis equivalent to 3 instructional classes per week during the school year.

(4) The physical education program should emphasize the concept of lifetime sports and be adapted to both individual and group physical education needs. All schools should conscientiously develop a meaningful elective program in physical education.

(5) In addition to the one unit of credit required for graduation, a student may receive only one unit of elective credit for a maximum total of two credits in physical education.

(a) Objectors must submit to the administrative head of the school an affidavit stating reasons for being excused from this activity.

(b) Pupils may be excused from physical education if they have a certified excuse from a qualified physician or they have objections based on religious beliefs to various rhythmical activity.

543 Physical Education

1.0 Physical education programs shall be a requirement for any two years during grades 9 through 12 with a maximum of 1/2 unit of credit earned per year. Provision for makeup and accumulation of required credit shall be provided at the ninth through twelfth grade levels.

1.1 Physical education shall be offered as an elective for ninth through twelfth grade students.

1.2 In addition to the one unit of credit required for graduation, a student may receive only one unit of elective credit for a maximum total of two credits in physical education.

2.0 The Physical Education requirements may be waived only for students who have an excuse from a qualified physician or objections based on religious beliefs. The Education Associate for Physical Education shall have the authority to grant such waivers.

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

804 IMMUNIZATIONS

A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Secretary of Education seeks to amend the regulation on Immunizations in order to up date the language and to bring the regulation in line with the recommendations of the Division of Public Health. Changes in 2.0 include adding a reference to public health recommendations in 2.0, adding DTaP to 2.1, recommending a booster dose of Td at five years instead of ten in 2.1.1, modifying the references to the doses of the oral polio vaccine in 2.2, allowing two doses of CDC approved Hepatitis B vaccine for children ages 11-15 in 2.4, and adding a recommendation for a varicella vaccine.

Changes to 3.0 include adding DTaP to 3.3.1 and allowing schools to admit students after the first dose of the Hepatitis B Series in 3.3.4.

Changes to 4.0 and 5.0 include correcting the way the *Delaware Code* is referenced in the regulations.

C. Impact Criteria

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

The amended regulation addresses immunizations, not state achievement standards.

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

The amended regulation addresses immunizations, not equity issues.

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

The amended regulation does address students' health and protects them from acquiring a communicable disease.

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

The amended regulation addresses immunizations, not students' legal rights.

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

The amended regulation 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 be placed in the same entity?

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

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

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

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

The requirements for immunization of school students must be in regulation.

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 and to the local school boards for compliance with the amended regulation.

804 Immunizations

1.0 Definition of School Enterer: A school enterer is any child between the ages of two months and 21 years entering or being admitted to a Delaware school district for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from nonpublic schools.

2.0 The following minimum immunizations will be required for all school enterers. Children who enter school prior to age 4 shall follow current Division of Public Health recommendations. Disease histories for measles, rubella and mumps will not be accepted unless serologically confirmed.

2.1 Four or more doses of diphtheria, tetanus, pertussis (DTaP, DTP, or other approved vaccine) or diphtheria, tetanus (DT) vaccine or a combination of these vaccines with

the following exceptions: (1) a child who received a fourth dose prior to the fourth birthday must have a fifth dose; (2) a child who received the first dose of Td (adult) at or after age seven may meet this requirement with only three doses of Td (adult).

2.1.1 A booster dose of Td (adult) is recommended for all students, five years at ten year intervals for all students after the last DTaP, DTP or DT dose was administered.

2.2 ~~Four~~ Three or more doses of inactivated polio virus (IPV), oral polio vaccine (OPV), or four doses of inactivated polio virus (IPV) or a combination of these vaccines with the following exception: If the third primary dose of OPV or IPV is administered on or after the fourth birth date, a fourth dose is not required. A child who received a third dose prior to the fourth birthday must have a fourth dose.

2.3 Two doses of measles vaccine. The first dose should be administered on or after the age of 12 months. The second dose should be administered after the fourth birthday. The combination vaccines of measles, mumps, rubella (MMR) can be used to meet this requirement.

2.4 Three doses of Hepatitis B vaccine beginning in the 1999-2000 school year with kindergarten and grade seven. (By adding a grade at each of the levels, by the year 2004-2005 all students will be required to have the vaccine.) Two doses of CDC approved vaccine for children ages 11 – 15 may be used.

2.5 One dose of rubella vaccine administered after the age of 12 months.

2.6 One dose of mumps vaccine administered after the age of 12 months.

2.7 One dose of varicella is recommended.

3.0 Certification of Immunization

3.1 All parents or legal guardians of school enterers shall present a certificate specifying the month, day, and year that the immunizations were administered by the ~~physician or public health agency~~ state licensed health care practitioner.

3.2 According to *Delaware Code*, Title 14, Section 131, a principal or person in charge of a school shall not permit a child to enter into school without acceptable evidence of immunization. The parent or legal guardian shall be notified of this requirement in writing. Within 14 calendar days after notification, evidence must be presented to the school that the basic series of immunizations has been initiated or has been completed.

3.3 A school enterer may be conditionally admitted to a Delaware school district by presenting a statement from a state licensed health care practitioner who ~~physician or public health agency~~ which specifies that the school enterer:

3.3.1 has received at least one dose of DTaP, DTP, or DT and

3.3.2 has received at least one dose of IPV or OPV

~~or IPV~~ and

3.3.3 has received at least one dose of measles, mumps and rubella (MMR) vaccine.

~~3.3.4 without documentation for the first or second dose of measles should be admitted after the first dose. A second dose is required between 30 and 90 days after the first dose. (MMR can be used to meet this requirement.)~~

3.3.4 without documentation for ~~the first, second, and third doses of~~ completion of the hepatitis B series, should be admitted after the first dose. ~~A second dose should be given at least one month after the first dose; a third dose should be given at least four months after the first dose and at least two (2) months after the second dose (beginning in September, 1999).~~

3.4 If the school enterer fails to complete the series of required immunizations according to the Division of Public Health's recommended schedule, the parent or legal guardian will be notified the child will be excluded according to 14 Del. C. Section 131.

4.0 Lost or Destroyed Medical Records: When an immunization record has been lost or destroyed by the medical provider who administered the vaccine, the parent shall sign a written statement to this effect and must obtain at least one dose of DTaP, DTP or DT, one dose of IPV or OPV, one dose of Hepatitis B ~~or IPV~~ and immunization against measles, mumps and rubella. ~~Beginning in 1999-2000, hepatitis B will be needed.~~ Evidence that the vaccines were administered shall be presented to the superintendent or designated person. An exemption to this requirement would be a statement from a physician demonstrating serological evidence of immunity to measles, mumps or rubella.

5.0 Exemption from Immunization:

5.1 Exemption from this requirement may be granted in accordance with 14 *Del. C.* Section 131.

5.2 Alternative dosages or immunization schedules may be accepted with the written approval of the Division of Public Health.

6.0 Verification of School Records: The Division of Public Health shall have the right to audit and verify school immunization records to determine compliance with the law.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH & WILDLIFE

Statutory Authority:

7 Delaware Code, Sections 1902(a)(2), 1902(a)(3)
(7 Del.C. §§1902(a)(2), 1902(a)(3))

REGISTER NOTICE

1. TITLE OF THE REGULATION:

TIDAL FINFISH REGULATIONS

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

To amend Tidal Finfish Regulations in order to remain in compliance with fishery management plans, as amended and adopted by the Atlantic States Marine Fisheries Commission, the Mid-Atlantic Fishery Management Council and/or the U.S. Department of Commerce.

Tidal Finfish Regulation No. 4 SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASON is proposed to be amended to adjust the recreational fishing season closure dates, creel limit and/or minimum size limit in order to implement any adjustments to fishing mortality required in the Summer Flounder Fishery Management Plan.

Tidal Finfish Regulation No. 7, STRIPED BASS POSSESSION SIZE LIMIT; EXCEPTIONS is proposed to be amended to eliminate the commercial slot size limits of 20 inches-32 inches and in its place return to a commercial minimum size limit of 20 inches or to not amend and leave the slot size limit of 20 inches – 32 inches in place. It also is proposed to allow the transfer of striped bass tags among commercial food fishermen prior to any tags being distributed by the Department.

Tidal Finfish Regulation No. 9, BLUEFISH POSSESSION LIMITS is proposed to be amended by increasing the daily possession limit from 10 bluefish to 15 bluefish per day.

Tidal Finfish Regulation No. 10 WEAKFISH SIZE LIMITS; POSSESSION LIMITS; SEASONS is proposed to be amended to change the 2000 dates when it was illegal to take weakfish with any gear other than hook and line in the Delaware Bay and Ocean to the corresponding calendar dates in 2001. These dates involve 35 days.

Tidal Finfish Regulation No. 14, SPANISH MACKEREL SIZE LIMIT AND CREEL LIMIT is proposed to be amended by increasing the daily possession limit from 10 Spanish mackerel per day.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There are no sunset dates for these regulations. However, if Delaware is found to be out of compliance with a Fishery Management Plan by the Atlantic States Marine Fisheries Commission, that particular fishery may be closed by the Secretary of the U.S. Department of Commerce.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §903(e)(2)(a).

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

None

6. NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover Delaware 19901, (302)739-3441. A public hearing on these proposed amendments will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover DE at 7:30 PM on Thursday January 25, 2001. The record will remain open for written comments until 4:30 PM on January 31, 2001.

7. PREPARED BY:

Charles A. Lesser, (302)-739-3441, December 8, 2000

Tidal Finfish Regulation No. 4. Summer Flounder Size Limits; Possession Limits; Seasons.

a) It shall be unlawful for any recreational fisherman or any commercial hook and line fisherman to take and reduce to possession or to land any summer flounder during the period beginning at 12:01AM ~~on January 1 and ending at midnight on May 9 and during the period beginning at 12:01AM on October 3 and ending at midnight on December 31.~~ (Note – A closed fishing period(s) will be required to meet the mandatory compliance measures in the Summer Flounder Fishery Management Plan. These dates will be decided after a public hearing).

See 3 DE Reg 1088 (2/1/00)

b) It shall be unlawful for any recreational fisherman to have in possession more than ~~eight (8)~~ (Note: the creel limit may change depending on the season closure) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

c) It shall be unlawful for any person, other than qualified persons as set forth in paragraph (f) of this regulation, to possess any summer flounder that measure ~~less than fifteen and one half (15.5) inches~~ (Note-the size may change depending on the season closure).

See 3 DE Reg 1088 (2/1/00)

d) It shall be unlawful for any person, while on board a vessel, to have in possession any part of a summer flounder that measures ~~less than fifteen and one-half (15.5) inches~~ (Note—the size may change depending on the season closure) between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

See 3 DE Reg 1088 (2/1/00)

e) Open **See 2 DE Reg 1900 (4/1/99)**

f) Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

1) A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

2) A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

3) A bill of lading while transporting fresh or frozen summer flounder.

g) Open **See 2 DE Reg 1900 (4/1/99)**

h) It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

i) It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

j) It shall be unlawful for any person, who has been issued a commercial foodfishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~eight (8)~~ (Note—the creel limit may change depending on the season closure.) summer flounder at or between the place where said summer flounder where caught and said persons personal abode or temporary or transient place of lodging.

See 1 DE Reg 1769 (5/1/98)

See 2 DE Reg 1900 (4/1/99)

Tidal Finfish Regulation 7. Striped Bass Possession Size Limit; Exceptions.

a) Notwithstanding, the provisions of §929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise

authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession more than two (2) striped bass from the tidal waters of this State in one day provided one measures no less than twenty-four (24) inches in total length or more than twenty-eight (28) inches in total length and one measures no less than twenty-eight (28) inches in total length.

See 4 DE Reg. 230 (7/1/00)

b) Notwithstanding, the provisions of § 929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass from the tidal waters of this State that measure less than twenty (20) inches in total length ~~or more than 32 inches in total length.~~ (Note—The thirty-two (32) inches maximum commercial size limit may be dropped if approved by the Striped Bass Fishery Management Board).

c) Unless otherwise authorized, it shall be unlawful for any person to possess a striped bass that measures less than 28 inches, total length, unless said striped bass is in one or more of the following categories:

1) It has affixed, a valid strap tag issued by the Department to a commercial food fisherman; or

2) It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or

3) It is packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or

4) It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or

5) It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.

d) Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.

e) The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.

f) It shall be unlawful for any person, except a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery, to land any striped bass that measures less than twenty four (24) inches in total length.

See 4 DE Reg. 230 (7/1/00)

g) It shall be unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than

twenty (20) inches in total length ~~or more than 32 inches in total length.~~ (Note-The 32 inches maximum commercial size limit may be dropped if approved by the Striped Bass Fishery Management Board.)

See 3 DE Reg 1088 (2/1/00)

Tidal Finfish Regulation No. 8, Striped Bass Commercial Fishing Seasons; Quotas; Tagging And Reporting Requirements.

a) It shall be unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 a.m. on March 1 and ending at 4:00 p.m. on April 30 next ensuing. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 a.m. on November 15 and ending at 4:00 p.m. on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not landed in the March - April gill net fishery. In order for a commercial food fisherman to be authorized by the Department to participate in a commercial gill net fishery, said commercial food fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with the Department to participate in said fishery by February 15 for the March - April gill net fishery and by November 1 for the December gill net fishery.

b) It shall be unlawful for any commercial food fisherman using a hook and line to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial hook and line fishery for striped bass established herein. A commercial food fisherman may use a hook and line to take and reduce to possession striped bass during the period beginning at 12:01 a.m. on September 1 and ending at 4:00 p.m. on December 31 next ensuing. In order for a commercial food fisherman to be authorized to participate in the commercial hook and line fishery, said commercial food fisherman shall register in writing with the Department to participate in said fishery by August 15.

c) It shall be unlawful for any commercial food fisherman using a hook and line, during the striped bass hook and line fishery established for subsection (b) herein, to take striped bass by means of a gill net or to have any gill net on board or to otherwise have in possession on or near his person any gill net.

d) The striped bass gill net fishery in March - April, the striped bass gill net fishery in November - December and the

striped bass hook and line fishery in September - December shall be considered separate striped bass fisheries. Each participant in a striped bass fishery shall be assigned an equal share of the total pounds of striped bass allotted by the Department to that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of striped bass allotted to that fishery by the Department. The total pounds of striped bass allotted to each fishery by the Department shall be as follows: 95% of the State's commercial quota, as determined by the ASMFC, for the March - April gill net fishery, 10% of the State's commercial quota for the September - December hook and line fishery and, provided that in excess of two (2) % of the March - April gill net fishery allocation was not landed, said remainder for the November - December gill net fishery. Any overage of the State's commercial quota will be subtracted from the next year's commercial quota proportionally to the appropriate fishery.

e) It shall be unlawful for any commercial food fisherman to land, during a striped bass fishing season, more than the total pounds assigned by the Department to said individual commercial food fisherman.

f) It shall be unlawful for any commercial food fisherman to possess any striped bass that does not have locked into place through the mouth and gill a tag issued to said commercial fisherman by the Department. Said tag shall be locked into place immediately after taking said striped bass.

g) The Department shall issue tags to commercial food fishermen who register in writing with the Department to participate in a striped bass fishery. Each participant shall initially be issued a quantity of tags that is to be determined by the Department by dividing said participants assigned share in pounds by the estimated weight of a striped bass expected to be landed. If a commercial food fisherman needs additional tags to fulfill his or her assigned share, the Department shall issue additional tags after verifying the balance of the share from reports submitted by an official weigh station to the Department.

h) It shall be unlawful for a commercial food fisherman who ~~has been~~ is authorized to be issued striped bass tags by the Department to transfer said tags to another ~~person~~ commercial food fisherman, authorized to participate in the same striped bass fishery, provided said transfer is made prior to said tags being issued by the Department.

i) It shall be unlawful for any commercial food fisherman to apply a tag to a striped bass unless said tag had been issued or legally transferred to said commercial food fisherman by the Department.

j) It shall be unlawful for any commercial food fisherman to apply a tag to a striped bass if said tag had previously been applied to another striped bass.

k) It shall be unlawful for any commercial food fisherman to sell, barter or trade any striped bass, to attempt

to sell, barter or trade any striped bass or to transport, to have transported or to attempt to have transported any striped bass out of the state unless said striped bass has been weighed and tagged by an official weigh station.

l) The Department shall appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall provide official weigh stations with tags to be applied to each striped bass weighed.

m) Each commercial food fisherman participating in a striped bass fishery shall file an acceptable report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued or legally transferred to a commercial food fisherman shall be returned to the Department with said report. Failure to file an acceptable report or failure to return all unused tags may disqualify the commercial food fisherman from future striped bass fisheries.

See 1 DE Reg 270 (9/1/97)

Tidal Finfish Regulation 9. Bluefish Possession Limits.

a) Unless otherwise authorized, it shall be unlawful for any recreational fisherman to have in possession more than ~~ten (10)~~ fifteen (15) bluefish (*Pomatomus saltatrix*) at or between the lace caught and his/her personal abode or temporary or transient place of lodging).

Tidal Finfish Regulation 10. Weakfish Size Limits; Possession Limits; Seasons.

a) It shall be unlawful for any person to possess weakfish *Cynoscion regalis* taken with a hook and line, that measure less than thirteen (13) inches, total length.

b) It shall be unlawful for any person to whom the Department has issued a commercial food fishing license and a food fishing equipment permit for hook and line to have more than six (6) weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line.

c) It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food fishing equipment, that measure less than twelve (12) inches, total length.

d) It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than six (6) weakfish, not to include weakfish in one's personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of six (6) if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale.

e) It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:

Beginning at 12:01 AM on May 1, ~~2000~~ 2001 and ending at midnight on May 9, ~~2000~~ 2001;

beginning at 12:01 AM on May ~~12, 2000~~ 11, 2001 and ending at midnight on May ~~14, 2000~~ 13, 2001;

beginning at 12:01 AM on May ~~19, 2000~~ 18, 2001 and ending at midnight on May ~~21, 2000~~ 20, 2001;

beginning at 12:01 AM on May ~~26, 2000~~ 25, 2001 and ending at midnight on May ~~28, 2000~~ 27, 2001;

beginning at 12:01 AM on June ~~2, 2000~~ 1, 2001 and ending at midnight on June 4, ~~2000~~ 3, 2001;

beginning at 12:01 AM on June ~~9, 2000~~ 8, 2001 and ending at midnight on June ~~11, 2000~~ 10, 2001;

beginning at 12:01 AM on June ~~16, 2000~~ 15, 2001 and ending at midnight on June ~~18, 2000~~ 17, 2001;

and beginning 12:01 AM on June 24, ~~2000~~ 2001 and ending at midnight on June 30, ~~2000~~ 2001."

See 1 DE Reg 1770 (5/1/98)

See 2 DE Reg 1904 (4/1/99)

See 3 DE Reg 1088 (2/1/00)

f) The Department shall indicate on a persons food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of six (6) weakfish per day. These four days of the week shall not be changed at any time during the remainder of the calendar year.

g) It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more than fourteen (14) weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person's food fishing equipment permit for hook and line specifies the same day of the week in question for taking in excess of six (6) weakfish.

See 1 DE Reg 1770 (5/1/98)

See 2 DE Reg 1904 (4/1/99)

Tidal Finfish Regulation No. 14. Spanish Mackerel Size Limit And Creel Limit.

a) Unless otherwise authorized, it shall be unlawful for any person to possess any Spanish mackerel, (*Scomberomorus maculatus*), that measure less than fourteen (14) inches total length.

b) Unless otherwise authorized, it shall be unlawful for any recreational fisherman to have in possession more than ~~ten (10)~~ fifteen (15) Spanish mackerel at or between the place caught and his/her personal abode or temporary or transient place of lodging.

Tidal Finfish Regulation No. 24 Fish Pot Requirements.

a) It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot has an escape vent placed in a lower corner of the parlor portion of said pot which complies with one of the following minimum sizes: 1.125 inches by 5.75 inches; or a circular vent 2 inches in diameter; or a square vent with sides of 1.5 inches, inside measure. Pots constructed of wooden lathes must have spacing of at least 1.125 inches between one set of lathes.

b) It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot contains a panel (ghost panel) measuring at least 3.0 inches by 6.0 inches affixed to said pot with one of the following degradable materials:

1.) Untreated hemp, jute or cotton string of 3/16 inches diameter or smaller; or

2.) Magnesium alloy timed float release (pop-up devices) or similar magnesium alloy fasteners; or

3.) Ungalvanized or uncoated iron wire of 0.094 inches diameter or smaller.

c) It shall be lawful for a person with a valid commercial crab pot license to take and reduce to possession any food fish caught in his/her commercial crab pots provided said food fish is otherwise legal to possess.

d) It shall be lawful for a person with a valid commercial crab dredgers license to take and reduce to possession any food fish caught in his/her crab dredge provided said food fish is otherwise legal to possess.

See 2 DE Reg 1905 (4/1/99)

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

Statutory Authority: 16 Delaware Code, Chapter 9 (16 Del.C. Ch. 9)

The Delaware Department of Services for Children, Youth and Their Families, Division of Family Services will hold public hearings to discuss proposed "Regulations for Entry onto and Expungement from the Central Child Abuse Registry"

The public hearings will be held January 22, 2001 from 5:30 p.m. to 7:30 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware; January 25, 2001 from 5:30 p.m. to 7:30 p.m. at the Alexis I. duPont Middle School Auditorium, 3130 Kennett Pike, Greenville, Delaware; and February 6, 2001 from 5:30 p.m. to 7:30 p.m. in the Sussex Central High School Auditorium, 301 W. Market Street, Georgetown, Delaware.

Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by January 30, 2001 to:

Linda M. Shannon, Program Manager, Intake and Investigation, Division of Family Services, 1825 Faulkland Road, Wilmington DE 19805. Fax comments to: (302)633-2625

PROPOSED REGULATIONS FOR CENTRAL CHILD ABUSE REGISTRY

Legislation regarding the Central Child Abuse Registry was signed into law by Governor Thomas R. Carper on July 18, 2000. The registry is a database of information about persons the Division of Family Services has substantiated to have committed child abuse or neglect. The statute gives an individual the opportunity for an appeal hearing prior to entry on the Central Child Abuse Registry and also provides an opportunity to be expunged from the registry. A person who is expunged from the registry will not be reported to an employer as having committed child abuse or neglect.

REGULATIONS FOR ENTRY ON TO AND EXPUNGEMENT FROM THE CENTRAL CHILD ABUSE REGISTRY UNDER 16 Del.C., CHAPTER 9

1.0 LEGAL AUTHORIZATION

1.1 The legal authority for these regulations is found in the Delaware Code: Title 10, Chapters 9 and 10; Title 11, Chapters 5 and 85; Title 16, Chapter 9; and Title 31, Chapter 3.

2.0 PURPOSE

2.1 The purpose of these regulations is to provide due process to persons to be entered on the Central Child Abuse Registry.

3.0 DATE OF IMPLEMENTATION

3.1 These regulations become effective ten days after publication in final form in the Delaware Register of Regulations.

4.0 INDIVIDUALS SUBJECT TO THE LAW

4.1 Persons, adults or children, substantiated on or after April 1, 2001 to have committed child abuse or neglect, except that the opportunity for administrative expungement shall be provided for substantiated cases before or after April 1, 2001 unless a disqualifying factor applies.

5.0 DEFINITIONS

“Abuse” as defined in 16 Del.C., § 902 (1) means any physical injury to a child by those responsible for the care, custody, and control of the child, through unjustified force as defined in 11 Del.C., § 468, emotional abuse, torture, criminally negligent treatment, sexual abuse, exploitation, or mistreatment.

“Administrative Expungement” as defined in 16 Del.C., § 902A (g) means that the individual's name shall no longer be reported to employers pursuant to 11 Del.C. § 8563(b) in a Central Child Abuse Registry check as a substantiated case from the central registry. Notwithstanding the granting of a request for administrative expungement under this section, the individual's name and other case information shall remain on the central registry as substantiated for all other purposes, including, but not limited to, the Division's use of such information for historical, treatment and investigative purposes, child care licensing decisions, reporting pursuant to 31 Del.C. § 309, reporting to law enforcement authorities, or any other purpose set forth in 16 Del.C. § 906(b).

“Central Registry” as defined in 16 Del.C., § 902 (2) means a registry of information about persons the Division of Family Services has substantiated to have committed child abuse and neglect. The persons shall have been responsible for the care, custody, and control of the child as defined in 16 Del.C. § 902 (12). Substantiation may be made through civil or criminal judicial proceedings or through civil administrative decision or proceedings where the burden of proof is at a minimum a preponderance of the evidence.

“Department” means the Department of Services for Children, Youth and Their Families.

“Disqualifying Factors” means items that disqualify an individual from the opportunity for notice and a substantiation hearing or the opportunity for administrative expungement.

“Division” means the Division of Family Services.

“Good Cause” means discretionary factors that justify not reporting a substantiated case of child abuse or neglect to an employer. It depends upon the circumstances of the individual case and the finding of it lies in the discretion of the decision-maker to which the decision is committed.

“Neglect” as defined in 16 Del.C., § 902 means the failure to provide, by those responsible for the care, custody, and control of the child, the proper or necessary: education as required by law; nutrition; or medical, surgical, or any other care necessary for the child's well-being.

“Intent to Substantiate” means a person for whom the Division of Family Services intends to substantiate for child abuse or neglect, but whose name has not been entered on the registry.

“Preponderance of the Evidence” is a standard of proof that is met when a party's evidence indicates that the fact “is more likely than not” what the party alleges it to be. Evidence which, as a whole, shows the fact to be proved is more probable than not.

“Substantiated” means that the Division of Family Services after an investigation has concluded by a preponderance of the evidence that child abuse or neglect occurred. In addition, substantiation may occur through civil or criminal judicial proceedings, failure to request a Substantiation Hearing within the specified time frame, or by decision of a hearing officer.

“Substantiation Hearing” means a hearing held by a hearing officer to determine whether or not an individual committed child abuse or neglect.

“Substantiated Person” means a person who has been substantiated by the Division of Family Services as having committed child abuse or neglect and has been entered on the Central Child Abuse Registry.

6.0 SUBSTANTIATION HEARING**6.1 NOTICE TO SUBSTANTIATED PERSONS PENDING ENTRY ON THE CENTRAL CHILD ABUSE REGISTRY**

6.2 At the conclusion of an investigation the Division shall send written notice, by certified mail, return receipt requested to the person's last known address, of its intent to place a person on the Central Registry for having committed child abuse or neglect, and shall advise the individual of the opportunity to request a Substantiation Hearing. The person can also be notified by personal delivery and accepting service of the notice in writing.

6.3 A person substantiated for child abuse or neglect, or an attorney acting on his or her behalf, shall have twenty (20) calendar days from the date the notice was mailed to request a Substantiation Hearing. The request for a Substantiation Hearing shall be in writing and shall be received by the Division Director within 20 days of the date the notice was mailed.

6.4 Though the Division shall still issue its notice and

the individual shall request a Substantiation Hearing within twenty (20) days, when such Substantiation Hearing is requested, such hearing shall be stayed if civil or criminal proceedings regarding the same allegations of abuse or neglect are pending. A person substantiated for child abuse and neglect awaiting adjudication of criminal or delinquency charges or awaiting civil court adjudication of abuse or neglect which were the result of the same child abuse or neglect incident investigated by the Division shall be offered a postponement of the hearing by the hearing officer. He or she shall be eligible to reschedule a Substantiation Hearing following the resolution of the criminal or delinquency charges or other civil court proceeding, unless they pled or were convicted or were adjudicated for the same incident investigated by the Division.

6.5 A person substantiated for child abuse or neglect may waive in writing his or her right to a Substantiation Hearing and request an Administrative Expungement in writing to the Division Director.

7.0 DISQUALIFYING FACTORS

7.1 See circumstances identified in Regulation #32.

8.0 PROCEDURES

8.1 Unless postponed or stayed, within twenty (20) calendar days of receiving a request for a hearing by the person found to have committed child abuse or neglect (appellant), a Substantiation Hearing date shall be set, and such hearing shall be held by the hearing officer within sixty (60) calendar days of the receipt of such request.

8.2 The burden of proof at the hearing shall be upon the Division, which shall be required to prove by a preponderance of the evidence that abuse or neglect occurred.

8.3 The appellant and the Division may have legal representation during the hearing. The parties may also present witnesses and other evidence on their behalf.

8.4 The hearing officer shall have the authority to:

8.4.1 issue subpoenas for witnesses and other sources of evidence, either at the request of the Division or at the request of the appellant;

8.4.2 administer oaths to witnesses;

8.4.3 exclude irrelevant, immaterial, insubstantial, cumulative and privileged evidence;

8.4.4 limit proof, rebuttal and cross-examination if they are repetitive; and

8.4.5 hold pre-hearing conferences for the settlement or simplification of issues by consent, for the disposal of procedural requests or disputes and to regulate and expedite the course of the hearing.

8.5 An audio tape recording shall be made of the hearing. Copies of the tape or request for a transcript of same may be made at the request of and expense of the appellant.

8.6 Following the Substantiation Hearing, the hearing officer shall issue a written decision to the appellant by certified mail, return receipt requested and by regular mail to the Division no later than sixty (60) calendar days of the last day of the conclusion of the hearing and arguments.

8.7 The decision shall include a brief summary of evidence and findings of fact based upon the evidence and conclusions of law. The appellant shall be advised of the right to request an appeal of the decision to Family Court.

9.0 APPEAL TO FAMILY COURT FOLLOWING SUBSTANTIATION HEARING DECISION

9.1 The appellant or the Division may request a review by Family Court within thirty (30) days of the date of the hearing officer's decision.

9.2 The Family Court review shall be limited in scope to whether there is substantial evidence to support the findings of fact or whether any error of law was made.

9.3 Such reviews, hearings and decisions, audio tapes, transcripts, and records on appeal to Family Court shall be confidential and not open to the public. Neither the Administrative Procedures Act 29 Del.C., Ch.101 nor the Freedom of Information Act shall apply to such hearings, any record thereof, or any evidence or documents produced or introduced at such hearings. The Division shall have the discretion to release records, the decision, and hearing evidence pursuant to 16 Del.C. § 906 (b) (18).

10.0 ENTRY ON TO THE CENTRAL CHILD ABUSE REGISTRY

10.1 A person found to have committed child abuse or neglect shall be entered on the Central Registry when he or she:

10.1.1 fails to make timely request in writing for a Substantiation Hearing in response to a notice as specified in law and regulation or failed to make a timely written request to appeal a similar notice issued prior to the enactment of this law;

10.1.2 fails to appear at a scheduled Substantiation Hearing without prior approval of the hearing officer or fails to show that good cause existed to postpone the hearing within ten (10) calendar days after the scheduled hearing date of the reason for his or her absence from the hearing;

10.1.3 fails to request a Family Court review of the substantiation hearing officer's decision;

10.1.4 has been afforded the due process provisions covered under these regulations or law and the substantiation was upheld;

10.1.5 has been convicted or pled guilty to a criminal offense contained in Subchapters II or V of Chapter 5 of Title 11 including those taken nolo contendere or subsequently discharged or dismissed under a First Offenders program pursuant to 10 Del.C. § 1024 and the

plea or conviction is for the same incident substantiated by the Division;

10.1.6 has been adjudicated delinquent as a juvenile for any of the comparable criminal offenses listed for adults for the same incident investigated by the Division; and

10.1.7 has been substantiated for abuse or neglect at a civil court hearing or administrative hearing at which the minimum standard of proof was preponderance of the evidence for the same incident investigated by the Division.

11.0 ADMINISTRATIVE EXPUNGEMENT OF SUBSTANTIATED CASES

11.1 An application for administrative expungement of a substantiated case may be made by any individual whose name is entered on the Central Child Abuse Registry unless there is one or more disqualifying factors. Expungement shall be granted only for good cause, and at the discretion of the Division considering the factors below:

11.1.1 the nature of the substantiation with respect to safety of the children who may come into the individual's direct care;

11.1.2 compliance with a DFS recommended or court-ordered treatment plan;

11.1.3 history of substantiated or unsubstantiated reports of child abuse and neglect;

11.1.4 any evidence of acts involving weapons, explosive devices, or threats of harm;

11.1.5 any evidence of domestic violence involving assaults, stalking, or cruelty to animals;

11.1.6 any evidence of addiction to drugs or alcohol;

11.1.7 untreated or treated medical conditions that present a threat of harm to children;

11.1.8 length of time since the incident;

11.1.9 seriousness of the incident;

11.1.10 number of incidents;

11.1.11 indication of remorse; and changed behavior.

12.0 DISQUALIFYING FACTORS

12.1 The entire criminal history of a person, including all convictions, is required to be reported for any person seeking employment with a licensed child care provider (11 Del.C. §8561) and for a person seeking employment in a nursing home, hospital, or other entity licensed pursuant to Chapter 11 of Title 16 of the **Delaware Code** (16 Del.C. § 1141), thus a individual shall not be eligible for Administrative Expungement when he or she has been convicted, pled guilty, or has been adjudicated delinquent via plea or adjudication of any criminal offense contained in Subchapters II or V of Chapter 5 of Title 11, or of the same offenses if charged or delinquent in which the person was responsible for the care, custody, and control of the child at the time of the offense.

13.0 PROCEDURES

13.1 A person placed on the Central Child Abuse Registry may submit a written request for Administrative Expungement to the Division Director with the reasons therefore.

13.2 Within sixty (60) days of receiving the written request for Administrative Expungement, the Division shall send its decision by certified mail, return receipt requested to the person requesting expungement. The decision shall include notice of the right to appeal to a hearing officer for a hearing on the issue of administrative expungement.

13.3 A person placed on the Central Child Abuse Registry, or an attorney acting on his or her behalf, shall have twenty (20) calendar days from the posted date of the notice to request an Administrative Expungement hearing before a hearing officer. The request shall be made in writing to the Division Director.

13.4 The procedures for an Administrative Expungement hearing shall be the same as for the Substantiation Hearing before a hearing officer. (See Regulations #24-28)

13.5 The Division and the individual may also consent to administrative expungement outside the procedures specified above.

14.0 APPEAL TO FAMILY COURT FOLLOWING ADMINISTRATIVE EXPUNGEMENT DECISION

14.1 Upon receipt of the hearing officer's decision, either the Division or the person requesting expungement, or an attorney acting on his or her behalf, may file a written appeal to Family Court within thirty (30) calendar days of receipt of the decision.

14.2 Such reviews, hearings and decisions, audio tapes, transcripts, and records on appeal to Family Court shall be confidential and not open to the public. Neither the Administrative Procedures Act 29 Del.C., Ch.101 nor the Freedom of Information Act shall apply to such hearings, any record thereof, or any evidence or documents produced or introduced at such hearings. The Division shall have the discretion to release records, the decision, and hearing evidence pursuant to 16 Del.C. § 906 (b) (18).

15.0 CASES SUBSTANTIATED PRIOR TO APRIL 1, 2001

15.1 A substantiated person can request a Substantiation Hearing unless they have already been notified by the Division of the right to appeal and failed to appeal, have already been given a hearing regarding the substantiation, or he or she have the circumstances described in Regulation 10.1.5, 10.1.6 and 10.1.7.

15.2 A substantiated person can request an Administrative Expungement unless a disqualifying factor applies.

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
STATE EXAMINING BOARD OF PHYSICAL
THERAPISTS
24 DE ADMIN. CODE 2600**

Statutory Authority: 24 Delaware Code,
Section 2604(1) (24 **Del.C.** 2604(1))

IN RE: |
| **ORDER**
ADOPTION OF REGULATIONS|

Summary of the Evidence and Information Submitted*Written Comments*

The State Council for Persons with Disabilities submitted written comments addressing the proposed changes to the Rules and Regulations. The written comments were contained in a letter dated October 30, 2000, and initialed by Ms. Rita Mariani, Chairperson of the State Council for Persons with Disabilities. The letter was received by the Division of Professional Regulation on November 1, 2000, and is attached herein as "Exhibit A." The letter stated the support by the State Council for Persons with Disabilities for the proposed changes to the Rules and Regulations and an overall general support for the expansion of authorized support activities of non-medical

personnel.

Findings of Fact

1. Pursuant to 24 *Del.C.* §2604(1), the Delaware State Examining Board of Physical Therapists (the "Board") proposed to revise to its rules and regulations as more specifically set forth in the Hearing Notice which is attached hereto as Exhibit "B" and incorporated herein.

2. Pursuant to 29 *Del.C.* § 10115, notice was given to the public that a hearing would be held on November 21, 2000, at 6:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware to consider the proposed changes. Notice was posted in two Delaware newspapers of general circulation as more specifically set forth in the affidavits which are attached hereto as Exhibits "C" and "D" and incorporated herein.

3. The notice invited the public to submit written comments regarding the proposed changes.

4. A hearing was held on November 21, 2000, at which a quorum of the State Examining Board of Physical Therapists was present.

5. The Board finds the change to Section 1.5.21 clarifies the extent to which a licensee can modify a treatment prescription without consulting a physician.

6. The Board finds that support personnel should be able to perform ambulation and not gait training. The Board finds that gait training is an activity that requires additional

training because the activity includes an intervention which involves an assessment of quality.

7. The Board finds that support personnel should be able to perform transfers instead of transfer training. The Board finds that transfer training is an activity that requires additional training because the activity includes an intervention which involves an assessment of quality.

8. The State Examining Board of Physical Therapists finds the proposed revisions serve to implement or clarify specific sections of 24 *Del. C.* Chapter 26 .

Text and Citation

The text of the Rules and Regulations hereby promulgated are as it appeared in the Delaware Register of Regulations, Vol. 4, Issue 4 (October 1, 2000). The text is attached hereto in "Exhibit E" with the changes noted.

Decision

After consideration of the written comments received, the Board has decided to change Sections 1.5.21, 5.1.1, and 5.1.3 of the Rules and Regulations.

NOW, THEREFORE, based on the State Examining Board of Physical Therapists' authority to formulate rules and regulations pursuant to 24 *Del.C.* §2604(1), it is the decision of the State Examining Board of Physical Therapists to adopt the proposed changes to Sections 1.5.21, 5.1.1, and 5.1.3 of its Rules and Regulations. A copy of the Rules and Regulations is attached hereto as Exhibit "E" and incorporated herein. Such proposed changes to the Rules and Regulations shall be effective ten days after the date this Order is published in its final form in the Register of Regulations.

IT IS SO ORDERED this _____ day of November, 2000.

DELAWARE STATE EXAMINING BOARD OF PHYSICAL THERAPISTS

Phillip N. Barkins, President	Lynn M. Doherty
Carolyn Cotter, Vice-President	Faith K. Hannagan
Tara J. Manal, Secretary	Danna Levy
Phyllis Collins	Kathy Watson

ATTEST:

Susan Miccio
Administrative Assistant to the Board

This is to certify that the above and foregoing is a true and correct copy of the Order of the Delaware State Examining Board of Physical Therapists in the Matter of Adoption of Regulations.

1.0 DEFINITIONS

1.1 Consultation (24 *Del.C.* § 2612)

1.1.1 Consultation in direct access. A physician must be consulted if a patient is still receiving physical therapy after 30 calendar days have lapsed from the date of the initial assessment. This consultation must be documented and could take place at any time during the initial thirty day period. The consultation can be made by telephone, fax, in writing, or in person. There is nothing in these rules and regulations or in the Physical Therapy Law that limits the number of consultations the Physical Therapist can make on the patient's behalf. The consult should be with the patient's personal physician. If the patient does not have a personal physician, the Physical Therapist is to offer the patient at least three physicians from which to choose. The referral to a physician after the initial thirty day period must not be in conflict with 24 *Del.C.* § 2616 (a)(8) which deals with referral for profit. If no physician consult has been made in this initial thirty day period, treatment must be terminated and no treatment may be resumed without a physician consult.

1.1.2 Consultation with written prescription from a physician, dentist, podiatrist, or chiropractor. A prescription accompanying a patient must not be substantially modified without documented consultation with the referring practitioner. The consultation can be made by telephone, fax, in writing, or in person.

1.2 Direct Supervision (24 *Del.C.* § 2611 (a))

1.2.1 Direct supervision in connection with a Physical Therapist practicing under a temporary license means:

1.2.1.1 a licensed Physical Therapist supervisor shall be on the premises when the individual with a temporary license is practicing and

1.2.1.2 evaluations and progress notes written by the individual with a temporary license shall be co-signed by the licensed Physical Therapist supervisor.

1.2.2 Direct supervision in relation to a Physical Therapist Assistant with less than one (1) year experience means a Physical Therapist shall be on the premises at all times and see each patient.

1.2.3 Direct supervision in relation to a Physical Therapist Assistant with one (1) year or more experience means that a Physical Therapist Assistant must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks, whichever occurs first. The supervising Physical Therapist must have at least one (1) year clinical experience. The Physical Therapist must be available and accessible by telecommunications to the Physical Therapist Assistant during all working hours of the Physical Therapist Assistant.

1.2.4 The Physical Therapist is responsible for the actions of the Physical Therapist Assistant when under his/her supervision. All supervision must be documented.

1.2.5 Direct supervision in connection with an Athletic Trainer means a Physical Therapist shall be on the premises at all times in a clinical setting and see every patient.

1.2.6 At no time may a Physical Therapist supervise more than 2 Physical Therapist Assistants, 2 Athletic Trainers or 1 Physical Therapist Assistant and 1 Athletic Trainer. A Physical Therapist may only supervise 1 Physical Therapist Assistant off site. Athletic Trainers must be supervised on site.

1.2.7 Direct supervision in connection with support personnel means a licensed Physical Therapist or Physical Therapist Assistant shall be personally present and immediately available within the treatment area to give aid, direction, and instruction when procedures are performed.

1.3 On site or on premises (24 Del.C. § 2602 (5)), in connection with supervision of a Physical Therapist Assistant or Athletic Trainer, means that the Physical Therapist Assistant or Athletic Trainer must be in the same physical building as the supervising Physical Therapist. On site or on premises does not refer to attached buildings.

1.4 Support personnel (24 Del.C. § 2615) means a person(s) who performs certain routine, designated physical therapy tasks under the direct supervision of a licensed Physical Therapist or Physical Therapist Assistant. There shall be documented evidence of sufficient in-service training to assure safe performance of the duties assigned to the support personnel.

1.5 Unprofessional Conduct (24 Del.C. § 2616 (7)). Unprofessional conduct shall include departure from or the failure to conform to the minimal standards of acceptable and prevailing physical therapy practice or athletic training practice, in which proceeding actual injury to a patient need not be established. 24 Del.C. § 2616 (7). Such unprofessional conduct shall include, but not be limited to, the following:

1.5.1 - Assuming duties within the practice of physical therapy or athletic training without adequate preparation or supervision or when competency has not been maintained.

1.5.2 - The Physical Therapist who knowingly allows a Physical Therapist Assistant or Athletic Trainer to perform prohibited activities is guilty of unprofessional conduct.

1.5.3 - The Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who knowingly performs prohibited activities is guilty of unprofessional conduct.

1.5.4 - The Physical Therapist or Physical Therapist Assistant who knowingly allows support personnel to perform prohibited activities is guilty of unprofessional conduct.

1.5.5 - Performing new physical therapy or athletic training techniques or procedures without proper education and practice or without proper supervision.

1.5.6 - Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

1.5.7 - Inaccurately recording, falsifying, or altering a patient or facility record.

1.5.8 - Committing any act of verbal, physical, mental or sexual abuse of patients.

1.5.9 - Assigning untrained persons to perform functions which are detrimental to patient safety, for which they are not adequately trained or supervised, or which are not authorized under these rules and regulations.

1.5.10 - Failing to supervise individuals to whom physical therapy tasks have been delegated.

1.5.11 - Failing to safeguard the patient's dignity and right to privacy in providing services regardless of race, color, creed and status.

1.5.12 - Violating the confidentiality of information concerning the patient.

1.5.13 - Failing to take appropriate action in safeguarding the patient from incompetent health care practice.

1.5.14 - Practicing physical therapy as a Physical Therapist or Physical Therapist Assistant or athletic training as an Athletic Trainer when unfit to perform procedures or unable to make decisions because of physical, psychological, or mental impairment.

1.5.15 - Practicing as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer when physical or mental ability to practice is impaired by alcohol or drugs.

1.5.16 - Diverting drugs, supplies or property of a patient or a facility.

1.5.17 - Allowing another person to use his/her license.

1.5.18 - Resorting to fraud, misrepresentation, or deceit in taking the licensing examination or obtaining a license as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer.

1.5.19 - Impersonating any applicant or acting as proxy for the applicant in a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer licensing examination.

1.5.20 - Continuing to treat a patient, who initiated treatment without a formal referral, for longer than thirty days without a physician consult.

1.5.21 - Substantially modifying a treatment prescription without consulting the referring physician.

1.5.22 - Failing to comply with the mandatory continuing education requirements of 24 Del.C. § 2607 (a) and Section 7 of these rules and regulations.

5.0 SUPPORT PERSONNEL (24 Del. C. § 2615)

5.1 Treatments which may be performed by support personnel under direct supervision are:

5.1.1 ambulation

5.1.2 functional activities

5.1.3 transfers

5.1.4 routine follow-up of specific exercises

5.1.5 hot or cold packs

5.1.6 whirlpool/Hubbard tank

5.1.7 contrast bath

5.1.8 infrared

5.1.9 paraffin bath

5.1.10 ultra sound

5.2 Exceptions - A support person may perform:

5.2.1 patient related activities that do not involve treatment, including transporting patients, undressing and dressing patients, and applying assistive and supportive devices without direct supervision, and

5.2.2 set up and preparation of patients requiring treatment using Physical Therapist modalities.

5.3 Prohibited Activities - support personnel may not perform:

5.3.1 evaluation, or

5.3.2 treatments other than those listed in Section

5.1.

a ditch if the slope of land is away from the ditch.

At the third hearing, conducted on November 1, 2000, an individual commented that the credit requirements are vague and do not "address a dual category situation" (i.e., a situation where someone may be both a nutrient generator and a nutrient handler). The commenter indicated that he believed he would need 9, 12 or 15 credits to spread manure but it was not clear which was needed. The same individual commented that a 21-day period should be changed to 30 days to allow additional time for a certificate holder to prepare for a hearing. The same individual commented that the record-keeping requirements are excessive and unnecessary. The same individual commented that he did not think it appropriate that the identity of a complainant be kept from the person he is accusing.

In addition to the oral comments received, one written comment was received during the comment period. That written comment was a two-paragraph letter from the Delaware Equine Council. The letter contended that equine's are not "agricultural commodities." The letter contends that equine owners should not be required to implement a nutrient management plan. The stated basis for excluding equine owners from implementation of the plan was that there is not an accurate count of the number of equines in the state and there are conflicting categorizations of equines.

2. Brief summary of findings of fact with respect to the above evidence and information.

As a general matter, the comments received did not appear to address specific provisions of the proposed regulations.

The aforementioned comment received at that first public hearing (the objection to eight horses triggering program requirements) probably relates to a provision of the certification regulations that requires a nutrient generator certification for owners or operators of animal feeding operations in excess of eight animal units. That requirement is derived in large part from the enabling statute which, at §2202(2) defines "animal unit" to "be as defined by the United States Department of Agriculture," as well as §2247(a) which requires nutrient management plans for animal feeding operations with greater than eight animal units. I hereby find that the regulation is consistent with the statutory requirements and otherwise serves the purposes intended by the statute.

The comment at the second hearing, to the effect that "nutrient" should be defined with more specificity and should exempt water, has been duly considered. The regulatory definition is consistent with the statutory definition at §2202(12). The definition is intentionally broad to ensure that the purposes of the statute are met and that there will be adequate control over elements that may have significant impacts on water quality in Delaware,

DEPARTMENT OF AGRICULTURE

NUTRIENT MANAGEMENT PROGRAM

Statutory Authority: 3 Delaware Code,
Section 2221 (3 Del.C. 2221)

MEMORANDUM FOR RECORD

SECRETARY'S ORDER ADOPTING REGULATIONS TO IMPLEMENT DELAWARE NUTRIENT MANAGEMENT PROGRAM

DATE: December 13, 2000

Pursuant to 29 Del.C. §10118, I hereby enter this Order which adopts certain elements, as specified below, of the Delaware Nutrient Management Program. Authority for the regulations appears at Title 3 Del.C. Chapter 22.

1. Brief summary of evidence and information submitted.

Three public hearings were held. On October 24, 2000, one substantive comment was received. The comment argued that eight horses were too few to trigger application of the nutrient management program.

At the second hearing, conducted on October 26, 2000, one individual commented that the definition of "nutrient" should exclude water and also "be more specific on what a nutrient is." The same individual commented that a person should be allowed to place a stockpile closer than 100 feet to

agricultural profitability, and the overall public welfare. It is not contemplated that rain water or irrigation water be considered a nutrient for purposes of the regulation and I find that it is not necessary to so indicate in the definition of "nutrient."

The comment regarding the 100 foot distance from the ditch appears to address §2247(e) of the statute which requires that the outdoor storage of manure, other than an approved manure storage structural facility, must be at least 100 feet from any body of water or drainage ditch. The regulation itself does not contain such requirement.

The comment at the third hearing regarding the number of credits required appears to relate to educational course work required to obtain certain types of certificates. The comment reflects that the commenter believes that the credit requirements are confusing if one is required to have more than one type of certificate because it is allegedly unclear whether the requirements are cumulative. Nothing in the regulation suggests that they are cumulative. For example, if an individual seeks a commercial nutrient handler certificate and a nutrient generator certificate, he/she needs only obtain the number of educational credits required for the certificate which requires the greater number of credits. I find that the regulation is clear and does not need to be changed in this regard.

With respect to the comment regarding the 21-day period for a hearing, the comment appears to relate to a requirement in the statute at §2244(a). The 21-day requirement is consistent with the statute and provides a reasonable amount of time to prepare for the hearing after the notice of the hearing is sent. Likewise, the comment regarding the confidentiality of the identity of complainants is apparently derived from §2260(c) of the statute, which does require such confidentiality.

Finally, the comment at the third hearing objects to the record-keeping requirements and asserts that they are more excessive than needed. The comment did not indicate which specific records are objectionable. The comment suggests that the record-keeping requirements should be no more stringent than those required in §2290 of the statute that requires the submission of annual reports by persons who maintain a nutrient management plan. However, the statute, at §2247(c) contains requirements for additional and more specific record-keeping than contained at §2290. I find that the record-keeping requirements contained in the regulation are consistent with the intent of the statute and are necessary to ensure that the nutrient management program is being properly implemented.

With respect to the written comment I find that the statute contemplates that the regulation encompass animal feeding operations of eight or more equines. For purposes of the regulation and the statute, it is not relevant that equines may be categorized differently with respect to the census of agriculture or that we may not have an accurate figure of the

number of equines located in the state.

3. Decision to adopt the regulations.

I hereby adopt the regulations attached hereto as Exhibits "A" and Exhibits "B".

4. Text and citation of such regulation adopted.

The exact text and citation of the regulations adopted herein appear in Exhibits "A" and Exhibits "B."

5. The effective date of the Order.

The Order shall take effect 10 days from the date the Order has been published in its final form in the **Register of Regulations**.

John F. Tarburton

Secretary of the Delaware Department of Agriculture

DELAWARE DEPARTMENT OF AGRICULTURE
NUTRIENT MANAGEMENT CERTIFICATION
REGULATIONS

Developed with the Guidance, Advice and Consent of
the Delaware Nutrient Management Commission.

PREAMBLE

These regulations have been developed pursuant to Title 3, Chapter 22, of the Delaware Code. That statute established the Delaware Nutrient Management Commission and authorized the Commission to develop, review, approve, and enforce nutrient management regulations, including regulations governing the certification of persons who conduct certain activities that involve the generation or application of nutrients to lands or water, or who are involved in providing advice or consultation regarding such application of nutrients. These regulations were developed by the Commission and the Delaware Department of Agriculture. They are adopted with the guidance, advice, and consent of the Commission.

A. AUTHORITY.

These regulations are promulgated pursuant to the authority provided by Section 2221, Chapter 22, Title 3, of the Delaware Code.

B. PURPOSE.

The purpose of these regulations is to establish certification requirements for certain generators or handlers of nutrients, or who engage in advising or consulting with others regarding the formulation, application, or scheduling of nutrients within the State of Delaware.

C. DEFINITIONS.

For purposes of these regulations, the following words or terms shall have the meanings as indicated:

1. "Animal Feeding Operation" or "AFO" means any area or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period.

2. "Animal unit" shall be as defined by the United States Department of Agriculture Natural Resources Conservation Service, and is approximately 1,000 lbs. "average" live body weight.

3. "Applicant" means any person seeking a certificate from the Commission.

4. "Apply, applying", or any derivation of the word "apply", as it relates to the application of nutrients, means the human controlled mechanical conveyance of nutrients to land for the purpose of applying organic and/or inorganic nutrients.

5. "Certification" means the recognition by the Commission that a person has met the qualification standards established by the Commission and has been issued a written certificate authorizing such person to perform certain functions specified in these regulations.

6. "Commercial nutrient handler" means a person who applies organic or inorganic nutrients to lands or waters in the State as a component of a commercial or agricultural business in exchange for a fee or service charge.

7. "Commercial processor" means any individual, partnership, corporation, association or other business unit that controls, through contracts, vertical integration or other means, several stages of production and marketing of any agricultural commodity.

8. "Commission" or "DNMC" means the Delaware Nutrient Management Commission.

9. "Credit" represents a unit of measuring education for certification as defined by the Commission and is dependent upon such factors as curricula intensity and class time.

10. "Direct Supervision" refers to actions by a person who is certified with the State Nutrient Management Program and directs individuals within the same organization/company in applying nutrients. Direct supervisors hold responsibility for nutrient application actions for those under his/her supervision.

11. "Nutrient consultant" means a person who is engaged in the activities of advising or consulting with another person who is required to have a certificate under these regulations, regarding the formulation, application, or scheduling of organic or inorganic nutrients within the State. Provided, however, any employee of any federal, State or local government agency or the University of Delaware, or other organization duly recognized by the Commission for such purpose, who provides advice or consultation in his/her capacity as such an employee, without compensation, shall not be deemed to be a nutrient consultant unless such advice

and consultation constitutes a direct and substantial part of a nutrient management plan developed pursuant to these regulations.

12. "Nutrient generator" means a person who owns or operates a facility within the State that produces organic or inorganic nutrients.

13. "Nutrient Management Plan" or "plan" means a plan by a certified nutrient consultant to manage the amount, placement, timing, and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turfgrass.

14. "Nutrients" means nitrogen, nitrate, phosphorus, organic matter, and any other elements necessary for or helpful to plant growth.

15. "Person" means any individual, partnership, association, fiduciary, or corporation or any organized group of persons, whether incorporated or not.

16. "Private nutrient handler" means a person in the State who applies organic or inorganic nutrients to lands or waters he/she owns, leases, or otherwise controls.

17. "Program Administrator" or "Nutrient Management Program Administrator" means the exempt employee of the Delaware Department of Agriculture who is responsible for the operation of the State Nutrient Management Program.

18. "Secretary" means the Secretary of the Delaware Department of Agriculture or his/her designee.

19. "State Nutrient Management Program" or "SNMP" means all the nutrient management program elements developed by the Commission, whether or not reduced to rules or regulations.

D. CERTIFICATION CATEGORIES AND ACTIVITIES REQUIRING CERTIFICATION.

1. No later than January 1, 2004, any person who engages in any of the following activities must have the applicable certificate or certificates required by and issued pursuant to these regulations, as follows:

a. Nutrient generator certification - A nutrient generator who owns or operates any animal feeding operation in excess of eight animal units must have a nutrient generator certificate.

b. Private nutrient handler certification - A private nutrient handler who, on an annual basis, applies nutrients to 10 acres or greater of land or waters owned, leased, or otherwise controlled by such handler must have a private nutrient handler certificate.

c. Commercial nutrient handler certification - A commercial nutrient handler who, on an annual basis, applies nutrients to 10 acres or greater of land or waters of the state must have a commercial nutrient handler certificate.

d. Nutrient consultant certification - A nutrient consultant who is engaged in the provision of nutrient management advice or the formulation of a nutrient

management plan or in nutrient management planning as it relates to the application or disposal of nutrients at or from a specific site in the State of Delaware must have a nutrient consultant certificate.

2. These certification requirements shall not apply to individuals who perform services under the direct supervision of a certified person, provided that the certified person assures that such individuals act in accordance with the standards or practices which the certified person would follow if such person performed the service. Nor shall the certification requirements of this section apply to persons who utilize a person certified under these regulations to conduct the activities identified in this section, provided that such persons do not engage in any of the activities themselves and the certified person is certified at the time the activities are undertaken.

3. Conditional certifications may be issued for any reason specified by the Commission and shall be issued for periods not to exceed one year.

E. CERTIFICATION REQUIREMENTS.

Any person who seeks a certification shall file with the Commission an application on a form provided by the Commission, along with the application fee. The minimum requirements for the certifications follow.

1. Nutrient generator certificates - To obtain a nutrient generator certificate, the applicant must take and successfully complete at least 6 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

2. Private nutrient handler- To obtain a private nutrient handler certificate, the applicant must take and successfully complete at least 9 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

3. Commercial nutrient handler - To obtain a commercial nutrient handler certificate the following criteria must be satisfied:

a. The applicant must take and successfully complete at least 12 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

b. The applicant must pass a written test approved by the Commission.

4. Nutrient consultant - To obtain a nutrient consultant certificate the following criteria must be satisfied:

a. The applicant must take and successfully complete at least 12 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

b. The applicant must pass a written test approved by the Commission.

F. RECIPROCITY.

Notwithstanding the requirements of Section E, supra, any person may obtain a certificate under these regulations if all the following requirements are satisfied.

1. The applicant must submit an application for the applicable certificate on a form provided by the Commission, along with the application fee.

2. The applicant must have a valid certificate or equivalent authorization, such as a license for the certificated activity, from another state or organization that requires qualifications at least as rigorous as those required under these regulations and approved by the Commission.

3. The applicant must pass a test approved by the Commission related to specific Delaware Nutrient Management requirements. The Commission may in its sole discretion waive this test requirement.

G. CONTINUING EDUCATION.

1. After a certificate is issued, the certificate holder must take and successfully complete continuing education courses approved by the Commission or Program Administrator in accordance with the following:

a. Nutrient generator - 6 credits of continuing education in each three-year period following the issuance of the certification.

b. Private nutrient handlers - 6 credits of continuing education in each three-year period following the issuance of the certification.

c. Commercial nutrient handlers - 9 credits of continuing education in each three-year period following the issuance of the certification.

d. Nutrient consultants - 8 credits of continuing education each year following the issuance of the certification.

2. Failure to satisfy the continuing education requirements may result in the revocation of a certificate or non-renewal of the certificate.

3. Any dispute regarding continuing education credits may be directed to the Commission which will determine whether a hearing is necessary to resolve the dispute.

H. DURATION OF CERTIFICATES AND CERTIFICATION FEES.

1. Certificates normally will be issued and renewed for periods of three years for nutrient generators, private nutrient handlers, and commercial nutrient handlers. Certified nutrient consultants will be issued and renewed certifications annually.

2. Certificate fees are due with the application. The fee for a one-year certificate issued to nutrient consultants shall be \$100.00. The certificate fee for commercial nutrient

handlers for a three-year certificate shall be \$150.00.

3. No fee will be charged for certification of a nutrient generator or a private nutrient handler.

I. SUSPENSIONS, MODIFICATIONS, AND REVOCATIONS.

The Commission may, after notice and opportunity for hearing, suspend, modify, or revoke any certificate where the Commission has reasonable grounds to believe that the certificate holder is responsible for violations of the nutrient management statute (Title 3, Chapter 22, of the Delaware Code) or Commission regulations. The Commission shall furnish the person accused of a violation with notice of the time and place of the hearing, which notice shall be served personally or by registered mail directly to such person's place of business or last known address with postage fully paid no sooner than 10 days but within 21 days of the time fixed for the hearing.

J. CERTIFICATION RENEWALS.

1. At least 60 days before the expiration of a certificate, the certificate holder shall file an application with the Commission for renewal of the certificate, along with the certification fee.

2. Nutrient consultants must file with the application and fee evidence that the consultant prepared at least one nutrient management plan during the preceding three-year period. If no such plan was prepared, the certificate shall not be renewed.

3. The certificate holders must also supply with the application and renewal fee evidence that they have complied with the continuing education and record keeping and reporting requirements contained in these regulations.

4. Absent good cause for failure to timely file an application for renewal in compliance with these requirements, the certificate holder must reapply for the certificate in the same manner required for the issuance of the original certificate.

5. Decisions to refuse renewal of a certificate shall be final and conclusive unless appealed to the Commission pursuant to Section 2262, Chapter 22, of the Delaware Code.

K. APPEALS TO THE SECRETARY.

All decisions of the Commission under this regulation shall be final and conclusive unless appealed to the Secretary pursuant to Section 2263, Chapter 22, of the Delaware Code. Provided, however, that the denial of a certificate pursuant to Sections 2243 or 2245, Chapter 22, of the Delaware Code shall first be appealed to the Commission which shall hold a hearing.

L. RECORD KEEPING.

1. Nutrient generators shall record and keep the following available for inspection by the Secretary or the Commission:

a. A contemporaneously recorded log that contains the dates, approximate quantities, locations, and disposition (stored, shipped, etc.) of nutrients that are applied to land or transported from land owned, leased or otherwise controlled by the Nutrient Generator.

b. A copy of any applicable nutrient management plan.

2. Private nutrient handlers shall record and keep the following available for inspection by the Secretary or the Commission:

a. A contemporaneously recorded log showing the dates, locations, approximate quantities, acreage and methods of nutrient application.

b. A copy of any applicable nutrient management plan.

3. Commercial nutrient handlers shall prepare and keep available for inspection by the Secretary or the Commission, a contemporaneously recorded log showing the dates, locations, approximate quantities, acreage, and methods of nutrient application.

4. Nutrient consultants shall prepare and/or keep available for inspection by the Secretary or the Commission, copies of any written materials prepared by the nutrient consultants or at their direction that establish how nutrients are to be managed at specific sites within Delaware, such as nutrient management plans.

5. The information required in this section shall be kept and maintained for a period of 6 years.

M. EFFECTIVE DATE.

These regulations shall become effective on [January 10, 2001 ~~2000~~]

**REGULATIONS GOVERNING THE PROCESSING
OF COMPLAINTS OF VIOLATIONS**
**Developed with the Guidance, Advice and Consent of
the Delaware Nutrient Management Commission.**

PREAMBLE

These regulations have been developed pursuant to Title 3, Chapter 22, of the Delaware Code. That statute established the Delaware Nutrient Management Commission and authorized the Commission to develop, review, approve, and enforce nutrient management regulations, including regulations governing the investigation and resolution of complaints concerning alleged violations of the statute or regulations. These regulations were developed by the Commission and the Delaware Department of Agriculture. They are adopted with the guidance, advice, and consent of the Commission.

PART A. AUTHORITY.

These regulations are promulgated pursuant to the authority provided by Sections 2221 and 2260, Chapter 22, Title 3, of the Delaware Code.

PART B. PURPOSE.

These regulations establish processes for the filing, investigation, and resolution of complaints against any person who allegedly has violated the Nutrient Management Law, Title 3, Chapter 22, of the Delaware Code, or regulations promulgated pursuant thereto.

PART C. DEFINITIONS.

For purposes of these regulations, the following words or terms shall have the meanings as indicated:

1. "Administrator," "Program Administrator," or "Nutrient Management Program Administrator" means the exempt employee of the Delaware Department of Agriculture who is responsible for the operation of the State Nutrient Management Program, or his or her designee.

2. "Certificate" means recognition by the Commission that a person has met the qualification standards established by the Commission and has been issued a written certificate authorizing such person to perform certain functions specified in regulations adopted by the Department of Agriculture with the Commission's approval.

3. "Chairman" means the Chairman of the Delaware Nutrient Management Commission.

4. "Commission" means the Delaware Nutrient Management Commission.

5. "Person" means any individual, partnership, association, fiduciary, or corporation or any organized group of persons, whether incorporated or not.

PART D. COMPLAINTS AND INVESTIGATIONS.

1. Any person wishing to file a complaint with the Commission against any person regarding an alleged violation of the Nutrient Management Law, or any regulation promulgated pursuant thereto, shall direct such complaint to the Nutrient Management Program Administrator.

2. Complaints must be in writing and include at least the following information:

- a) name of complainant;
- b) information on how the Administrator may contact the complainant; and
- c) sufficient information to identify the location of the alleged violation, the nature thereof, and any other material fact known to the complainant that supports the complaint.

3. The Commission and the Administrator shall not investigate or respond to anonymous complaints, and, when requested, shall keep confidential the identity of complainants.

4. The Administrator shall provide the members of the Commission with a copy of any complaint that complies with the above section 2 requirements as soon as practicable, but no later than within 14 days of receipt of the complaint. A copy of any complaint that does not comply with the section 2 requirements shall, if possible, be returned to the complainant with an explanation of how the complaint is deficient.

5. Unless otherwise directed by the Chairman or the Commission, the Administrator shall conduct an investigation sufficient to determine if the complaint appears to have any merit and whether there is a possible means of resolving it. If the Administrator determines that the complaint may be meritorious, the alleged violator(s) shall be informed of the complaint and provided an opportunity to respond.

6. The Administrator shall prepare a report and present it to the Commission that relates his/her investigative findings and recommendations.

7. If the Administrator's report indicates that the complaint appears not to have any merit or that for any other reason enforcement action is not warranted, the Commission may dismiss the complaint.

8. If the report indicates that a resolution has been tentatively agreed to by the alleged violator(s) and the Administrator, the Commission may authorize approval of the resolution, pursue another acceptable resolution, or hold a hearing on the complaint.

9. The dismissal of a complaint or any other resolution approved by the Commission without holding a hearing shall take place at a public meeting of the Commission and before any complaint is dismissed or any resolution is approved by the Commission, any interested person shall be provided an opportunity to explain to the Commission why such action should not be taken or why a hearing should be held.

PART E. HEARINGS.

1. A hearing shall be held on any complaint if it is requested by an interested party or the Commission determines in its sole discretion to hold a hearing.

2. Requests for a hearing may be made at any time before the Commission authorizes a disposition of the case without a hearing.

3. Any request for a hearing shall be in writing, unless made at the Commission meeting at which the case disposition is considered, and shall include a statement of how the person requesting the hearing may be affected by the resolution of the case.

4. The Commission shall send not less than 10 days written notice of any hearing to the alleged violator(s) and any other person who has requested notification.

5. All hearings shall be conducted by the Commission. Interested persons shall be provided an opportunity to present relevant evidence that is not unduly

repetitive. Formal rules of evidence need not be observed within the discretion of the Commission.

6. A record of the hearing shall be kept by the Commission until all appeal periods are exhausted and shall include all the evidence presented to the Commission.

7. The Commission's decision shall recite:

(a) its findings of fact;

(b) the manner in which the Commission construed the law and applied it to the facts;

(c) any remunerative action a violator must take or has taken;

(d) any fine a violator must pay pursuant to Department regulations and a reference to the applicable regulations; and

(e) any revocation, suspension or modification to any certificate that has occurred.

8. Any decision of the Commission made pursuant to PART E. shall be final and conclusive unless a party to such hearing shall appeal the decision within 15 days of receipt of notice thereof.

[PART F. EFFECTIVE DATE.

These regulations shall become effective on January 10, 2001]

HARNESS RACING COMMISSION

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

IN RE: PROPOSED RULES AND REGULATIONS ORDER

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10027, the Delaware Harness Racing Commission ("Commission") hereby issues this Order promulgating a proposed amendment to the Commission's Rules. Following notice and a public hearing held on November 28, 2000 on the proposed Rule amendment to Rule 6.3.3.13, the Commission makes the following findings and conclusions:

SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

1. The Commission posted public notice of the proposed rule revisions in the November 1, 2000 Register of Regulations and in the News-Journal and the Delaware State News. The proposal contained a proposed amendment to Rule 6.3.3.13 to strike the existing first two sentences and add the following provision: "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."

2. The Commission held a public hearing on November 28, 2000. The Commission received a public comment from Presiding Judge Don Harmon against striking the first two sentences of the existing Rule 6.3.3.13. Charles Lockhart of Dover Downs stated that the horsemen do not want to have all the claimed horses tested.

FINDINGS OF FACT

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. A summary of the evidence is contained in paragraph #2.

4. Based on the public comments and the Commission's own review of the proposed rule, the Commission finds that the proposed amendment to Rule 6.3.3.13 should not be adopted in its current form. The Commission agrees with the comments of the Presiding Judge Harmon that the first two sentences of the existing Rule 6.3.3.13 should remain in the Rule. The Commission finds that a new proposed rule should be published to provide as follows:

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.

CONCLUSIONS

5. The proposed rule amendment to Rule 6.3.3.13 was promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 Del. C. § 10027. The Commission concludes that the proposed Rule should not be adopted in its proposed form since it would strike necessary provisions of the existing rule. The Commission will not adopt the proposed amendment to Rule 6.3.3.13 and will issue a new proposed amendment to the same rule.

6. The effective date of this Order shall be ten (10) days from the publication of this order in the Registrar of Regulations on January 1, 2001.

IT IS SO ORDERED this 4th day of December, 2000.

Anthony G. Flynn, Chairman

Terry Johnson, Commissioner

Beth Steele, Commissioner

Mary Ann Lambertson, Commissioner

Robert Kerr, Commissioner

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

2 DE Reg. 1240 (01/01/99)

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.

6.2.1.5.3 However, where necessary to fill a card, not more than one race per day may be divided into not more than two 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;

2 DE Reg. 1243 (01/01/99)

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

2 DE Reg. 1241 (01/01/99)

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.

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

2 DE Reg. 1243 (01/01/99)

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. 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.

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.

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

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.

4 DE Reg 336 (8/1/00)

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 of 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.

3 DE Reg 1520 (5/1/00)

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.

2 DE Reg. 1765 (1/1/98)

3 DE Reg 1520 (5/1/00)

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;

2 DE Reg. 1243 (01/01/99)

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.

2 DE Reg. 1243 (01/01/99)

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.

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.

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

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 no 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.

2 DE Reg. 1241 (1/1/99)

THOROUGHBRED RACING COMMISSION

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

PROPOSED RULES AND REGULATIONS ORDER

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10103, the Delaware Thoroughbred Racing Commission ("Commission") hereby issues this Order promulgating proposed amendments to the Commission's Rules. Following notice and a public hearing held on September 27, 2000 on the proposed Rules, the Commission makes the following findings and conclusions:

**SUMMARY OF EVIDENCE AND INFORMATION
SUBMITTED**

1. The Commission posted public notice of the proposed rule revisions in the September 1, 2000 Register of Regulations and in the News-Journal and the Delaware State News. The proposal contained five proposed changes to the Commission's existing rules. The proposed rule amendments were as follows: 1) amend Rule 10.07 to provide a procedure for postmortem examinations; 2) amend Rule 15.01.2(d) to permit the use of phenylbutazone in two year old horses; 3) amend Rule 15.02 to provide for quantification of lasix; 4) amend Rule 15.01.1(b) to expand the definition of "foreign substance" to include substances that cause interference with testing procedures; 5) amend Rule 8.08 to increase the fee for losing mounts by \$5.00.

2. The Commission held a public hearing on September 27, 2000 on the proposed rules. The Delaware Thoroughbred Horsemen's Association ("DTHA") did not oppose the quantification of lasix under proposed Rule 15.02 but opposed the proposed penalties. The DTHA also opposed the revision to Rule 15.01.1(b) expanding the definition of "foreign substance" The DTHA recommended that the Commission follow the standards and penalties used by the Maryland Racing Commission. The DTHA also opposed the jockey fee increase under proposed Rule 8.08.

3. The Commission Veterinarians agreed with proposed Rule 15.02 for quantification of lasix. The Veterinarians believed that adoption of this rule would require stricter enforcement of lasix treatment times. The Veterinarians opposed the portion of proposed Rule 15.02 that would permit intramuscular injections of lasix over 500 mg. The Veterinarians were also opposed to proposed Rule 15.01.1(b) to expand the definition of a "foreign substance" and opposed to proposed Rule 15.01(d).

4. The Commission Stewards submitted comments opposing Rule 15.01.2(d) to permit the use of phenylbutazone for two year olds.

5. The DTHA submitted written comments from Dr. Soma who appeared at the Commission's prior meeting. Dr. Soma is employed by the Pennsylvania Equine Toxicology & Research Laboratory, West Chester, Pennsylvania. In his comments to the Commission, Dr. Soma stated that his research raised questions about any correlation between specific gravity and the specific dosage of lasix or the timing of the administration. Dr. Soma stated that his research indicated that some horses may have a naturally high or low specific gravity, thereby affecting the test result for specific gravity. Dr. Soma recommended that the Commission use specific gravity as the standard in any lasix quantification rule. The DTHA also submitted a research paper authored by Dr. Soma, Dr. Cornelius Uboh, Jeffrey Rudy, Elizabeth Morgan, Kathleen Mengerlinghausen, and Richard Sams. The research paper found no meaningful correlation between

the dose of furosemide and the specific gravity of the sample. The research found that specific gravity cannot be reliably used in either predicting the dose of furosemide administered or in accurately differentiating the bleeders from the non-bleeders.

6. The Commission received comments from the Jockey's Guild in support of the jockey fee increase under proposed Rule 8.08. The Jockey's Guild stated that the jockey fees had not increased in approximately ten years.

FINDINGS OF FACT

7. 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. A summary of the evidence is contained in paragraphs 2-6.

8. The Commission received no comments in opposition to proposed Rule 10.07. This proposed rule would establish a procedure for the Commission to conduct a postmortem examination on a horse that expires on the licensee's grounds. This proposed Rule is modeled after a rule currently enacted by the Delaware Harness Racing Commission. The Commission finds Rule 10.07 is necessary for the regulation of racing and will be adopted as proposed.

9. The Commission received comments in favor and against the proposed amendment to Rule 15.01.2(d). The Commission finds that the use of phenylbutazone in two year olds will have little overall impact on the health of the two year olds racing at Delaware Park. The Commission will adopt the proposed Rule 15.01.2(d).

10. The Commission received extensive comments regarding proposed amendments to Rule 15.02(d)(g-i). The Commission finds that the issue of quantification of lasix and implementation of a penalty schedule requires further study. The Commission will not adopt the proposed amendment to Rule 15.02(d)(g-i).

11. The Commission received comments from the DTHA and the Commission Veterinarians in opposition to proposed Rule 15.01.1(b). This proposed Rule would expand the definition of a "foreign substance" to include detection by the Commission chemist of substances that are foreign to a horse that cause interference with testing procedures. The Commission does not agree with the comments of the DTHA that this rule requires further study. The Commission finds the rule is necessary to address a situation where a trainer gives a horse a foreign substance with the intent to mask other illegal substances. The Commission finds the proposed Rule 15.01.1(b) should be adopted as proposed.

12. The Commission proposed the amendment to Rule 8.08 to increase the jockey fee on losing mounts by \$5.00. This rule amendment was requested by the Jockeys' Guild who noted that the fees for losing mounts have not increased in about ten years. The Commission finds that the \$5.00

increase is more than warranted considering the passage of time since the last increase. The Commission will adopt the proposed amendment to Rule 8.08.

CONCLUSIONS

13. The proposed rules were promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 **Del.C.** §10103. The Commission deems these rules as proposed to be necessary for the effective enforcement of 3 **Del.C.** chapter 101 and for the full and efficient performance of the duties thereunder.

14. The Commission concludes that the adoption of the proposed rules, with the exception of proposed Rule 15.02(d)(g-i), would be in the best interests of the citizens of the State of Delaware and necessary to ensure the integrity and security of thoroughbred racing in the State of Delaware.

15. The Commission therefore adopts the following rule amendments pursuant to 3 **Del.C.** §10103 and 29 **Del.C.** §10113:

Amendment to Rule 10.07 (proposed amendment #1).

Amendment to Rules 15.01.2 (proposed amendment #2).

Amendment to Rule 15.01.1 (proposed amendment #4).

Amendment to Rule 8.08 (proposed amendment #5).

These rules replace in their entirety the former version of the Rules of the Delaware State Thoroughbred Racing Commission.

16. The effective date of this Order shall be ten (10) days from the publication of this order in the Registrar of Regulations on January 1, 2001. Attached hereto and incorporated herein is the amended Rules marked as Exhibit A and executed simultaneously this 20th day of November, 2000. IT IS SO ORDERED this 20th day of No v er 2000.

Bernard Daney, Chairman

Duncan Patterso, Commissioner

H. Jam Decker, Commissioner

Carolyn Wilson, Commissioner

Part 8 -- Jockeys and Apprentice Jockeys

8.01 Probationary Mounts:

Any person desiring to participate at Licensee's premises as a rider and who never previously has ridden in a race may be permitted to ride in two races before applying for a permit as a Jockey or Apprentice Jockey, provided, however:

(a) Such person has had at least one year of service with a racing stable and currently holds a permit issued by the Commission for a recognized activity in racing;

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(b) A registered Trainer certifies in writing to the Stewards that such person has demonstrated sufficient horsemanship to be permitted such probationary mounts;

(c) The Starter has schooled such person in breaking

from the starting gate with other horses and approves such person as being capable of starting a horse properly from the starting gate in a race;

(d) The Stewards, in their sole discretion, are satisfied that such person intends to become a licensed Jockey, possesses the physical ability and has demonstrated sufficient horsemanship to ride in a race without jeopardizing the safety of horses or other riders in such race. No such person shall be permitted to ride in any such probationary race without the prior approval of the Stewards.

8.02 Qualification for Permit:

In addition to satisfying the requirements applicable to Permittees, et al., imposed by Part 2 of these Rules, in order to be eligible to have an authorization or permit issued to him as a Jockey or Apprentice Jockey, a person also:

(a) Must be an individual 16 years of age or older;

(b) Must utilize in his or her application his or her legal name only so that such may be listed in the daily race program;

(c) Must have served at least one year with a racing stable;

(d) Must have ridden in at least two races; and

(e) Must, when required by the Stewards, provide a medical affidavit certifying he or she is physically and mentally capable of performing the activities and duties of a Jockey.

8.03 Amateur or Provisional Jockey:

An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefor, must be approved by the Stewards as to competency of horsemanship, may be granted a Jockey's authorization or permit, and such amateur status must be duly noted on the daily race program. A registered Owner or registered Trainer, upon approval by the Stewards, may be issued a provisional Jockey's authorization or permit to ride his or her own horse or horse registered in his or her care as Trainer.

8.04 Apprentice Allowance:

An apprentice jockey may claim the following weight allowances in all overnight races except stakes and handicaps:

(a) A ten pound allowance beginning with the first mount and continuing until the apprentice has ridden five winners.

(b) A seven pound allowance until the apprentice has ridden an additional 35 winners.

(c) If an apprentice has ridden a total of 40 winners prior to the end of a period of one year from the date of riding his or her fifth winner, he or she shall have an allowance of five pounds until the end of that year.

(d) If after one year from the date of the fifth winning

mount, the apprentice jockey has not ridden 40 winners, the applicable weight allowance shall continue for more than one year or until the 40th winner, whichever comes first. An apprentice may in no event claim a weight allowance for more than two years from the date of the fifth winning mount, unless an extension has been granted pursuant to this Rule.

(e) After the completion of the weight allowances as defined in this Rule, a contracted apprentice may for one year claim three pounds when riding horses owned or trained by his or her original contract employer, provided his or her contract has not been transferred or sold since his or her first winner. Such original contract employer shall be deemed the party to the contract who was the employer at the time of the apprentice jockey's first winner.

(f) An apprentice jockey may enter into a contract with a registered owner or registered trainer qualified under Rule 8.05 for a period not to exceed five years. Such contracts must be approved by the stewards and filed with the licensee or its registrar. Such contracts shall be binding in all respects on the signers thereof. An apprentice who is not contracted may be given an apprentice jockey certificate on a form furnished by the licensee or its registrar.

(g) After the completion of the weight allowances defined in this Rule, such rider must obtain a jockey license before accepting subsequent mounts.

(h) The Commission may extend the weight allowance of an apprentice jockey when, in the discretion of the Commission, an apprentice jockey is unable to continue riding due to:

- (1) Physical disablement or illness;
- (2) Military service;
- (3) Attendance in an institution of secondary or higher education;
- (4) Restriction on racing;
- (5) Other valid reasons.

(i) To qualify for an extension, an apprentice jockey shall have been rendered unable to ride for a period of not less than seven (7) consecutive days during the period in which the apprentice was entitled to an apprentice weight allowance. Under exceptional circumstances, total days lost collectively will be given consideration.

(j) The Commission currently licensing apprentice jockeys shall have the authority to grant an extension to an eligible applicant, but only after the apprentice has produced documentation verifying time lost as defined by this Rule.

(k) An apprentice may petition one of the jurisdictions in which he or she is licensed and riding for an extension of the time for claiming apprentice weight allowances, and the apprentice shall be bound by the decision of the jurisdiction so petitioned.

Revised 10/31/96.

8.05 Rider Contracts:

All contracts between an employer or Trainer and employee rider are subject to the rules of racing. All riding contracts for terms longer than 30 days, as well as any amendments thereto, or cancellations or transfer thereof, must be in writing with the signatures of the parties thereto notarized, be approved by the Stewards and filed with Licensee or his Registrar. The Stewards may approve a riding contract and permit parties thereto to participate in racing at Licensee's premises if they find that:

(a) The contract employer is a registered Owner or registered Trainer who owns or trains at least three horses eligible to race at the time of execution of such contract;

(b) The contract employer possesses such character, ability, facilities and financial responsibility as may be conducive to the development of a competent race rider;

(c) Such contracts for Apprentice Jockeys provide for fair remuneration, adequate medical care and an option equally available to both employer and Apprentice Jockey to cancel such contract after two years from the date of execution.

8.06 Restrictions as to Contract Riders:

No rider may:

(a) Ride any horse not owned or trained by his or her contract employer in a race against a horse owned or trained by his or her contract employer;

(b) Ride or agree to ride any horse in a race without the consent of his or her contract employer;

(c) Share any money earned from riding with his or her contract employer;

(d) Repealed: 10/31/96.

8.07 Calls and Engagements:

Any rider not so prohibited by prior contract may agree to give first or second call on his or her race-riding services to any registered Owner or Trainer. Such agreements, if for terms of more than 30 days, must be in writing, approved by the Stewards and filed with the Licensee or its Registrar. Any rider employed by a racing stable on a regular salaried basis may not ride against the stable which so employs him or her. No Owner or Trainer shall employ or engage a rider to prevent him or her from riding another horse.

8.08 Jockey Fee:

The fee to a Jockey in all races shall be, in the absence of special agreement, as follows:

Purse	Winning Mount	Second Mount	Third Mount	Losing Mount
\$5,000 to 9,900	10% of Win Purse	\$65	\$50	\$40 <u>\$45</u>
\$10,000 to 14,900	10% of Win Purse	5%	5%	\$45 <u>\$50</u>

\$15,000 to 24,900	10% of Win Purse	5%	5%	\$50 <u>\$55</u>
\$25,000 to 49,900	10% of Win Purse	5%	5%	\$60 <u>\$65</u>
\$50,000 to 99,900	10% of Win Purse	5%	5%	\$75 <u>\$80</u>
100,000 and up	10% of Win Purse	5%	5%	\$100 <u>\$105</u>

A jockey fee shall be considered earned by a rider when he or she is weighed out by the Clerk of Scales, except when:

(a) A rider does not weigh out and ride in a race for which he or she has been engaged because an Owner or Trainer engaged more than one rider for the same race; in such case, the Owner or Trainer shall pay an appropriate fee to each rider engaged for such race.

(b) Such rider capable of riding elects to take himself or herself off the mount, without, in the opinion of the Stewards, proper cause therefor.

(c) Such rider is replaced by the Stewards with a substitute rider for a reason other than a physical injury suffered by such rider during the time between weighing out and start of the race.

8.09 Duty to Fulfill Engagements:

Every rider shall fulfill his or her duly scheduled riding engagements unless excused by the Stewards. No rider shall be forced to ride a horse he or she believes to be unsound nor over a racing strip he or she believes to be unsafe, but if the Stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, such rider may be subject to disciplinary action.

8.10 Presence in Jockey Room:

Each rider who has been engaged to ride in a race shall be physically present in the Jockey room no later than one hour prior to post time for the first race on the day he or she is scheduled to ride, unless excused by the Stewards or the Clerk of Scales and, upon arrival, shall report to the Clerk of Scales his or her engagements. In the event a rider fails for any reason to arrive in the Jockey room prior to one hour before post time of a race in which he or she is scheduled to ride, the Clerk of Scales shall so advise the Stewards who thereupon may name a substitute rider, in which case they shall cause an announcement to be made of any such rider substitution prior to the opening of wagering on such race.

(a) Each rider reporting to the Jockey room shall remain in the Jockey room until he or she has fulfilled all his riding engagements for the day, except to ride in a race or to view the running of a race from a location approved by the

Stewards. Such rider shall have no contact or communication with any person outside the Jockey room other than an Owner or Trainer for whom he or she is riding, or a racing official, or a representative of Licensee, until such rider has fulfilled all his or her riding engagements for the day.

(b) Licensee shall take measures designed to exclude from the Jockey room all persons, except riders scheduled to ride on the day's program, Valets, authorized attendants, Racing Officials, representatives of Licensee and persons having special permission from the Stewards to enter the Jockey room.

(c) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall so notify the stewards not later than after fulfilling his or her final riding engagement of the day he or she intends to depart.

8.11 Weighing Out:

Each rider engaged to ride in a race shall report to the Clerk of Scales for weighing out not more than one hour and not less than 15 minutes before post time for each race in which he or she is engaged to ride and to report their weight and overweight, if any, at a time designated by the Stewards.

(a) No rider shall pass the scale with more than one pound overweight, without the consent of the Owner or Trainer of the horse he or she is engaged to ride. In no event shall a rider pass the scale with more than five pounds overweight.

(b) No horse shall be disqualified because of overweight carried.

(c) Whip, blinkers, number cloth, bridle and rider's safety helmet and rider's safety vest (with a minimum British rating of #5) shall not be included in a rider's weight.

Revised: 10/20/93

8.12 Wagering:

No rider shall place a wager, or cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race, except on his or her own mount to win, or a combination wager on his or her own mount to win, place and show, and except through the Owner or Trainer of the horse he or she is riding. Such Owner or Trainer placing wagers for his rider shall maintain a precise and complete record of all such wagers and such record shall be available for examination by the Stewards at all times.

8.13 Attire:

Upon leaving the Jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional Jockey costume with all jacket buttons and catches fastened. Except with the approval of the Stewards, each Jockey shall wear the cap and jacket racing colors registered in the name of the Owner of the horse he or she is to ride, white or light breeches, top boots, safety helmet

approved by the Commission, safety vest approved by the Commission and a number on his or her right shoulder corresponding to his or her mount's number as shown on the saddle cloth and daily race program. The Clerk of Scales and attending Valet shall be held jointly responsible with a rider for his or her neat and clean appearance and proper attire.

Revised: 10/20/93

8.14 Viewing Films or Tapes of Race

Every rider shall be responsible for checking the film list posted by the Stewards in the Jockey room the day after riding in a race, the posting of same to be considered as notice to all riders whose names are listed thereon to present themselves at the time designated by the Stewards to view the patrol films or video tape of races. Any rider may be accompanied by a representative of the Jockey organization of which he or she is a member in viewing such films or, with the Stewards' permission, be represented at such viewing by his or her designated representatives.

Part 10 -- Horses

10.01 Registration required:

No horse may be entered or raced in the State unless duly registered and named in the registry office of the Jockey Club in New York and unless the registration certificate or racing permit issued by the Jockey Club for such horse is on file with the Racing Secretary except that, for good cause, the Stewards, in their discretion, may waive this requirement if the horse is otherwise correctly identified to their satisfaction.

For steeplechase racing only, a Certificate for Racing Purposes Only issued by the National Steeplechase and Hunt Association in New York can be acceptable within the meaning of this paragraph.

10.02 Ringers Prohibited:

No horse may be entered or raced in this state designated by a name other than the name under which such horse is currently registered with the Jockey Club in New York or with any other authority recognized by the Commission. In the event a horse's name is changed by the Jockey Club, or any other authority recognized by the Commission, such horse's former name shall be shown parenthetically in the daily race program the first three times such horse races after such name change.

(a) No person shall at any time cause or permit the correct identity of a horse to be concealed or altered nor shall any person refuse to reveal the correct identity of a horse he owns, or which is in his care, to a Racing Official.

(b) No horse shall race in this State without a legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau, except that for good cause the

Stewards, in their discretion, may waive this requirement if the horse is otherwise correctly identified to the Stewards' satisfaction. The Stewards shall require that a horse without a lip tattoo number be lip tattooed within a reasonably practical time.

(c) No horse may be entered or raced in this State if previously involved in a "ringer" case if: (1) a person having control of such horse knowingly entered or raced such horse while designated by a name other than the name under which such horse was registered with the Jockey Club or any other authority recognized by the Commission; or (2) such person having control of such horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to such horse in question.

10.03 Denerving:

Any horse on which a neurectomy has been performed shall have such fact designated on its registration certificate or racing permit. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the Trainer of such denerved horse to insure that such fact is designated on the registration certificate or racing permit.

(a) Any horse whose ulnar, radial or median nerve has been either blocked or removed (known as high nerved), or whose volar or plantar nerve has been blocked or removed, unilaterally or bilaterally, shall not be entered or raced in this State.

(b) Any horse which has had a posterior digital neurectomy (known as low nerved) may be permitted to race provided such denerving has been reported by the Trainer to the Stewards and such horse has been approved for racing by the Commission's Veterinarian prior to being entered for a race.

4 DE Reg. 182 (7/1/00)

(c) In the event a horse races in violation of this Rule and participates in the purse distribution, then no protest thereon will be considered unless submitted in writing to the Stewards within 48 hours after such race.

(d) In the event a horse races in violation of this Rule and is claimed, then no protest thereon will be considered unless the successful claimant submits such protest in writing within 48 hours requesting that his claim be voided. Should the claim be voided, the horse shall be returned to the Owner who started such horse in such race and the claim price shall be returned to the claimant.

(e) A list of all denerved horses shall be posted in the Racing Secretary's Office. No person shall report a horse as having a neurectomy when in fact such horse has not.

10.04 Bleeders:

Any horse known to have bled from its nostrils during a race or workout may not be entered or raced without the prior approval for racing by the Commission's Veterinarian. A horse which bled for the first time shall not be permitted to

run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for thirty (30) calendar days. A horse which bleeds a third time shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time, the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. (A positive endoscopic examination shall be classed as a first time bleeder). See Rule 15.02 Bleeder Medication.

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10.05 Health Certificate Required:

Licensee, within its discretion, may require a health certificate from an accredited, practicing veterinarian of any horse stabled or to be stabled on its grounds.

10.06 Workouts:

No horse may be schooled in the paddock or taken onto a track on Licensee's grounds for training or workout, other than during normal training hours as posted by Licensee, without the special permission of the Stewards.

10.07 Removal from Licensee's Grounds/Postmortem Examination

(a) No dead or sick horse may be removed from Licensee's grounds without the prior approval of the Commission's Veterinarian.

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(b) 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.

(c) The Commission may conduct a postmortem examination of any horse that expires while housed on a licensee's grounds within this jurisdiction. Trainers and owners shall be required to comply with such action as a condition of licensure.

(d) 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.

(e) 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.

(f) The cost of Commission-ordered postmortem examinations, testing and disposal will be borne by the Commission.

10.08 Serviceable for Racing:

No horse may be entered or raced that:

(a) is not in serviceable, sound racing condition. The Stewards may, at any time, cause a horse on Licensee's grounds to be examined by a qualified person.

(b) is posted on a Veterinarian's list or Steward's list or is suspended in any racing jurisdiction;

(c) has been administered any drug, medication or substance foreign to the natural horse in violation of these Rules;

(d) is blind or has seriously impaired vision in both eyes;

(e) is not correctly identified to the satisfaction of the Stewards;

(f) is owned wholly or in part by, or is trained by, an ineligible person.

10.09 Equipment:

Whips or blinkers must be used consistently on a horse or not at all. Permission to change any equipment used on a horse in its last previous start must be obtained from the Stewards. A horse's tongue may be tied down for a race with a clean bandage or gauze. A horse's bridle may weigh no more than two pounds. War bridles are prohibited. No horse may race in ordinary training shoes. Bar shoes may be used for racing only with the permission of the Stewards.

Use on a horse either in a race or workout of any goading device, chain, electrical or mechanical device or appliance, other than the ordinary whip, which could be used to alter the speed of such horse is prohibited, except that spurs may be used in jumping races and, with the permission of the Stewards, during workouts.

No whip shall be used that weighs more than one pound or is longer than 30 inches with one popper; no stingers or projections extending through the hole of a popper or any metal part on a whip shall be permitted.

Indiscriminate or brutal use of an ordinary whip on a horse, as determined by the Stewards in their sole discretion, is prohibited.

10.10 Sex Alteration:

Any alteration in the sex of a horse must be reported by such horse's Trainer to the Racing Secretary promptly, and the Racing Secretary shall note same on such horse's

registration certificate.

Rule 10.01 and 10.02 Rev. March 1976.

Part 15 -- Medication, Testing Procedures

15.01 Prohibition and Control of Medication:

It shall be the intent of these Rules to protect the integrity of horse racing, to guard the health of the horse and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs and medications or substances foreign to the natural horse. In this context:

(a) No horse participating in a race shall carry in its body any substance foreign to the natural horse, except as hereinafter provided.

(b) No foreign substance shall be administered to a horse (entered to race) by injection, oral administration, rectal infusion or suppository, or by inhalation within twenty-four (24) hours prior to the scheduled post time for the first race, except as hereinafter provided.

(c) No person other than a veterinarian shall have in his possession any equipment for hypodermic injection, any substance for hypodermic administration or any foreign substance which can be administered internally to a horse by any route, except for an existing condition as prescribed by a veterinarian.

(d) Notwithstanding the provisions of Rule 15.01(c) above, any person may have in his possession within a race track enclosure, any chemical or biological substance for use on his own person, provided that, if such chemical substance is prohibited from being dispensed by any Federal law or law of this State without a prescription, he is in possession of documentary evidence that a valid prescription for such chemical or biological substance has been issued to him.

(e) Notwithstanding the provisions of Rule 15.01(c) above, any person may have in his possession within any race track enclosure, any hypodermic syringe or needle for the purpose of administering a chemical or biological substance to himself, provided that he has notified the Stewards: (1) of his possession of such device; (2) of the size of such device; and (3) of the chemical substance to be administered by such device and has obtained written permission for possession and use from the Stewards.

15.01.1 Definitions:

The following terms and words used in these Rules are defined as:

(a) Hypodermic Injection shall mean any injection into or under the skin or mucous, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection and intraocular (intraconjunctival) injection.

(b) Foreign Substances shall mean all substances except those which exist naturally in the untreated horse at normal physiological concentration, and shall also include

substances foreign to a horse at levels that cause interference with testing procedures.

(c) Veterinarian shall mean a veterinary practitioner authorized to practice at the race track.

(d) Horse includes all horses registered for racing under the jurisdiction of the Commission and for the purposes of these Rules shall mean stallion, colt, gelding, ridgling, filly or mare.

(e) Chemist shall mean the Commission's chemist.

(f) Test Sample shall mean any body substance including, but not limited to, blood or urine taken from a horse under the supervision of the Licensee's Veterinarian and in such manner as prescribed by the Commission for the purpose of analysis.

(g) Race Day shall mean the 24-hour period prior to the scheduled post time for the first race.

15.01.2 Foreign Substances:

No horse participating in a race shall carry in its body any foreign substance except as provided in Rule 15.01.2(c):

(a) A finding by the chemist that a foreign substance is present in the test sample shall be prima facie evidence that such foreign substance was administered and carried in the body of the horse while participating in a race. Such a finding shall also be taken as prima facie evidence that the Trainer and agents responsible for the care or custody of the horse has/have been negligent in the handling or care of the horse.

(b) A finding by the chemist of a foreign substance or an approved substance used in violation of Rule 15.01 in any test sample of a horse participating in a race shall result in the horse being disqualified from purse money or other awards, except for purposes of pari-mutuel wagering which shall in no way be affected.

(c) A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Veterinary-Chemist Advisory Committee of the National Association of State Racing Commissioners and approved by the Commission.

(d) The only approved non-steroidal anti-inflammatory drug (NSAID) that may be present in a horse's body while it is participating in a race is phenylbutazone/oxyphenbutazone in the level stated in subsection (e) or (f). The presence of any other NSAID at any test level is forbidden. ~~Notwithstanding the foregoing, the presence of any NSAID at any test level is forbidden for a two-year old horse.~~

Revised: 1/6/92.

(e) The test level of phenylbutazone under this Rule shall not be in excess of two point five (2.5) micrograms (mcg) per milliliter (ml) of plasma without penalties in the following format:

Micrograms per milliliter	Penalties
0 to 2.5	No action
2.6 to 4.9	First Offense \$250.00 fine
2.6 to 4.9	Second Offense within 365 days - \$500.00 fine
2.6 to 4.9	Third Offense within 365 days - \$500.00 fine and/ or Suspension and or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

(f) The test level for oxphenbutazone under this Rule shall not be in excess of two (2) micrograms (mcg) per milliliter (ml) of plasma.

Micrograms per milliliter	Penalties
0 to 2.5	No action
2.6 to 4.9	First Offense \$250.00 fine
2.6 to 4.9	Second Offense within 365 days - \$500.00 fine
2.6 to 4.9	Third Offense within 365 days - \$500.00 fine and/ or Suspension and/ or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

15.02 Bleeder Medication:

Notwithstanding anything in the Rules of Racing to the contrary, the Stewards may permit the administration of Furosemide (Lasix) to control epistaxis (bleeding) to horses under the following conditions:

(a) A horse which, during a race or workout at a duly licensed race track in this State or within the first hour immediately following such a race or workout, is observed by the Commission's Veterinarian or the Stewards to be shedding blood from one or both nostrils or is found to have bled internally. (An endoscopic examination of the horse, in order to confirm bleeding, may be performed by the practicing veterinarian in the presence of the Commission's Veterinarian at the detention barn within one (1) hour of workout or race.)

(b) A horse which has been certified as a bleeder in another jurisdiction may be placed on the bleeder list provided that the other jurisdiction qualified it as a bleeder using criteria satisfactory to the Commission's Veterinarian and the Stewards. It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the

Licensee's Veterinarian or Stewards on official forms from that State prior to entry.

(c) The Commission's Veterinarian shall be responsible to maintain an up-to-date "bleeder" list and the list shall be available in the Racing Secretary's office.

(d) A horse in the Bleeder Program shall be required to be brought to ~~the detention barn~~ an area designated by the Licensee and approved by the Commission not later than three and one-half (3 1/2) hours before post time for the race in which it is entered ~~and shall remain in said detention barn (in its assigned stall) until called to the paddock prior to post time.~~ During the 3 1/2 hour period, the horse shall be under the care and custody of a groom or caretaker appointed by the Trainer. The approved furosemide medication may be administered by a licensed practicing veterinarian ~~in the detention barn~~ within three (3) hours before post time. The practicing veterinarian shall make a report to the Stewards of the treatment on forms provided by the Stewards on the same day of treatment.

(e) (Deleted.)

(f) A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for thirty (30) calendar days. A horse which bleeds a third time shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time, the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. A positive endoscopic examination shall be classed as a first time bleeder.

Revised: 6/19/92.

~~[(g) Dosage. Furosemide (Lasix) shall be administered intravenously to horses in the Bleeder Program by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:~~

~~i. A horse may receive an intramuscular administration of furosemide if the Commission Veterinarian determines that the horse cannot receive an intravenous administration of furosemide and gives permission for an intramuscular administration;~~

~~ii. A horse may receive up to 750 milligrams of furosemide if the Commission Veterinarian grants permission for a dosage greater than 500 milligrams;~~

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

~~(h) 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.~~

~~(i) Post Race Quantification. 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 furosemide (lasix) per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower, unless the dosage of furosemide (lasix):~~

~~i. Was administered intramuscularly as provided in Rule 15.02(g)(i); or~~

~~ii. Exceeded 500 milligrams as provided in Rule 15.02(g)(ii).~~

~~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 Rule 15.02(g)(i) or exceeded 500 milligrams as provided in Rule 15.02(g)(ii), then a penalty shall be imposed as follows:~~

~~a. If such overage is the first violation of this rule within a twelve month period up to a \$250 fine and loss of purse.~~

~~b. If such overage is the second violation of this rule within a twelve month period up to a \$1,000 fine and loss of purse.~~

~~c. If such overage is the third violation of this rule within a twelve month period up to a \$1,000 fine, up to a fifteen day suspension, and loss of purse.~~

~~d. If the overage caused interference with the testing procedures, then the penalty for such overage will be up to a \$1,000 fine, a suspension of from 15 to 50 days, and loss of purse.~~

4 DE Reg. 183 (7/1/00)

15.03 Responsibility for Prohibited Administration:

Any person found to have administered or authorized a medication, drug or substance which caused or could have caused a violation of Rules 15.01 or 15.02, or caused, participated or attempted to participate in any way in such administration, shall be subject to disciplinary action.

(a) The registered Trainer of a horse found to have been administered a medication, drug or substance in violation of Rules 15.01 or 15.02 shall bear the burden of proof to show freedom from negligence in the exercise of a high degree of care in safeguarding such horse from being tampered with and, failing to prove such freedom from negligence (or reliance on the professional ability of a licensed Veterinarian), shall be subject to disciplinary action.

(b) The Assistant Trainer, groom, stable watchman or any other person having the immediate care and custody of a

horse found to have been administered a medication, drug or substance in violation of Rules 15.01 or 15.02, if found negligent in guarding or protecting such horse from being tampered with, shall be subject to disciplinary action.

(c) A licensed Veterinarian shall be responsible for any medication, drug or substance that he administers, prescribes or causes to be administered by his direction on a horse. If found to have made an error in type or quantity of same administered and if in reliance upon the correctness thereof a Trainer races such treated horse in violation of Rules 15.01 and 15.02, such licensed Veterinarian shall be subject to disciplinary action.

15.04 Reports of Administration:

Before a licensed Veterinarian administers or prescribes any drug or restricted substance for a horse, he shall ascertain by reasonable inquiry whether the horse has been entered to race at any track and, if the horse has been entered, he shall not administer or prescribe any drug or restricted substance within the time or manner restricted by these Rules.

If, however, an emergency exists involving the life or health of the horse, he may proceed to treat or prescribe for the horse but shall report the matter as promptly as practicable to the State Veterinarian and Stewards.

(a) Any Veterinarian practicing at any Delaware race track shall file a daily report with the Stewards and the Track Veterinarian as to any medication prescribed or administered or professional service performed. This report shall be filed in person or postmarked within a period of forty-eight (48) hours from the time of treatment. Detection of any unreported medication, drug or substance by the Commission's Chemist in a pre-race or post-race test may be grounds for disciplinary action against such Veterinarian.

(b) Such daily reports shall accurately reflect the identity of the horse treated, diagnosis, time of treatment, type and dosage of medication, drug or substance and method of administration.

(c) Such daily reports shall remain confidential except that the Commission's Veterinarian may compile general data therefrom to assist the Commission in formulating policies or rules and the Stewards may review the same in investigating a possible violation of these rules. See Rule 11.02(d) respecting a public list of horses declared to race on medication.

4 DE Reg. 184 (7/1/00)

(d) When making an entry, it shall be the duty of the Trainer or his representative, as required by Rule 11.02(d), to disclose and declare to the Racing Secretary or his representative whether said horse will race on any medication permitted by these rules.

15.05 Report Prior to Race of Cessation or Reduction of Medication:

For any horse entered to run in a race, a timely report of the elimination or reduction since its last race in the level of Phenylbutazone and/or similar medications administered to it at the time of such last race shall be made to the Commission's Veterinarian by the horse's Owner, Trainer, attending Veterinarian and/or any other person having supervision over, or custody of, such horse.

4 DE Reg. 184 (7/1/00)

Violation of this Rule will constitute grounds for disciplinary action.

15.06 Bettors' Safeguard:

To help protect against inconsistent performances, a horse which last raced after having been administered Phenylbutazone and/or similar medication shall not be permitted to race without having been administered the same or similar medication at a comparable level, unless the Commission's Veterinarian grants his prior, express approval that such horse may race notwithstanding that the medication program to which it was subjected at the time of its last race has subsequently been eliminated or reduced.

4 DE Reg. 184 (7/1/00)

Violation of any aspect of this Rule by an Owner, Trainer, attending Veterinarian or any other person having supervision or custody of the horse will constitute grounds for disciplinary action as provided by these Rules.

15.07 Commission List:

As a guide to Owners, Trainers and Veterinarians, the Commission may from time to time publish a list of medications, shown by brand and generic names, specifically prohibited for racing. Such list shall not be considered exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Rule 15.01.

15.08 Detention Area:

Each Licensee may provide and maintain on its grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing; such detention area shall be under the supervision and control of the Commission's Veterinarian.

4 DE Reg. 184 (7/1/00)

15.09 Horses to be Tested:

The Stewards may at any time order the taking of a blood, urine, or saliva specimen for testing from any horse entered. Any Owner or Trainer may at any time request that a specimen be taken from a horse he owns or trains by Licensee's Veterinarian and be tested by Commission's Chemist, provided the costs of such testing are borne by the Owner or Trainer requesting such test.

15.10 Procedure for Taking Specimens:

(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 hotwalker of horses to be tested shall be admitted to the detention area without permission of the Commission veterinarian.

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

(a) Buckets and water shall be furnished by the Commission veterinarian.

(b) 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.

(c) A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission veterinarian.

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

(a) The owner;

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

(c) A stable representative designated by such owner or trainer.

(4) (a) 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) of this section.

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

(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.

(a) 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.

(b) The Commission veterinarian shall:

1. Identify the horse from which the specimen was taken.

2. Document the race and day, verified by the witness; and

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

(c) 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.

(d) 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.

(e) 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.

(f) When the Commission chemist has reported that the "primary" sample delivered contains no prohibited drug, the "secondary" sample shall be properly disposed.

(g) 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.

(h) 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.

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

(j) In the event of an initial finding of a prohibited drug or in violation of these Rules & Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral 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.

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.

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.

(k) 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.

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.

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

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 to the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

(l) 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 the possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

(m) 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.

15.11 Commission Chemist:

The Commission's Chemist, who shall be a member of the Association of Official Racing Chemists, shall conduct tests on specimens provided him in order to detect and identify prohibited substances therein and report on such in such a manner, and according to such procedures, as the Commission from time to time may approve and/or prescribe.

DEPARTMENT OF EDUCATION

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

**REGULATORY IMPLEMENTING ORDER
PROCEDURES RELATED TO THE COLLECTION,
MAINTENANCE AND DISCLOSURE OF STUDENT
DATA**

**I. SUMMARY OF THE EVIDENCE AND
INFORMATION SUBMITTED**

The Secretary of Education seeks the approval of the State Board of Education to amend Appendix C from the *Handbook for K-12 Education* entitled Procedures Related to the Collection, Maintenance and Disclosure of Student Data. The amendments change the format of the regulations to the DOE format and change the references to the State Board of Education to the Department of Education. Sections 12.0 and 26.0, which have references to the Delaware Public Archives have been amended to reflect changes in the procedures and rules of the Delaware Public Archives. The other aspects of the regulations remain unchanged.

The concerns expressed in a letter from the State Council for Persons with Disabilities have been addressed in the following ways.

The Council was concerned with the tension between FERPA's characterization of an "eligible student" for the purpose of releasing records at age 18 and the 14 *Del. C.* 4111 reference to the student being 14 years of age. The concern was addressed by adding a new 5.3 to read "Nothing in these regulations shall be construed to limit the ability of a pupil who has reached the age of 14 to request the release of records as provided for in 14 *Del. C.* 4111".

The Council expressed concern about the application of these regulations to Business and Trade Schools and Higher Education Institutions. The Department addressed this concern by changing the last part of 3.0 to read "disclosure of education records by covered agencies and institutions" thereby eliminating the words "under the general supervision of the Department of Education".

The Department changed 5.1 by removing the words "with disabilities" from line four, so if applicable, 504 students would be covered by this section as per the Council's suggestion.

The Department has revised the numbering for 6.0 as suggested by the Council to provide better clarity.

The Department added an additional reference to a Federal statute in 9.2 as suggested by the Council.

The Department has eliminated the references to "Divisions of Mental Health, Mental Retardation or Youth Rehabilitation Services from 26.10 and replaced those references with "Department of Children Youth and Their

Families" as per the Council's recommendation.

The Council's concern in 27.2 about the timelines and ways appeals can be processed has been addressed by changing 27.2 so that complaints involving this regulation are directed to the Director, Exceptional Children and Early Childhood Education and stating that the "procedures provided in Regulation 925 Children with Disabilities may also be available to students with disabilities for resolving such allegations."

The changes made are not substantive and hence do not require that the regulations be readvertised.

Notice of the proposed regulations were published in the News Journal and the Delaware State News on October 24, 2000, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. FINDINGS OF FACTS

The Secretary finds that it is necessary to amend these regulations because the language of the regulations needed up dating and the format needed to be changed to the Department's format for regulations.

III. DECISION TO AMEND THE REGULATIONS

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 *Del. C.* Section 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 *Del. C.* Section 122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations 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.* Section 122, in open session at the said Board's regularly scheduled meeting on December 21, 2000. 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 21st day of December, 2000.

DEPARTMENT OF EDUCATION
Valerie A Woodruff, Secretary of Education

Approved this 21st day of December, 2000.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Mary B. Graham, Esquire

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

**PROCEDURES FOR THE COLLECTION,
MAINTENANCE AND DISCLOSURE OF STUDENT
DATA**

State Department of Public Instruction

Dover, Delaware

Revised September, 1994

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~~DELAWARE DEPARTMENT OF PUBLIC
INSTRUCTION
PROCEDURES RELATED TO THE COLLECTION,
MAINTENANCE AND DISCLOSURE OF STUDENT
DATA~~

SECTION 1—AUTHORITY

Under the provisions of Section 122, Title 14, of the Delaware Code, the State Board of Education has been given authority to establish rules and regulations for the schools in Delaware. This document reflects Federal regulations and procedures as required by Code of Federal Regulations. Part 99 Family Education Rights and Privacy, Revised 2/19/88 and Public Law 101-476 Individuals with Disabilities Education Act effective November 13, 1992, and their respective regulations.

SECTION 2—APPLICABILITY

(1) These regulations apply to an education agency or institution to which funds have been available under any program for which the U. S. Secretary of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.

(2) These regulations do not apply to an educational agency or institution solely because students attending that non-monetary agency or institution receive benefits under one or more of the Federal programs referenced in paragraph 1 of this section, if no funds under those programs are made available to the agency or institution itself.

(3) For the purposes of these regulations, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in paragraph 1 of this section: (1) Are provided to the agency or institution by grant, contract, subgrant, or subcontract, or (2) are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended.)

(4) Except as otherwise specifically provided, these procedures apply to education records of students who are, have been, or will be in attendance at the educational institution which collects, maintains, or discloses the records.

SECTION 3—PURPOSE

The purpose of these procedures is to set forth the conditions governing the protection of privacy of parents and students as it relates to the collection, maintenance, and disclosure of education records by agencies and institutions under the general supervision of the Delaware State Board of Education.

SECTION 4—DEFINITIONS

As used in these procedures:

“Attendance” at an agency or institution includes, but is not limited to: (a) attendance in person having homebound or correspondence instruction, and (b) the period during which a person is working under a work-study program.

“Consent” means that (1) the parent or eligible student has been fully informed of the information set out in this document in his or her native language or other mode of communication, unless it clearly is not feasible to do so; (2) the parent or eligible student understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent sets forth that activity and lists the records (if any) which will be released and to whom; and (3) the parent or eligible student understands that the granting of consent is voluntary.

“Directory information” means information in an educational record the disclosure of which would not generally be considered harmful or an invasion of privacy. It includes, but is not limited to, a student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student, and other similar information.

“Disclosure” means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

“Educational institution” or “educational agency or institution” means any public or private agency or institution which is the recipient of the funds under any Federal program referenced in Section 2 of this document. The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

“Education records” (a) means those records which: (1) are directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution, (b) the term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary

thereto which:

(i) Are in the sole possession of the maker thereof, and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

(2) Records of a law enforcement unit of an educational agency or institution which are:

(i) Maintained apart from the records described in paragraph (a) of this definition.

(ii) Maintained solely for law enforcement purposes, and:

(iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction: provided, that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

(3) (i) Records relating to an individual who is employed by an educational agency or institution which (a) are made and maintained in the normal course of business; (b) relate exclusively to the individual available for use for any other purpose.

(ii) This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.

(4) Records relating to an eligible student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity.

(ii) Created, maintained, or used only in connection with the provision of treatment to the student, and

(iii) Disclosed only to individuals providing the treatment, provided that the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities, diagnostic and evaluative data, or other activities used in the development of the student's instructional program.

(5) Records of an educational agency or institution which contain only information related to a person after that person is no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

"Eligible Student" means a student who has attained eighteen years of age, or is attending an institution of post-secondary education.

"Financial Aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or institution.

"Student with Disability" means a person in the chronological age group ranging from infancy, 3 or 4 (depending upon the disability) through 20 years, inclusive, who because of mental, physical, emotional or learning disability problems as defined by the State Board of Education, requires special educational services in order to develop his or her capabilities.

"Institution of post-secondary education" means an institution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under state law.

"Parent" includes a parent, guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights of access and consent unless the agency or institution has been provided with evidence that there is a court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

"Party" means an individual, agency, institution, or organization.

"Personally identifiable" means that the data or information includes (1) the name of the child, the child's parent, or other family member, (2) the address of the child, (3) a personal identifier, such as the child's social security number or student number, or (4) a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. {34 CFR 300.500 (e) (1) through (4)}.

"Records" means any information or data recorded in any medium including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

"Secretary" means the Secretary of the U. S. Department of Education.

"Student" includes any individual with respect to whom an education agency or institution maintains educational records.

SECTION 5 - STUDENT RIGHTS

(1) For the purpose of this part, whenever a student has attained eighteen years of age, or is attending an institution of post-secondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student, except in the case of a student with disabilities who is legally determined to be incompetent to make such decisions for himself/herself, and for whom legal guardianship is required beyond the age of majority. In these instances, the legally

established guardian shall maintain the rights to privacy as outlined in this document.

(2) The status of an eligible student as a dependent of his or her parents does not otherwise affect the rights accorded to and the consent required of the eligible student by paragraph (1) of this section.

(3) These procedures shall not be construed to preclude educational agencies or institutions from acceding students rights in addition to those accorded to parents of students.

SECTION 6 — FORMULATION OF INSTITUTIONAL POLICIES AND PROCEDURES

Each educational agency or institution shall formulate and adopt a policy of —

(1) Informing parents of students or eligible students of their rights under Section 7.

(2) Permitting parents of students or eligible students to inspect and review the education records of the student in accordance with Section 10, including at least:

(i) A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student.

(ii) With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records.

(iii) A schedule of fees for copies, and

(iv) A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records.

(3) Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by Section 17 and 23, the policy shall include, at least:

(i) A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under Section 17(1) and, if so, a specification of the criteria for determining which parties are “school officials” and what the educational agency or institution considers to be a “legitimate educational interest” and

(ii) A specification of the personally identifiable information to be designated as “directory information” under Section 23.

(4) Maintaining the records of disclosures of personally identifiable information from the education records of a student required to be maintained by Section 18 and permitting a parent or an eligible student to inspect that record;

(5) Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend

the records or a hearing and permitting a parent of a student or an eligible student to place a statement in the education records of the student as provided in Section 14(3).

The policy required to be adopted by this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

SECTION 7 — ANNUAL NOTIFICATION OF RIGHTS

(1) Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following:

(a) Their rights under these procedures adopted under Section 6; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained, and

(b) The right to file complaints under Section 24 concerning alleged failure by the educational agency or institution to comply with the requirements of these policies.

(2) Agencies and institutions shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

SECTION 8 — LIMITATIONS ON WAIVERS

(1) Subject to the limitations in this section and Section 11, a parent of a student or an eligible student may waive any of his or her rights under these procedures. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

(2) An educational agency or institution may not require that a parent of a student or an eligible student waive his or her rights under these procedures. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

(3) An individual who is an applicant for admission to an institution of post-secondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation.

(4) All waivers under paragraph (3) of this section must be executed by the individual, regardless of age, rather than by the parent of the individual.

(5) A waiver under this section may be made with respect to specified classes of (1) education records, and (2) persons or institutions.

(6) (a) A waiver under this section may be revoked with respect to any actions occurring after the revocation.

(b) A revocation under this paragraph must be in writing.

(c) If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

SECTION 9 — FEES

(1) An educational agency or institution may charge a fee for copies of educational records which are made for the parent of students or an eligible student, provided that the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records. {34 CFR 300.566(a)}

(2) An educational agency or institution may not charge a fee to search for or retrieve the education records of a student. {34 CFR 300.566(b)}

SECTION 10 — RIGHT TO INSPECT AND REVIEW EDUCATION RECORDS

(1) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45 days after the request has been made. {34 CFR 300.562(a)}

(2) The right to inspect and review education records under paragraph (1) of this section includes:

(a) The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

(b) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and {34 CFR 300.562(b)(2)}

(c) The right to have a representative of the parent inspect and review the records. {34 CFR 300.562(b)(3)}

(3) An education agency or institution may presume that either parent of student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.

SECTION 11 — LIMITATIONS ON RIGHT TO INSPECT AND REVIEW EDUCATION RECORDS

If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information which pertains to that student.

SECTION 12 — DESTRUCTION OF EDUCATION RECORDS

(1) An educational agency or institution is not precluded from destroying education records, subject to the following exceptions:

(a) The agency or institution may not destroy any education records if there is an outstanding request to inspect

and review them under Section 10;

(b) Explanations placed in the education record under Section 14 shall be maintained as provided in Section 14(4);

(c) The record of access required under Section 18 shall be maintained for as long as the education record to which it pertains is maintained;

(d) Records of handicapped students shall not be destroyed without parental consent, or the consent of an eligible student. Prior to any destruction of such data parents must be informed and give consent for that destruction. They must be informed that records may be needed for other purposes, such as social security benefits, etc. If the parents or eligible student requests that the information be destroyed, that information must be destroyed. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

(2) The following shall apply to the length of time and special consideration for the maintaining of all student records:

(a) Directory information may be maintained in perpetuity;

(b) Academic grades and attendance records may be maintained in perpetuity;

(c) Other personally identifiable data which is no longer needed to provide educational services for the child may be, but is not required to be destroyed, and may be retained permanently;

(d) Student records should be reviewed and screened at each level of school transition: i.e., elementary to middle school or junior high school to senior high school or between other agencies providing educational programming;

(e) Records of students who are no longer in school should be duplicated and maintained in separate facilities.

SECTION 13 — REQUEST TO AMEND EDUCATION RECORDS

(1) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(2) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(3) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing. {34 CFR 300.567}

SECTION 14 – RIGHT TO A HEARING

(1) A local educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with Section 15.

(2) If, as a result of the hearing, the local educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parents of the student or the eligible student in writing.

(3) If, as a result of the hearing, the local education agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

(4) Any explanation places in the education records of the student under paragraph (3) of this section shall:

(a) Be maintained by the local educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and

(b) If the education records of the student or the contested portion thereof is disclosed by the local educational agency or institution to any party, the explanation shall also be disclosed to that party. (34 CFR 300.569)

SECTION 15 – CONDUCT OF THE HEARING

The hearing required to be held by Section 14(1) shall be conducted according to procedures which shall include at least the following elements:

(1) The hearing shall be held within a reasonable period of time after the local educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing;

(2) The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

(3) The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under Section 14, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(4) The educational agency or institution shall make its

decision in writing within a reasonable period of time after the conclusion of the hearing; and

(5) The decision of the educational agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decisions.

SECTION 16 – PRIOR CONSENT FOR DISCLOSURE REQUIRED

(1) (a) An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in Section 17.

(b) Consent is not required under this section where the disclosure is to --

(i) The parent of a student who is not an eligible student, or

(ii) The student himself or herself.

(2) Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.

(3) The written consent required by paragraph (1) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

(a) A specification of the records to be disclosed;

(b) The purpose of the disclosure; and

(c) The party or class of parties to whom the disclosure may be made.

(4) When a disclosure is made pursuant to paragraph (1) of this section, the educational agency or institution shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

SECTION 17 – PRIOR CONSENT FOR DISCLOSURE NOT REQUIRED

(1) An educational agency or institution may disclose personally identifiable information from the education record of a student without the written consent of the parent of the student or the eligible student if the disclosure is --

(a) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interest;

(b) To officials of another school or school system, or institution of post-secondary education, in which the

student seeks or intends to enroll, subject to the requirements set forth in Section 20.

(e) Subject to the conditions set forth in Section 21, to authorized representatives of:

- (i) The Comptroller of the United States
- (ii) The Secretary of Education
- (iii) State and local educational authorities.

(d) In connection with financial aid for which a student has applied or which a student has received; provided, that personally identifiable information from the education records of the students may be disclosed only as may be necessary for such purposes as:

- (i) To determine the eligibility of the student for financial aid;
- (ii) To determine the amount of the financial aid;
- (iii) To determine the conditions which will be imposed regarding the financial aid, or
- (iv) To enforce the terms and conditions of the financial aid.

(e) To state and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to state statute adopted prior to November 19, 1974.

(f) To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of administering predictive tests, administering student aid programs, and improving instruction; provided that the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to federal, state, and local agencies, and independent organizations.

(g) To accrediting organizations in order to carry out their accrediting functions.

(h) To parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1954.

(i) To comply with a judicial order or lawfully issued subpoena: provided, that the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith;

(j) The appropriate parties in health or safety emergency subject to the conditions set forth in Section 22.

SECTION 18 — RECORD OF REQUESTS AND DISCLOSURE REQUIRED TO BE MAINTAINED

(1) An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

(a) The parties who have requested or obtained personally identifiable information from the education records of the student, and

(b) The legitimate interests these parties had in requesting or obtaining the information.

(2) Paragraph (1) of this section does not apply:

(a) To requests by or disclosures to a parent of a student or an eligible student;

(b) To requests by or disclosures to school officials under 34 CFR §99.31(a)(1);

(c) If there is written consent of a parent of a student or an eligible student; or

(d) To requests for or disclosure of directory information under 34 CFR §99.37.

(3) The record of requests and disclosures may be inspected:

(a) By the parent of the student or the eligible student.

(b) By the school official and his or her assistants who are responsible for the custody of the records, and

(c) For the purpose of auditing the recordkeeping procedures of the educational agency or institution by the parties authorized in and under the conditions set forth in 34 CFR §99.31(a)(1) and (3).

SECTION 19 — LIMITATION ON REDISCLOSURE

(1) An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees, and agents, but only for the purposes for which disclosure was made.

(2) Paragraph (1) of this section does not preclude an agency or institution from disclosing personally identifiable information under Section 17, with the understanding that the information will be redisclosed to other parties under that section; provided, that the recordkeeping requirements of Section 18 are met with respect to each of those parties.

(3) An educational agency or institution shall, except for the disclosure of directory information under Section 23, inform the party to whom a disclosure is made of the requirements set forth in paragraph (1) of this section.

SECTION 20 — CONDITIONS FOR DISCLOSURE TO OFFICIALS OF OTHER SCHOOLS AND SCHOOL SYSTEMS

(1) An educational agency or institution transferring the education records of a student pursuant to Section 17(1)(b) shall:

- (a) Make a reasonable attempt to notify the parent

of the student or the eligible student of the transfer of the records at last known address of the parent or eligible student, except

(i) When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

(ii) When the agency or institution includes a notice on its policies and procedures formulated under Section 6, that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer.

(b) Provide the parent of the student or the eligible student, upon request with an opportunity for a hearing under these procedures:

(2) If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; provided, that the disclosure meets the requirements of paragraph (1) of this section.

SECTION 21 — DISCLOSURE TO CERTAIN FEDERAL AND STATE OFFICIALS FOR FEDERAL PROGRAM PURPOSES

(1) Nothing in these policies shall preclude authorized representatives of officials listed in Section 17(1)(c) from having access to student and other records which may be necessary in connection with the audit and evaluation of federally supported education programs, or in connection with the enforcement of or compliance with the federal legal requirements which relate to these programs, or in connection with the enforcement of or compliance with the federal legal requirements which relate to these programs.

(2) Except when the consent of the parent of a student or an eligible student has been obtained under Section 16, or when the collection of personally identifiable information is specifically authorized by federal or state law, any data collected by officials listed in Section 17(1)(c) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials and personally identifiable data shall be destroyed when no longer needed for such audits, evaluation, or enforcement of or compliance with federal and state legal requirements.

SECTION 22 — CONDITIONS FOR DISCLOSURE IN HEALTH AND SAFETY EMERGENCIES

(1) An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other

individuals:

(2) The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

(a) The seriousness of the threat to the health or safety of the student or other individuals;

(b) The need for the information to meet the emergency;

(c) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

(d) The extent to which time is of the essence in dealing with the emergency.

(3) Paragraph (1) of this section shall be strictly construed.

SECTION 23 — CONDITIONS FOR DISCLOSURE OF DIRECTORY INFORMATION

(1) An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information under paragraph (3) of this section.

(2) An educational agency or institution may disclose directory information from the educational records of an individual who is no longer in attendance at the agency or institution without following the procedures under paragraph (3) of this section.

(3) An educational agency or institution which wishes to designate directory information shall give public notice of the following:

(a) The categories of personally identifiable information which the institution has designated as directory information;

(b) The right of the parent of the student or the eligible student to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

(c) The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

SECTION 24 — SAFEGUARDS

(1) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(2) One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.129

and part 99 of this title.

(4) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. (34 CFR 300.572)

SECTION 25—DESTRUCTION OF INFORMATION

(1) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(2) The information must be destroyed at the request of the parents. However, permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without the time limitation. (34 CFR 300.573)

NOTE: Under §300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (2) of this section.

SECTION 26—DELAWARE SPECIFIC REQUIREMENT FOR STUDENT RECORDS

The following education records are required in Delaware schools:

(1) Directory information for each student as defined in Section 4 of this document.

(2) A cumulative record for each student which may include identifying data, academic work completed, level of achievement, attendance data, grades, scores on group or individualized intelligence, achievement, aptitude psychological, sociometric, or interest inventory tests, health data, family background information, teacher, counselor, or other school personnel ratings and observations, and verified reports of serious or recurrent behavior patterns:

(a) Although they may be collected and maintained separately from the cumulative record file, the following education records shall be considered part of the total cumulative record:

- A School Health Record Card and Emergency Treatment Data Card for each student.
- A file including documents related to the identification, evaluation, placement, and provision of a free appropriate public education for each handicapped student.

The records of handicapped students shall be

maintained in accordance with Section 12(1)(d) of this document.

The total cumulative record shall be disclosed only in accordance with Sections 16-22 of this document.

(3) Permanent maintenance is required of certain education records:

The following information shall be maintained in perpetuity for each student ever registered and/or in attendance:

- (a) Names, address and telephone numbers of parents or guardians.
- (b) Birthdate, sex and other identifying data of the student.
- (c) Academic work completed.
- (d) Level of achievement such as grades and standardized achievement test score, including approval for certificate of attendance, early college admission, or alternative/option education.
- (e) Attendance data.
- (f) Transportation data.
- (g) The reason for leaving school—graduated, transferred, dropped out, etc.

(4) Contracts for microfilming student records of graduates, for district storage, may be initiated between the school district and the State Department of Historical and Cultural Affairs. Two or more copies in separate sites are recommended to provide fire safe storage.

The cumulative records folders for students who have graduated from or who left school prior to graduation from high school are to be stored at the school of last attendance. In those cases where schools have been closed, razed or reorganized:

A central storage file should be developed and maintained. All clerical staff of the district, especially those typically handling student record requests, should have as a part of an operations manual information about stored records, including site and acquisition procedures.

(NOTE: Records of students graduated from the William C. Jason Comprehensive High School during the years 1951 through 1967 may be obtained by writing directly to the Department of Public Instruction.)

In those cases where records are no longer being handled by the original comprehensive high school, it will be impossible to obtain character references on former students. Employers or others requesting character references on former students should be instructed to contact these students for information concerning persons who served as administrators or teachers during the period of time they were in school. They should then contact these individuals directly for the needed information.

(5) Transfer is required of certain education records.

A file consisting of the complete up-to-date cumulative record including School Health Record Card shall follow each student transferred from one school to

another. The file for each handicapped student transferring from one school to another shall also be included. This transfer of education records from one school to another is subject to the requirements set forth in Sections 16-22.

(6) The "Student Folder Inspection Record" (Attachment B) shall be permanently kept with the file on each student, with all inspection and review transactions recorded in the spaces provided. The "Permission for Disclosure of Educational Records" form (Attachment A) shall be used in all cases requiring parental consent for disclosure of records.

(7) ~~Transfer of Student Records in the Case of Placement for Adoption and Change of Name~~

In the case of either placement for adoption, or adoption of a student, it is legally necessary to change the name of that student to modify his or her identity on official records. Delaware law provides that adoption records of this sort are to be held in confidence in the appropriate state agency or court. The Department of Services for Children, Youth, and Their Families, Division of Child Protective Services, is the agency authorized by Delaware Code, Title 13, Chapter 9, to undertake the appropriate transactions in the case of placement for adoption, and change of name. This agency is also authorized under Section 901 of that chapter to license or to otherwise authorize adoption procedures by other public or private agencies in the State of Delaware or in other states. When a written request for records of a child being placed for adoption is addressed to the superintendent of a Delaware school district from the Adoption Coordinator, Division of Child Protective Services; the Director, Catholic Social Services, Inc.; or the Director, Children's Bureau of Delaware, the superintendent shall release all pertinent and transferable records relating to that student to that requesting agency. Following any such release, no information concerning the student named is to be released to any other person or agency except for further endorsement from the Adoption Coordinator. It is recommended that any records considered not appropriate to transfer to any other school be destroyed, and that the permanent record system of the school show that the named student has transferred to the social service agency named. The official agency receiving the records will modify the name wherever it appears and forward the file to the new school. The agency will identify itself as the contact point for further information.

(8) ~~Transfer of Students~~

(a) When a student transfers from a public school to any other school in or out of Delaware, a Delaware Student Transfer Form (Attachment C) will be available to the transferring student or the student's parent or guardian for presentation to the receiving school or district. The principal of the school from which the student is transferring shall hold all cumulative records pending a request for them from the receiving school. A student assigned or admitted to any

of the institutions of the Divisions of Mental Health, Mental Retardation or Youth Rehabilitation Services shall be transferred as above. A student on supportive instruction (homebound or hospital) shall continue as an enrollee in the public school attended before being assigned to such a program.

(b) When a student transfers to a Delaware school, the receiving school shall immediately request all student records, including the cumulative record, from the sending school district. All transferred students shall be enrolled and assigned temporarily to classes upon arrival in the receiving school.

(c) In order for a transfer unit of credit to be valid in the school to which transfer is made, it must have been completed in the school from which pupil transferred. In no case shall work not satisfactorily completed (failed or left incomplete) in one school be accepted as passed and completed work in another school. Incomplete or failed work must be repeated if credit is to be granted for that work.

(d) Principals of secondary schools should be constantly alert to the transfer rules as prescribed by the Delaware statute and the regulations of the State Board of Education.

(e) In the case of students who transfer to a Delaware school from a foreign country, the transcripts may be forwarded to the Department of Public Instruction for appropriate evaluation.

~~SECTION 27 - STATE AND FEDERAL REVIEW~~

(1) The Secretary of the U. S. Department of Education is required to establish or designate an office and a review board. The office will investigate, process, and review violations, and complaints which may be filed concerning the Privacy Rights of Parents and Students. The review board will adjudicate cases referred to it by the office under the procedures set forth in §99.65-§99.67 of the Privacy Rights of Parents and Students. The following is the address of the office: The Family Educational Rights and Privacy Act Office (FERPA), 330 Independence Avenue, S. W., Washington, D.C. 20201.

(2) In the case of handicapped students the reviewing, investigating, and acting on any allegation of substance which may be filed concerning the violation of provisions of this policy by educational agencies or institutions will be processed by the Team Leader of Exceptional Children Team, Department of Public Instruction, Townsend Building, Box 1402, Dover, DE 19903.

~~ATTACHMENT A~~

~~PERMISSION FOR DISCLOSURE OF EDUCATIONAL RECORDS~~

~~NOTE: When submitted, this authorization will become a part of the student's permanent records in accordance with the Family Educational Rights and Privacy Act of 1974 and~~

P. L. 94-142, Education for All Handicapped Children Act.

Name of Student (use legal last name): _____
Birthdate: _____
School/Agency Presently Attending: _____

- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

Permission is granted to disclose the education records listed below: (Please check appropriate item(s).)

- a. Cumulative record (i.e., academic grades, attendance data, and group or individually administered test scores).
- b. Health data and/or medical reports.
- c. Diagnostic and evaluative data.
- d. Special program records.
- e. Other (be specific):

This record must be permanently kept with the file of the student pursuant to Public Law 100-476 (I.D.E.A.) as amended.

ATTACHMENT C
DELAWARE STUDENT TRANSFER FORM

This form is to be filled out by school personnel when a student is transferred from a Delaware school to any other school district. The completed form will be given to the student's parents, guardians and/or the student on the last day of attendance and presented to the receiving school at the time the student is registered. Records will be sent to the receiving school upon the request of that school.

The record(s) indicated above is/are to be disclosed to:
The purpose for this disclosure is:
I hereby consent to the disclosure of the above record(s).

Date: _____ Signature: _____
(Parent/guardian/student over 18 years)

(Legal Last Name of Student) (First Name)
(Middle Name)

School/Agency Use Only
Date this Form Received: _____ Date Data Released: _____
By: _____

Date of Birth: Year: _____ Month: _____ Day: _____
No. of days school in session: _____ Days attended: _____
Date of last attendance: _____ Grade Placement: _____
Special Programs or Services Provided: _____
Pertinent Medical Information: _____

A parent or an eligible student (18 years old) has the legal right to inspect and review education records. Guidelines governing the inspection, review, and amendment of educational records are available through this agency.

ELEMENTARY STUDENTS ONLY

Consent means that (1) the parent (or eligible student) has been fully informed of the procedures related to the collection, maintenance, and disclosure of student data in his or her native language or other mode of communication unless it clearly is not feasible to do so; (2) the parent (or eligible student) understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent sets forth that activity and lists the records (if any) which will be released and to whom; and (3) the parent (or eligible student) understands that the granting of consent is voluntary.

Instructional Reading Level: _____ Reading Series or Text: _____
Completed to: _____
Comments: _____
Instructional Math Level: _____ Math Series or Text: _____
Completed to: _____
Comments: _____
General Comments: _____
School _____ Teacher _____
District _____ Principal _____
Date _____
Address _____

ATTACHMENT B
STUDENT FOLDER INSPECTION RECORD FOR

Name of Student _____
Person Inspecting Record Date Reason for Record Inspection _____
1. _____
2. _____
3. _____

250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data

1.0 Authority: Under the provisions of Section 122, Title 14, of the *Delaware Code*, the Department of Education has been given authority to establish rules and regulations for the schools in Delaware. This document reflects Federal

regulations and procedures as required by Code of Federal Regulations. Part 99 Family Education Rights and Privacy, Revised 2/19/88 and Public Law 105-17 Individuals with Disabilities Education Act effective June 4, 1997, and their respective regulations.

2.0 Applicability

2.1 These regulations apply to an education agency or institution to which funds have been available under any program for which the U. S. Secretary of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.

2.2 These regulations do not apply to an educational agency or institution solely because students attending that non-monetary agency or institution receive benefits under one or more of the Federal programs referenced in 1.0, if no funds under those programs are made available to the agency or institution.

2.3 For the purposes of these regulations, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in 1.0, are provided to the agency or institution by grant, contract, sub-grant, or subcontract, or are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended.).

2.4 Except as otherwise specifically provided, these procedures apply to education records of students who are, have been, or will be in attendance at the educational institution that collects, maintains, or discloses the records.

3.0 Purpose: The purpose of these procedures is to set forth the conditions governing the protection of privacy of parents and students as it relates to the collection, maintenance, and disclosure of education records by [covered] agencies and institutions [~~under the general supervision of the Department of Education~~].

4.0 Definitions: as used in these procedures:

4.1 "Attendance" at an agency or institution includes, but is not limited to: attendance in person having homebound or correspondence instruction, and the period during which a person is working under a work-study program.

4.2 "Consent" means that the parent or eligible student has been fully informed of the information set out in this document in his or her native language or other mode of communication, unless it clearly is not feasible to do so; the parent or eligible student understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent sets forth that activity and lists the

records (if any) which will be released and to whom; and the parent or eligible student understands that the granting of consent is voluntary.

4.3 "Directory information" means information in an educational record the disclosure of which would not generally be considered harmful or an invasion of privacy. It includes, but is not limited to, a student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student, and other similar information.

4.4 "Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

4.5 "Educational institution" or "educational agency or institution" means any public or private agency or institution that is the recipient of the funds under any Federal program referenced in 2.0. The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

4.6 "Education records" means those records that are directly related to a student, and are maintained by an educational agency or institution or by a party acting for the agency or institution, the term does not include:

4.6.1 Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

4.6.1.1 Are in the sole possession of the maker thereof, and are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

4.6.2 Records of a law enforcement unit of an educational agency or institution that are:

4.6.2.1 Maintained apart from the records described in 4.6.

4.6.2.2 Maintained solely for law enforcement purposes, and:

4.6.2.3 Not disclosed to individuals other than law enforcement officials of the same jurisdiction: provided, that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

4.6.3 Records relating to an individual who is employed by an educational agency or institution which are

made and maintained in the normal course of business; relate exclusively to the individual available for use for any other purpose.

4.6.3.1 This paragraph does not apply to records relating to an individual in attendance at the agency or institution that is employed as a result of his or her status as a student.

4.6.4 Records relating to an eligible student that are:

4.6.4.1 Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity.

4.6.4.2 Created, maintained, or used only in connection with the provision of treatment to the student, and

4.6.4.3 Disclosed only to individuals providing the treatment, provided that the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities, diagnostic and evaluative data, or other activities used in the development of the student's instructional program.

4.6.5 Records of an educational agency or institution that contain only information related to a person after that person is no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

4.7 "Eligible Student" means a student who has attained eighteen years of age, or is attending an institution of post-secondary education.

4.8 "Financial Aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

4.9 "Student with Disability" means a person in the chronological age group ranging from infancy, 3 or 4 (depending upon the disability) through 20 years, inclusive, who because of mental, physical, emotional or learning disability problems as defined by the Department of Education, requires special educational services in order to develop his or her capabilities.

4.10 "Institution of post-secondary education" means an institution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under state law.

4.11 "Parent" includes a parent, guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights of access and consent unless the agency or institution

has been provided with evidence that there is a court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

4.12 "Party" means an individual, agency, institution, or organization.

4.13 "Personally identifiable" means that the data or information includes the name of the child, the child's parent, or other family member, the address of the child, a personal identifier, such as the child's social security number or student number, or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. [434 CFR 300.500 (c) (1) through (4)]~~1~~.

4.14 "Records" means any information or data recorded in any medium including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

4.15 "Secretary" means the Secretary of the U. S. Department of Education.

4.16 "Student" includes any individual with respect to whom an education agency or institution maintains educational records.

5.0 Student Rights

5.1 For the purpose of this part, whenever a student has attained eighteen years of age, or is attending an institution of post-secondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student, except in the case of a student ~~[with disabilities]~~ who is legally determined to be incompetent to make such decisions for himself/herself, and for whom legal guardianship is required beyond the age of majority. In these instances, the legally established guardian shall maintain the rights to privacy as outlined in this document.

5.2 The status of an eligible student as a dependent of his or her parents does not otherwise affect the rights accorded to and the consent required of the eligible student by 5.1.

[5.3 Nothing in these regulations shall be construed to limit the ability of a pupil who has reached the age of 14 to request the release of records as provided in 14 Del. C. 4111.

~~[5.3 5.4]~~ These procedures shall not be construed to preclude educational agencies or institutions from according students rights in addition to those accorded to parents of students.

~~6.0 Formulation of Institutional Policies and Procedures~~

~~6.1 Each educational agency or institution shall formulate and adopt a policy of informing parents of students or eligible students of their rights under 7.0, and permitting parents of students or eligible students to inspect and review the education records of the student in accordance with 10.0, including at least:~~

~~6.1.1 A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student.~~

~~6.1.2 With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records.~~

~~6.1.3 A schedule of fees for copies, and~~

~~6.1.4 A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records.~~

~~6.2 Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by 17.0 and 23.0, the policy shall include, at least:~~

~~6.2.1 A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under 17.1 and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest" and~~

~~6.2.2 A specification of the personally identifiable information to be designated as "directory information" under 23.0.~~

~~6.3 Maintaining the records of disclosures of personally identifiable information from the education records of a student required to be maintained by 18.0 and permitting a parent or an eligible student to inspect that record.~~

~~6.4 Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing and permitting a parent of a student or an eligible student to place a statement in the education records of the student as provided in 14.3.~~

~~6.5 The policy shall be in writing and copies shall be made available upon request to parents of students and to eligible students.]~~

6.0 Formulation of Institutional Policies and Procedures

6.1 Each educational agency or institution shall formulate and adopt a policy of:

6.1.1 informing parents of students or eligible students of their rights under 7.0;

6.1.2 permitting parents of students or eligible students to inspect and review the education records of the student in accordance with 10.0 including at least:

6.1.2.1 a statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the

student;

6.1.2.2 An understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

6.1.2.3 A schedule of fees for copies; and

6.1.2.4 A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records.

6.1.3 Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by 17.0 and 23.0, including, at least:

6.1.3.1 A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under 17.1 and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest" and

6.1.3.2 A specification of the personally identifiable information to be designated as "directory information" under 23.0.

6.1.4 Maintaining the records of disclosures of personally identifiable information from the education records of a student required to be maintained by 18.0 and permitting a parent or an eligible student to inspect that record.

6.1.5 Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing and permitting a parent of a student or an eligible student to place a statement in the education records of the student as provided in 14.3.

6.2 The policy adopted by the educational agency or institution shall be in writing and copies shall be made available upon request to parents of students and to eligible students.]

7.0 Annual Notification of Rights

7.1 Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following:

7.1.1 Their rights under these procedures adopted under 6.0; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained, and

7.1.2 The right to file complaints under 24.0

concerning alleged failure by the educational agency or institution to comply with the requirements of these policies.

7.2 Agencies and institutions shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

8.0 Limitations on Waivers

8.1 Subject to the limitations in 8.0 and 11.0, a parent of a student or an eligible student may waive any of his or her rights under these procedures. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

8.2 An educational agency or institution may not require that a parent of a student or an eligible student waive his or her rights under these procedures. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

8.3 An individual who is an applicant for admission to a post-secondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation.

8.4 All waivers must be executed by the individual, regardless of age, rather than by the parent of the individual.

8.5 A waiver under this section may be made with respect to specified classes of education records, and persons or institutions.

8.5.1 A waiver under this section may be revoked with respect to any actions occurring after the revocation.

8.5.2 A revocation under this paragraph must be in writing.

8.5.3 If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

9.0 Fees

9.1 An educational agency or institution may charge a fee for copies of educational records which are made for the parent of students or an eligible student, provided that the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records. [434 CFR 300.566(a)]

9.2 An educational agency or institution may not charge a fee to search for or retrieve the education records of a student. [434 CFR 300.566(b)] and [34 CFR 99.11].

10.0 Right to Inspect and Review Educational records

10.1 Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45

days after the request has been made. [434 CFR 300.562(a)]

10.2 The right to inspect and review education records under 10.1 include:

10.2.1 The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

10.2.2 The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and [434 CFR 300.562(b)(2)]

10.2.3 The right to have a representative of the parent inspect and review the records. [434 CFR 300.562(b)(3)]

10.3 An education agency or institution may presume that either parent of student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.

11.0 Limitations on the Right to Inspect and Review Records

11.1 If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information that pertains to that student.

12.0 Destruction of Educational Records

12.1 An educational agency or institution is not precluded from destroying education records, subject to the following exceptions:

12.1.1 The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them as in 10.0.

12.1.2 Explanations placed in the education record under 14.0 shall be maintained as provided in 14.4.

12.1.3 The record of access required under 18.0 shall be maintained for as long as the education record to which it pertains is maintained.

12.1.4 Records of children with disabilities shall not be destroyed without parental consent, or the consent of an eligible student. Prior to any destruction of such data parents must be informed and give consent for that destruction. They **[must shall]** be informed that records may be needed for other purposes, such as social security benefits, etc. If the parents or eligible student requests that the information be destroyed, that information **[must shall]** be destroyed. However, a **[permanent]** record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed

and year completed ~~[may shall]~~ be maintained~~]. without time limitation.~~ (See School District General Records Retention Schedule)]

12.2 The following shall apply to the length of time and special consideration for the maintaining of all student records:

12.2.1 Directory information ~~[may shall]~~ be maintained ~~[in perpetuity]~~ in accordance with the retention for the student files. (See School District General Records Retention Scheduled)]

12.2.2 Academic grades and attendance records ~~[may shall]~~ be maintained ~~[in perpetuity]~~ in accordance with the retention for the student files. (See School District General Records Retention Scheduled)]

12.2.3 Other personally identifiable data which is no longer needed to provide educational services for the child ~~[may shall]~~ be ~~[purged and destroyed in accordance with the Delaware Public Archives (29 Delaware Code Subsection 504(b)), but is not required to be destroyed, and may be retained permanently.]~~

12.2.4 Student records ~~[should shall]~~ be reviewed and screened at each level of school transition: i.e., elementary to middle school or junior high school to senior high school or between other agencies providing educational programming;

12.2.5 Records of students who are no longer in school ~~[should shall]~~ be ~~[transferred to the Delaware Public Archives for storage. duplicated and maintained in separate facilities.]~~

13.0 Request to amend Educational Records

13.1 A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

13.2 The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

13.3 If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing. [4]34 CFR 300.567[4]

14.0 Right to a Hearing

14.1 A local educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with 15.0.

14.2 If, as a result of the hearing, the local educational agency or institution decides that the information is

inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parents of the student or the eligible student in writing.

14.3 If, as a result of the hearing, the local education agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

14.4 Any explanation placed in the education records of the student under 14.3 shall:

14.4.1 Be maintained by the local educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and

14.4.2 If the education records of the student or the contested portion thereof is disclosed by the local educational agency or institution to any party, the explanation shall also be disclosed to that party. [4]34 CFR 300.569[4]

15.0 Conduct of a Hearing

15.1 The hearing required to be held by 14.1 shall be conducted according to procedures that shall include at least the following elements:

15.1.1 The hearing shall be held within a reasonable period of time after the local educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing;

15.1.2 The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

15.1.3 The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under 14.0, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

15.1.4 The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

15.1.5 The decision of the educational agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decisions.

16.0 Prior Consent for Disclosure Required

16.1 An educational agency or institution shall obtain the written consent of the parent of a student or the eligible

student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in 17.0.

16.1.1 Consent is not required under this section where the disclosure is to the parent of a student who is not an eligible student, or the student himself or herself.

16.2 Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.

16.3 The written consent must be signed and dated by the parent of the student or the eligible student giving the consent and shall include: a specification of the records to be disclosed; the purpose of the disclosure; and the party or class of parties to whom the disclosure may be made.

16.4 When a disclosure is made pursuant to 16.1, the educational agency or institution shall, upon request, provide a copy of the record that is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

17.0 Prior Consent

17.1 An educational agency or institution may disclose personally identifiable information from the education record of a student without the written consent of the parent of the student or the eligible student if the disclosure is:

17.1.1 To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interest;

17.1.2 To officials of another school or school system, or institution of post-secondary education, in which the student seeks or intends to enroll, subject to the requirements set forth in 20.0.

17.1.3 Subject to the conditions set forth in 21.0, to authorized representatives of the Comptroller of the United States, the Secretary of Education and state and local educational authorities.

17.1.4 In connection with financial aid for which a student has applied or which a student has received; provided, that personally identifiable information from the education records of the students may be disclosed only as may be necessary for such purposes as: to determine the eligibility of the student for financial aid, to determine the amount of the financial aid, to determine the conditions which will be imposed regarding the financial aid, or to enforce the terms and conditions of the financial aid.

17.1.5 To state and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to state statute adopted prior to November

19, 1974.

17.1.6 To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of administering predictive tests, administering student aid programs, and improving instruction; provided that the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to federal, state, and local agencies, and independent organizations.

17.1.7 To accrediting organizations in order to carry out their accrediting functions.

17.1.8 To parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1954.

17.1.9 To comply with a judicial order or lawfully issued subpoena: provided, that the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith;

17.1.10 The appropriate parties in health or safety emergency subject to the conditions set forth in 22.0.

18.0 Records of Requests and Disclosure Required to be Maintained

18.1 An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

18.1.1 The parties who have requested or obtained personally identifiable information from the education records of the student, and

18.1.2 The legitimate interests these parties had in requesting or obtaining the information.

18.1.3 18.1 does not apply: to requests by or disclosures to a parent of a student or an eligible student, to requests by or disclosures to school officials under 34 CFR §99.31(a)(1); if there is written consent of a parent of a student or an eligible student; or to requests for or disclosure of directory information under 34 CFR §99.37.

18.1.4 The record of requests and disclosures may be inspected:

18.1.4.1 By the parent of the student or the eligible student.

18.1.4.2 By the school official and his or her assistants who are responsible for the custody of the records, and

18.1.4.3 For the purpose of auditing the record keeping procedures of the educational agency or institution by the parties authorized in and under the conditions set forth

in 34 CFR §99.31(a)(1) and (3).

19.0 Limitation on Redisclosure

19.1 An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees, and agents, but only for the purposes for which disclosure was made.

19.2 Section 19.1 does not preclude an agency or institution from disclosing personally identifiable information under 17.0, with the understanding that the information will be redisclosed to other parties under that section; provided, that the recordkeeping requirements of 18.0 are met with respect to each of those parties.

19.3 An educational agency or institution shall, except for the disclosure of directory information under 23.0, inform the party to whom a disclosure is made of the requirements set forth in 19.1.

20.0 Conditions for Disclosure to Officials of Other Schools and School Systems

20.1 An educational agency or institution transferring the education records of a student pursuant to 17.1.2 shall:

20.1.1 Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at last known address of the parent or eligible student, except

20.1.1.1 When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

20.1.1.2 When the agency or institution includes a notice on its policies and procedures formulated under 6.0, that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer.

20.1.2 Provide the parent of the student or the eligible student, upon request with an opportunity for a hearing under these procedures.

20.2 If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; provided, that the disclosure meets the requirements of 20.1.

21.0 Disclosure to Certain Federal and State Officials for Federal Program

21.1 Nothing in these policies shall preclude authorized

representatives of officials listed in 17.1.3 from having access to student and other records which may be necessary in connection with the audit and evaluation of federally supported education programs, or in connection with the enforcement of or compliance with the federal legal requirements which relate to these programs, or in connection with the enforcement of or compliance with the federal legal requirements which relate to these programs.

21.2 Except when the consent of the parent of a student or an eligible student has been obtained under 16.0, or when the collection of personally identifiable information is specifically authorized by federal or state law, any data collected by officials listed in 17.1.3 shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials and personally identifiable data shall be destroyed when no longer needed for such audits, evaluation, or enforcement of or compliance with federal and state legal requirements.

22.0 Conditions for Disclosure in Health and Safety Emergencies

22.1 An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

22.2 The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following: the seriousness of the threat to the health or safety of the student or other individuals; the need for the information to meet the emergency; whether the parties to whom the information is disclosed are in a position to deal with the emergency; and the extent to which time is of the essence in dealing with the emergency.

22.3 22.1 shall be strictly construed.

23.0 Conditions for Disclosure of Directory Information

23.1 An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information under 23.3.

23.2 An educational agency or institution may disclose directory information from the educational records of an individual who is no longer in attendance at the agency or institution without following the procedures under 23.3.0

23.3 An educational agency or institution that wishes to designate directory information shall give public notice of the following:

23.3.1 The categories of personally identifiable information which the institution has designated as directory

information;

23.3.2 The right of the parent of the student or the eligible student to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

23.3.3 The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

24.0 Safeguards

24.1 Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

24.2 One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

24.3 All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.129 and part 99 of this title.

24.4 Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. [§34 CFR 300.572(f)]

25.0 Destruction of Information

25.1 The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

25.2 The information must be destroyed at the request of the parents. However, permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without the time limitation. [§34 CFR 300.573(f)]

NOTE: Under §300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in 25.2.

26.0 Education Records Required in Delaware Schools:

26.1 Directory information for each student as defined in [4.0 4.3].

26.2 A cumulative record for each student which may include identifying data, academic work completed, level of achievement, attendance data, grades, scores on group or individualized intelligence, achievement, aptitude psychological, sociometric, or interest inventory tests, health data, family background information, teacher, counselor, or other school personnel ratings and observations, and verified reports of serious or recurrent behavior patterns.

26.3 Although they may be collected and maintained separately from the cumulative record file, the following education records shall be considered part of the total cumulative record:

26.3.1 A School Health Record Card and Emergency Treatment Data Card for each student.

26.3.2 A file including documents related to the identification, evaluation, placement, and provision of a free appropriate public education for each student with disabilities.

26.3.3 The records of students with disabilities shall be maintained in accordance with 12.1.4.

26.3.4 The total cumulative record shall be disclosed only in accordance with 16.0 to 22.0.

26.4 [Permanent] Maintenance [for 100 years] is required of certain education records and the following information shall be maintained [in perpetuity] for each student ever registered and/or in attendance:

26.4.1 Names, addresses and telephone numbers of parents or guardians.

26.4.2 Birthdate, sex and other identifying data of the student.

26.4.3 Academic work completed.

26.4.4 Level of achievement such as grades and standardized achievement test score, including approval for certificate of attendance, early college admission, or alternative/option education.

26.4.5 Attendance data.

26.4.6 Transportation data.

26.4.7 The reason for leaving school--graduated, transferred or dropped out.

26.5 Contracts for [microfilming storage of] student records of graduates, [withdrawals and special education students] for district storage, [may shall] be initiated between the school district and the Delaware Public Archives. Two or more copies in separate sites are recommended to provide fire-safe storage.

26.6 The cumulative records folders for students who have graduated from or who left school prior to graduation from high school are to be stored at the school of last attendance. In those cases where schools have been closed, razed or reorganized a central storage file should be developed and maintained. All clerical staff of the district, especially those typically handling student record requests, should have as a part of an operations manual information about stored records, including site and acquisition

procedures.

(NOTE: Records of students graduated from the William C. Jason Comprehensive High School during the years 1951 through 1967 may be obtained by writing directly to the Department of Education.)

In those cases where records are no longer being handled by the original comprehensive high school, it will be impossible to obtain character references on former students. Employers or others requesting character references on former students should be instructed to contact these students for information concerning persons who served as administrators or teachers during the period of time they were in school. They should then contact these individuals directly for the needed information.

[Otherwise, the Delaware Public Archives should be contacted immediately to facilitate the transfer and continuing maintenance of the student records in those cases described above.]

26.7 Transfer is required of certain education records. A file consisting of the complete up-to-date cumulative record including the school health record card shall follow each student transferred from one school to another. The file for each student with disabilities transferring from one school to another shall also be included. This transfer of education records from one school to another is subject to the requirements set forth in 16.0 through 22.0. **[Records of students graduated from or who left school prior to graduation from Wilmington High School, may be obtained by contacting the Delaware Public Archives.]**

26.8 ~~**[The "Student Folder Inspection Record" shall be permanently kept with the file on each student, with all inspection and review transactions recorded in the spaces provided. The "Permission for Disclosure of Educational Records" form shall be used in all cases requiring parental consent for disclosure of records.]**~~

[26.9] Transfer of Student Records in the Case of Placement for Adoption and Change of Name

[26.8.1 ~~26.9.1~~] In the case of either placement for adoption, or adoption of a student, it is legally necessary to change the name of that student to modify his or her identity on official records. Delaware law provides that adoption records of this sort are to be held in confidence in the appropriate state agency or court. The Department of Services for Children, Youth, and Their Families, Division of Child Protective Services, is the agency authorized by Delaware Code, Title 13, Chapter 9, to undertake the appropriate transactions in the case of placement for adoption, and change of name. This agency is also authorized under Section 901 of that chapter to license or to otherwise authorize adoption procedures by other public or private agencies in the State of Delaware or in other states. When a written request for records of a child being placed for adoption is addressed to the superintendent of a Delaware school district from the Adoption Coordinator, Division of

Child Protective Services; the Director, Catholic Social Services, Inc.; or the Director, Children's Bureau of Delaware, the superintendent shall release all pertinent and transferable records relating to that student to that requesting agency. Following any such release, no information concerning the student named is to be released to any other person or agency except for further endorsement from the adoption coordinator. It is recommended that any records considered not appropriate to transfer to any other school be destroyed, and that the permanent record system of the school show that the named student has transferred to the social service agency named. The official agency receiving the records will modify the name wherever it appears and forward the file to the new school. The agency will identify itself as the contact point for further information.

[26.9 ~~26.10~~] Transfer of Students

[26.9.1 ~~2-6.10.1~~] When a student transfers from a public school to any other school in or out of Delaware, a Delaware Student Transfer Form shall be made available to the transferring student or the student's parent or guardian for presentation to the receiving school or district. The principal of the school from which the student is transferring shall hold all cumulative records pending a request for them from the receiving school. ~~[A student assigned or admitted to any of the institutions of the Divisions of Mental Health, Mental Retardation or Youth Rehabilitation Services shall be transferred as above.]~~ [A student assigned or admitted to an educational program operated by the Department of Services for Children Youth and Their Families shall be transferred as above.] A student on supportive instruction (homebound or hospital) shall continue as an enrollee in the public school attended before being assigned to such a program.

[26.9.2 ~~26.10.2~~] When a student transfers to a Delaware school, the receiving school shall immediately request all student records, including the cumulative record, from the sending school district. All transferred students shall be enrolled and assigned temporarily to classes upon arrival in the receiving school.

[26.9.3 ~~26.10.3~~] In order for a transfer unit of credit to be valid in the school to which transfer is made, it shall have been completed in the school from which pupil transferred. In no case shall work not satisfactorily completed (failed or left incomplete) in one school be accepted as passed and completed work in another school. Incomplete or failed work shall be repeated if credit is to be granted for that work.

[26.9.4 ~~26.10.4~~] Principals of secondary schools should be constantly alert to the transfer rules as prescribed by the Delaware Code and the regulations of the Department of Education.

[26.9.5 ~~26.10.5~~] In the case of students who transfer to a Delaware school from a foreign country, the local school district or school is responsible for having the

transcripts evaluated.

27.0 State and Federal Review

27.1 The Secretary of the U.S. Department of Education is required to establish or designate an office and a review board. The office will investigate, process, and review violations, and complaints that may be filed concerning the Privacy Rights of Parents and Students. The review board will adjudicate cases referred to it by the office under the procedures set forth in §99.65-§99.67 of the Privacy Rights of Parents and Students. The following is the address of the office: The Family Policy Compliance Office, Federal Building No. 6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

27.2 In the case of students with disabilities the reviewing, investigating, and acting on any allegation of substance which may be filed concerning the violation of provisions of this policy by educational agencies or institutions will be processed by the [Director, Exceptional Children and Early Childhood Education,] Department of Education, Townsend Building, Box 1402, Dover, DE 19903-1402. [The procedures provided in Regulation 925 Children with Disabilities may also be available to students with disabilities for resolving such allegations.]

REGULATORY IMPLEMENTING ORDER POLICIES, STANDARDS AND PROCEDURES FOR APPROVING DEGREE GRANTING INSTITUTIONS OF HIGHER EDUCATION

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the approval of the State Board of Education to amend the regulation Policies, Standards and Procedures for Approving Degree Granting Institutions of Higher Education. The regulations have been reformatted to fit the style of DOE regulations and to remove language that repeats the *Del. C.* References to the State Board of Education have been changed to the Department of Education and the title has been shortened to Degree Granting Institutions of Higher Education.

Correspondence was received from the State Council for Persons with Disabilities concerning inserting references to the regulation 225 Prohibition of Discrimination. The Council's concerns have been addressed by adding a new 1.1.1.2 to read "The Department's regulation 225 Prohibition of Discrimination that prohibits discrimination on the basis of race, color, creed, national origin, disability or gender in programs receiving approval from the Department applies to Degree Granting Institutions of Higher Education approved by the Department of Education".

The Council also suggested adding a section on the institution's duties to make its facilities accessible to persons with disabilities. The Department added a sentence affirming the institution's duty to comply with state and federal laws. The sentence added to 1.9.1 reads as follows, "The institution shall comply with applicable state and federal standards, with respect to the accessibility of facilities by persons with disabilities".

The Council also recommended revising the language in 4.5 to read as follows: "The institution shall prove that the proposed site or facility is in compliance with applicable Federal, Delaware and local governmental laws and standards pertaining to zoning, occupancy, accessibility, fire, health and safety". This revision was made. The grammatical error identified by the Council in 1.5.4.1 was also corrected by changing the word "their" to "its".

The changes made are not substantive and hence do not require that the regulation be re-advertised. Notice of the proposed regulation was published in the News Journal and the Delaware State News on October 24, 2000 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. FINDINGS OF FACTS

The Secretary finds that it is necessary to amend this regulation because the changes are necessary to bring the language of the regulation up to date, and to align the format with existing regulations.

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.* Section. 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 *Del. C.* Section 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be cited 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.* Section 122, in open session at the said Board's regularly scheduled meeting on December 21, 2000. 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 21st day of December, 2000.
DEPARTMENT OF EDUCATION

Valerie A Woodruff, Secretary of Education

Approved this 21st day of December, 2000.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Mary B. Graham, Esquire

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

Exhibit B

398 Degree Granting Institutions of Higher Education

State Board of Education and Department of Education

~~POLICIES, STANDARDS AND PROCEDURES FOR
APPROVING DEGREE GRANTING INSTITUTIONS
OF HIGHER EDUCATION~~

~~State of Delaware~~

~~Department of Education~~

~~P.O. Box 1402~~

~~Dover, DE 19903~~

~~POLICIES, STANDARDS AND PROCEDURES FOR
APPROVING DEGREE GRANTING INSTITUTIONS OF
HIGHER EDUCATION~~

Revised, February 1, 1998

For further information or explanation, please contact:

Dr. Catherine Gilbertson

Education Associate,

Program Approval, Evaluation and Certification

Department of Education

P.O. Box 1402

Dover, DE 19903

(302) 739-5622

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~~POLICIES, STANDARDS AND PROCEDURES FOR
APPROVING DEGREE GRANTING INSTITUTIONS OF
HIGHER EDUCATION~~

INTRODUCTION

~~The authority for the State Board of Education to approve institutions of higher education incorporating in Delaware and non-Delaware institutions making offerings in Delaware are determined from the following sections of the Delaware Laws:~~

~~A. Institutions Incorporated in Delaware — Title 8, Delaware Code Annotated — General Corporation Laws Section 125 — Conferring academic or honorary degrees.~~

~~“No corporation [created under the provisions of this chapter] organized after April 18, 1945, shall have~~

power to confer academic or honorary degrees unless the certificate of incorporation or an amendment thereof shall expressly so provide and unless the certificate of incorporation or an amendment thereof prior to its being filed in the office of the Secretary of State shall have endorsed thereon the approval of the State Board of Education of this State. No corporation created under this chapter before April 19, 1945, and provision in its certificate of incorporation to the contrary notwithstanding possess the power aforesaid without first filing in the office of the Secretary of State [in accordance with Section 242 of this title] a certificate of amendment expressly so providing, the filing of which certificate of amendment in the office of the Secretary of State shall be subject to prior approval of the State Board of Education, evidenced as herein above provided. Approval shall be granted only when it appears to the reasonable satisfaction of the State Board of Education, that the corporation is engaged in conducting a bona fide institution of higher learning, giving instructions in arts and letters, science, or the professions, or that the corporation proposes, in good faith, to engage in that field and has or will have the resources, including personnel, requisite for the conduct of an institution of higher learning.”

B. Institutions Located in Delaware Offering Teacher Education Programs — Title 14, Del. C. — Education Section 122 — Rules and Regulations.

The Board shall prescribe Rules and Regulations:—

“(7)(a) Governing the qualifications and certification of teachers in all of the public schools of the State.

(b) Providing that no individual public or private educational association, corporation or institution shall offer a course, or courses for the training of school teachers to be certified by the State Board of Education without having first procured the assent of the Board for the offering of such training courses.”

C. Non-Delaware Institutions Making Offerings in Delaware — Title 14 Del. C. — Education Section 121 — General Powers of the Board

“The Board shall exercise general control and supervision of the public schools of the State including:

(13) The determination of criteria to be met and procedures to be followed by institutions of postsecondary education that offer courses, programs of courses, or degrees within the State of Delaware but that are not institutions either incorporated in Delaware or located in Delaware, except for the purpose of offering the particular courses, programs of courses or degrees referred to above. The administration of the authority herein granted shall be carried out according to Rules and Regulations of the Board as authorized in §122 of this title.

§ 122(b), the Board shall prescribe Rules and Regulations:

(4)(a) Governing the issuance of certificates

and diplomas from the public schools of the State, and

— (b) Determining the minimum requirements for presentation of any course or program of courses and for the issuing of academic, normal school, collegiate, professional, or university degrees of any level by such institutions as are not otherwise authorized by Delaware law to determine such requirements;

(7)(c) Providing for the licensing of any institution of higher education, public or private, which is not incorporated in the State of Delaware or which is not established according to Delaware state law, whether the main office of that institution is located within the State of Delaware or in any state of the United States or any nation of the world, if that institution offers any course, or program of courses, or degree at a location within the State of Delaware or by correspondence, to residents of the State. Regulations on this subject shall include provisions for the identification and licensing of any agent of such institution who contacts persons within the state of Delaware in person or by correspondence for the purpose of soliciting enrollment by a permanent or temporary resident of the State of Delaware in any such course, program of courses, or degree.”

As required by statutes in effect in 1972, the following STANDARDS were initially developed cooperatively by the State Department of Education and the President of the University of Delaware after review by attorneys for the University and approval of the Executive Committee of the Board of Trustees of the University and were adopted by the State Board of Education on June 14, 1972. The statutes in effect in 1972 were amended by House Bill 423 of the 130th General Assembly in 1979, and now appear as amendments of *Delaware Code*, Title 14, Sections 12 and 122. (See Also Volume 62, *Laws of Delaware*, chapter 18.)

PART I

Policy statement regarding institutions of higher education incorporated in Delaware and institutions located in Delaware offering training in teacher education

POLICIES

Those institutions not fully established but incorporating in Delaware are referred to Section 125 of Title 8 of the Delaware Corporation Laws (see page 1) where it states “or that the corporation proposes, in good faith, to engage in that field and has or will have the resources, including personnel, requisite for the conduct of an institution of higher learning.” The material presented for review must follow the standards in this document and be comprehensive in nature, covering all the required courses of a projected program, and must specify what is proposed or estimated for program, staff, facilities, library and other resources on opening day. The institution should expect to

be held to these commitments where feasible. If the material is acceptable to the committee and the recommendation is accepted by the State Board of Education, the institution shall be acknowledged as a Recognized Applicant. This status may be valid for one or more years according to the action of the State Board. The status may be extended yearly until Provisional Approval has been granted or it may be terminated. The status of Recognized Applicant does not provide the right to grant degrees.

Once the institution is in operation, however, it may petition for provisional Approval which shall be valid until such time as the first class has been graduated. In preparation for this second review, additional information will be required to bring the material up to date in line with the various standards as described in this document and with the recommendations made at the time of the first review. This will include the section on outcomes and other sections throughout the document relative to the judgment of performance and shall be used as the basis for the on-site visitation.

For final approval status, another on-site visitation may or may not be required by the State Department of Education. See Section 13 of this report for more detailed information relative to making applications, visitations, subsequent reports, and possible actions of the State Board of Education.

Proposals or descriptions for graduate programs must be very carefully detailed with emphasis on admission requirements, standards for maintaining graduate status, qualifications of staff, opportunities for research, adaptation of programs to individual needs, and any other facts pertinent to a good graduate program.

Nonprofit institutions must apply for regional accreditation within a minimum of two years from date of initial operation.

Proprietary institutions must seek accreditation from the appropriate national accrediting body or association within a minimum of two years from date of initial operation.

For Final Approval an institution must meet the minimum standards which are found in the following sections of this document. However, for certain types of organizations such as a junior college of business, or a specialized area within a college such as the library, or a specialized college or school offering degrees, the State Board of Education reserves the right to use as additional criteria the regulations of the appropriate accrediting or approving agency. For example, the criteria established by the Accrediting Commission for Business Schools might be used as supplementary requirements to be applied to two-year proprietary business colleges; the standards of the American Association of Collegiate Schools of Business might be applied to nonprofit two or four year institutions. The Guidelines of the American Bar Association might be the basis of approving a law school or college. The

standards established by the American Library Association will be applied to all college libraries except where more specific standards are available for professional libraries such as a law library.

STANDARDS

Section 1—Purposes and Objectives

For the information of its prospective students and to provide a sound framework in which to operate, an institution must present a well-defined statement of the broad purposes or goals of the institution and the specific objectives for the students both generally and in each special program or area of study. This statement should include the reasons for the existence of the institution in its particular community. In addition, the purposes should be reflected in the types of students and sequence of the offerings of the college in general and in specific programs. Wherever possible, the specific objectives should be presented in behavioral terms and should be the basis for future student and program evaluation.

Section 2—Administrative Organization

The organizational pattern of the institution as a two-year associate or a four-year baccalaureate or graduate or professional institution, or as a single or multi-purpose institution, should be clearly defined and should be related to the purposes of the institution.

The institution must present a definite statement, including an organizational chart, or its administrative structure and a description of the functions and interrelationships of the governing board (board of trustees), advisory board (if any), the president and his administrative staff, and the faculty.

There should be evidence that the governing board is aware of the purposes of the institution and is working toward their fulfillment and is striving to anticipate the institution's future needs. The functions and responsibilities of the board should be clearly defined in the Bylaws. The board should be moderate in size (preferably between 9 and 25 members), represent different points of view and interests, be selected from persons interested in the institution and willing to give the time necessary for board matters, and be appointed or elected for regular and overlapping terms of office long enough to be of real service but not for indefinite tenure. The large majority of members should be other than the salaried administrators of the institution.

There should be evidence of established channels of communication between the governing board and the administration and faculty and of the means developed for cooperative planning and appraisal. The delegation of authority and responsibility to the administration and faculty should be clearly delineated.

There should be evidence that the administrative staff

has the necessary time and assistance to enable the members to discharge their duties efficiently. The assignment of multiple functions to one individual, or the assignment of administrative work as extra duty with or without compensation to full-time members of the faculty without due consideration of the full teaching and administrative burden, is evidence of administrative inadequacy.

There should be evidence that the administrative staff is aware of its three major functions: selection, supervision, and support of the faculty; selection and supervision of the students; and operation of facilities for the benefit of faculty and students.

There should be definite policies and procedures concerning academic freedom, tenure, retirement, pensions, leaves of absence, sick leave, the determination of rank and promotions, and the professional development of the faculty, administrative officers and professional staff.

Section 3 -- Financial Administration

The institution must demonstrate financial resources adequate for the effective accomplishment of its announced purposes. There should be a minimum of \$500,000 for an adequate reserve in unencumbered funds for a beginning private four-year institution. The income must be so expended as to provide equitably for instruction, administration, maintenance, equipment and supplies, library, and student activities.

The financial statements for both beginning and continuing institutions should reflect clearly the sources of income, categories of expenditure, and the profit or nonprofit status of the institution. They should show the nature and amount of indebtedness, if any; how incurred; and the provision for amortization. They should indicate agreement or provide a surety company bond for the protection of the contractual rights of students.

The business management should be under the direction of a responsible bonded financial officer charged with the preparation and supervision of the budget in accordance with sound financial and educational practices.

A continuing institution must present an operating statement and proposed balance sheet for the fiscal year and a budget summary for each present fiscal year, comparable in amount of detail to those customarily prepared for trustees.

Information should be available on the annual surplus or deficit at the end of each of the past five fiscal years.

The general aspects of business administration and the principles of accounting and reporting shall adhere to the widely accepted standards published by the American Council on Education in the current edition of *College and University Business Administration*.

Section 4 -- Student Personnel Program

An institution should provide evidence of an adequate

student personnel program, including student activities and a counseling service, which demonstrates a concern for the total needs of the student as a citizen in a democratic society. The student personnel program should be directed by a professionally trained person whose responsibilities embrace the general welfare and discipline of the students. Depending upon the scope of the institution and whether it is to be residential or nonresidential in character, the student personnel program should be concerned with the living arrangements and health needs of students and with the development of a meaningful program of social, recreational and athletic, education, and cultural out of class activities. A counseling service should be provided which is staffed with professional personnel competent to assist students in resolving academic, personal and vocational problems. Provision should be made in the counseling service for testing of students' abilities and interests as aids to student self-understanding, educational planning and career decisions. The counseling service should have a responsibility for analyzing causes of academic deficiency and reasons for dropping out. The advisement of students in the selection of courses to meet stated requirements for various degree programs may be a responsibility assigned to the counseling staff or to an academic dean and members of the teaching faculty.

Section 5 -- Admission Policies and Procedures

An admissions office must be adequately staffed to carry out the admissions policies and procedures.

The instruction should have a carefully stated selective admissions policy which is appropriate to the institution's purposes and organization. Admissions criteria should be established in consideration of the abilities needed by all students to achieve satisfactorily in the various programs of study offered. The institution must operate in compliance with announced admission policies and procedures.

For admission, the institution should require either graduation from an accredited secondary school or other recognized standards such as the General Education Development Test scores or the College Entrance Examination Board scores. The applicant's file should contain a complete transcript of his school record including courses, grades, and other appropriate information properly signed by the high school principal, guidance officer or other duly authorized school official.

The institution should be able to supply evidence such as correlation between admission credentials and freshman grades, academic attrition studies, objective test results, and others, to demonstrate that it selects students qualified to pursue successfully the program of study for which admitted. The institution is expected to admit students in accordance with its published criteria.

Institutions may at their discretion employ more flexible and experimental admissions standards. However, if

applicants whose qualifications are marginal are accepted as "risks", there should be supporting information obtained through interviews, tests, and recommendations made by guidance officers or others qualified to judge these applicants' potential. The admission of marginal students should involve follow-up studies to evaluate whether these risks were justified and the effects of such admissions on other students.

Section 6 -- Faculty

The quality of education program is determined largely by the quality of the faculty. Therefore, any institution of higher education should have clearly defined criteria for faculty appointment, incentives for retention, and provisions for in-service growth and development.

A faculty member should be adequately prepared both by training and experience in the specific area of the teaching assignment. Academic preparation is one valid index of potential quality. It is recommended that, except for certain specialized courses, there should be several faculty members, particularly Department Chairmen, with doctoral degrees or the equivalent and all others with master's degrees or the equivalent from recognized graduate or professional programs. It will be expected that, except in unusual circumstances, they will have graduate course credits in the fields in which they teach, and the level of preparation will increase with the level of teaching assignment. Advanced study and scholarly and creative production are other significant indexes of educational stature.

In some junior colleges, especially in a single-purpose professional or technical program such as a business college, the academic requirements might be slightly lower. However, at least one-half of the faculty teaching second-year course work must have a master's degree, LLB, CPA or other professional equivalent.¹ It is recognized that no one terminal designation is appropriate for all faculty members.

Following the selection criteria, there should be a well planned incentive program designed for retention of faculty. Such a program should include policies on academic freedom, tenure, retirement, pensions, leaves of absence including sabbaticals, sick leave, insurance, and other faculty benefits. There should be a clear statement of criteria for each rank and the requirements for promotion.

There should be evidence that there is a faculty organization to carry out the respective educational responsibilities.

As contributing factors in the in-service professional

development program for the faculty, there should be a thorough orientation for all new faculty, periodic evaluation and critique of instructional methods, and, where appropriate, evidence of research accomplishment.

Normally, teaching loads should be no more than fifteen credit hours. Variations may be made when responsibilities for other college-related activities are assigned or in recognition of particularly significant professional endeavors. In the case of single courses offered, or weekend programs presented by non-Delaware institutions, the workload shall be evaluated to determine that it is compatible with any other assignment carried by the instructor and does not constitute a burden that might detract from the quality of the presentation.

If faculty members serve as advisors, they should be fully informed about degree requirements, transfer regulations and any other specific requirements such as state teacher certification or professional licensing.

Section 7 -- Program

An institution's educational program includes the total impact of all the influences which the institution brings to bear upon the student such as what goes on in the classroom, laboratory, studio, library, the counseling program, student activities, playing fields, lounges, cafeterias and dining rooms, dormitories, lectures and exhibitions, and casual faculty contacts.

The curriculum and all other experiences should be designed to meet the specific purposes of the institution. A college should be concerned with the total growth of the student as an individual.

The number and variety of curricula should be determined by the purposes of the institution, the size of the student body, and the available personnel and resources of the institution. An institution is more likely to serve its clientele better by doing a few things well rather than by undertaking too many specialties. However, each curriculum design should be broad enough to allow for individual differences and interests.

Curricula in all fields must evidence recognition of the relationships between broad education and the acquisition of techniques and skills. Degree requirements for each curriculum should be clearly stated.

The means should exist for continuous evaluation of the curriculum by the faculty and for modifying it when necessary.

In a junior college, transfer and career programs should include a block of courses in liberal education. It is difficult and dangerous to try to match exactly a transfer program with the equivalent in a specific receiving college. It is important for a two-year institution to develop its program on the basis of stated objectives. However, degree-granting institutions are expected also to contribute to the overall development of the student as well as to prepare him for

1. The Accrediting Commission for Business Schools, Official Directory of Accredited Institutions and Operating Criteria (The Accrediting Commission for Business Schools, Detroit, Michigan, 1967) page 49.

employment. The State Board of Education recommends a minimum of 40% of the total program in general or liberal education.

Section 8 -- Graduation Requirements

For authorization to grant an associate degree, an institution must: require no less than 60 semester hours of academic and pre-professional work or equivalent; must allow no credit for any course completed with a grade lower than the passing grade of the institution (D or its equivalent); and should require no less than an average of 2.0 or specify clearly what index is required for grade for graduation. Credit hours should be determined in line with nationally recognized standards.

For authorization to grant a baccalaureate degree, an institution shall require a minimum of 120 semester hours for graduation and no less than a 2.0 overall average (on a 4.0 scale). The awarding of a large variety of degrees, especially by a small institution, will be questioned.

The above standards do not preclude the possibility by a college or professional school in experimenting with or using other means of evaluation or assessment of a student's progress and success in moving through the course or experience sequence required for graduation.

The graduation requirements need to be clearly delineated for any institution.

Section 9 -- Facilities

A physical plant in and of itself does not determine the quality and effectiveness of the educational program. However, good housing and equipment make better teaching possible and better enable the institution to accomplish its stated purposes.

The administrative and faculty facilities, classrooms, library, laboratories, and student activity centers should be suitable for their specific purposes, and convenience for advisement and scheduling, and should promote the highest standards of learning, health and personal welfare. As far as possible, faculty members should have separate offices.

Beginning institutions and those planning expansion programs should have well designed plans for appropriate building expansion.

Section 10 -- Library

The institution must provide library facilities adequate to the effective realization of its stated educational objectives. The library is the chief resource for both faculty and students. The nature and content of the collection will depend on the institution's program and objectives.

The physical facilities should be conducive to frequent and effective use of the collections. The accommodations should allow for seating from one fourth to one third of the student body. However, any situation will be affected by the availability of other facilities on campus. The program should be administered by a professionally trained library

staff adequate in number for the size of the student body. According to the standards of the American Library Association¹ for a junior college is a minimum of 20,000 volumes for up to 1,000 students, and 50,000 volumes for a senior college of up to 600 students with 10,000 that an institutional collection shall be of the size and quality recommended by the American Library Association for degree-granting institutions or by the appropriate professional association.

Other factors to be considered are the sufficiency of space set aside for quiet study and leisure time reading; the accessibility of materials for reference, collateral study, and general reading; the amount of the annual appropriation for new books; the methods by which new books are selected; the adequacy of the number of hours the library is open; and the efficiency of the system of organizing and cataloging the collections. In addition to books and periodicals, the library or other division of the institution should provide the other media (films, records, video and audio tape, and other instructional media) necessary to support the institution's objectives.

In the case of the non-Delaware institution offering courses, programs of courses, or degrees in Delaware, library facilities are to be imported on a temporary basis or provided through contractual arrangements with other Delaware institutions so that the material available will provide adequate support to the courses offered.

Section 11 -- Outcomes

The institution must describe its means for assessing the extent to which it achieves its stated purposes and objectives insofar as this is measurable.

Plans for the measurement of outcomes could include evaluation of undergraduate achievement based on standard tests; a study of the performance of graduates in graduate or professional schools (or of transfer students in the junior or senior years); and a long term study of the achievements based on data gathered periodically and systematically.

Section 12 -- Catalog and Announcements

The catalogs and all other announcements must give an accurate description of the actual offerings of the institution and show evidence that the institution is managed by educationally competent and morally responsible persons.

The catalog should include:

Identification data, such as volume number, and date of publication:

Names of the institution, the governing board, and

1. Hirsch, Feliz E. Standards for College Libraries, College and Research Libraries, Vol. 20, July 1949, pp. 274-80 page 5.

the administrative staff and faculty showing earned degrees and the institutions granting them.

A complete calendar for the academic year.

A statement of its accredited or approval status.

A statement of the origin and objectives of the institution.

Admission and graduation policies and requirements.

Detailed schedule of all fees and other charges as well as refund policies.

Information concerning scholarship funds.

Description of location of the institution; buildings, grounds and equipment.

List of degrees conferred and requirements for each degree.

Outline of each curriculum and a description of each course offered during period covered by the catalog and an indication of courses offered at other times. Descriptions should indicate prerequisites, if any.

Number of weeks of instruction per semester and of class meetings per week.

Section 13 — Detailed Procedures for Securing State Board Approval

As stated in the Policy on Procedures, the State Board of Education accepts three levels of recognition of an institution: 1) Recognized Applicant; 2) Provisional Approval; and 3) Full Approval for five years.

To become a Recognized Applicant, an institution must complete the questionnaire, "Application To Confer Academic and Honorary Degrees" required by the State Board of Education. This material presented in duplicate¹ will be reviewed by an evaluation team mutually acceptable to the institution and the State Board of Education through its administrative staff, the State Department of Education. After the review and a hearing with the Board of Trustees and the administrative staff of the institution, an on-site visitation may be required if the institution is actually in operation. If all the facts gained appear to meet, or show promise of meeting, a significant portion of the standards as stated in the Delaware Standards for Approving Institutions of Higher Education, the institution will be notified of Recognized Applicant, valid for one or more years. Recommendations will be made for any changes in or additions to the information previously submitted which would be necessary for consideration for Provisional Approval. A two year institution should request evaluation for Provisional Approval no later than the beginning of the 4th semester; four year institutions, no later than the 7th semester.

1. Additional materials may be requested from the institution.

Following the on-site visit, required for the second level of approval, the team shall recommend to the State Board of Education that either the institution continue to be recognized only as an Applicant without degree granting status, or it be granted Provisional Approval with the right to confer the degrees requested. Those institutions required to remain on Applicant Status will be informed of the changes and improvements necessary to be eligible for Provisional Status. There is no guarantee that a Recognized Applicant institution will be given either Provisional or Full Approval. A Recognized Applicant institution may incorporate but its charter may not include the right to confer degrees.

An institution receiving Provisional Approval may incorporate under Section 125 of Title 8 of the Delaware Corporation Laws with the right to confer a degree. If the institution has previously incorporated without the right to confer a degree, the charter may be amended to include the degree-granting privilege. The institution shall retain this status until after the first class has been graduated. Such an institution must seek full approval within a minimum of two years following the first graduation but may petition for such approval within the first year. The conferring of final approval may require a second on-site visit.

If a Provisionally Approved institution does not receive Full Approval within four years after the first graduating class, the State Board of Education may withdraw all approval and inform the Corporation Division of the State of Delaware that the section in the Charter for the institution which refers to the right to confer degrees is no longer valid. It shall be the responsibility of the State Board of Education to keep Recognized Applicants and Provisionally Approved institutions apprised of the requirements they must meet in order to achieve the next level of recognition.

Fully Approved institutions shall retain such status for a period of no longer than five years by which time a progress report must be filed with a follow-up visitation required if deemed desirable by the State Department of Education. If such an institution is scheduled for a Regional Accreditation evaluation at the time of either the Final Approval or the five-year period review and the State Department of Education has a representative on the valuation team, the State Board of Education may accept the Regional Approval in lieu of a separate evaluation.

Provisionally Approved and Fully Approved institutions shall keep the State Board of Education informed of any changes in the facts as presented in their applications.

All expenses incurred by a visiting team, with the exception of personnel from publicly supported educational institutions, at any stage in the approval procedures must be born by the institution requesting approval. If an institution is located outside of the State of Delaware and is incorporating in Delaware, it must also pay the expenses of Delaware representative appointed by the State Board of Education if such a visit is deemed necessary.

PROCEDURES

~~POLICY ON PROCEDURES TO BE FOLLOWED IN APPROVING DEGREE-GRANTING AUTHORITY TO INSTITUTIONS OF HIGHER EDUCATION^{1*}~~

~~The following procedures are established by the State Board of Education and are to be followed by any institution seeking approval to incorporate and to grant a degree under Delaware Code, Title 8, §125:~~

~~1. Authorities of the institution shall make formal request to the State Board of Education through its secretary, the State Superintendent of Public Instruction.~~

~~2. The State Board of Education shall acknowledge receipt of the request and authorize the State Superintendent of Public Instruction to assign personnel in the State Department of Education to execute the approval procedures.~~

~~3. The Applicant Institution shall complete detailed application questionnaires and submit data as requested.~~

~~4. An appropriate committee shall be appointed by the Superintendent of Public Instruction to serve as an evaluation committee to advise the State Board of Education and the Applicant Institution from the time of application through final approval. The committee shall be composed of persons from the State Department of Education, the University of Delaware and other persons with experience in the field of higher education. Careful attention is to be given in the appointment of committee personnel to such specialties as may be required by the particular curricular offering of the institution concerned. The "specialty assignments" will be particularly important in the case of professional schools.~~

~~5. Immediately upon receipt and review of the application materials, the committee shall prepare a report to the State Superintendent of Public Instruction with a recommendation to the State Board of Education. This recommendation shall be either to grant the institution status as a Recognized Applicant or to deny recognition. The status of "Recognized Applicant" does not carry authorization to confer degrees.~~

~~6. Near the end of the first full school year of classes but prior to the close of classes, the institution shall file a progress report as described and requested by the committee. The evaluation committee will make an on-site visit to the institution in order to verify the contents of the report and evaluate progress to date. A written report of the committee's action is to be sent to the State Superintendent of Public Instruction with recommendation for action by the State Board of Education. The recommendation in this case~~

~~shall be: (a) to withdraw approval; or (b) to continue the status of Recognized Applicant along with a listing of any specific recommendations to be met by the institution; or (c) to grant new status of Provisional Approval, with the right to confer a degree.~~

~~7. At a time one or two years following the graduation of the first class from the institution, on an occasion mutually agreed upon by the officials of the institution and the evaluation committee, the institution shall present a third progress report and the committee shall make an on-site visit. In the event that this planned visit is scheduled to occur at approximately the same time as that of a visit from the Commission on Higher Education of the Middle States Association of Colleges and Schools, or another appropriate specialized accrediting agency, it may be recommended to the State Board of Education that a favorable report by this visiting agency be accepted in lieu of a separate report and on-site visit from the evaluating committee. The recommendation on this occasion may be for Final Approval of the degree-granting authority of the institution.~~

~~8. The evaluation committee should be discharged.~~

~~9. If approval of the institution is denied at any of the three major steps described in this procedure, the institution shall have the right of appeal to the State Board of Education but in such appeal will be required to submit necessary evidence to show cause why approval should be granted or why temporary approval should be extended for a longer period of time.~~

~~10. Any costs incidental to the evaluation and approval of a college, except the salary of personnel from the publicly supported educational institutions in Delaware, shall be the responsibility of the Applicant Institution.~~

PART II

~~Policy statement regarding non-Delaware institutions of higher education that offer courses, programs of courses, or degrees within the State of Delaware^{2**}~~

~~The State Board of Education by statutory mandate has a responsibility to review all petitions or applications from out-of-state institutions wishing to offer credit-bearing courses or degree programs in the State of Delaware. The Board will approve only those offerings that, in the opinion of the Board, meet minimum standards of quality and are financially sound.~~

Section 1 -- Petition or Application from Institution

~~Out-of-state institutions wishing to offer credit-bearing courses, programs of courses, or degree programs in Delaware shall:~~

~~1. *Approved by State Board of Education, October 21, 1971. Edited and approved by State Board of Education, June 14, 1972.~~

~~2. **Approved by State Board of Education, August 16, 1979.~~

1. Make application to the State Board of Education through its secretary at least one academic year before the requested date of implementation.

2. Shall present final application forms with supporting documents to the State Board of Education at least six months prior to the requested date of implementation.

Institutions which are operating or which have made offerings in the State of Delaware at or prior to the time of adoption of this policy by the State Board of Education shall apply for recognition and licensure on or before January 1, 1980 for offerings to be made after June 1, 1980, but prior to June 1, 1981.

The application or request shall contain supportive evidence that the following are met or will be met according to the STANDARDS set forth in this document. However, if the institution is accredited in its main campus location by the regional accrediting agency for that region and if that accreditation includes extension, satellite or other off-campus operations, the programs in Delaware will be licensed upon application and payment of the fee.

An accreditation agency designation of "Recognized Applicant" or any other less than full accreditation designation will not be accepted. Even though an institution is regionally accredited, the State Board of Education may at any time require that institution to present a complete and documented application for license if complaints directed against the Delaware operation of the institution by Delaware enrollees seem to warrant a more thorough review.

All applications, whether accredited or not, must show that:

1. The proposed site or facility is in compliance with Delaware and local ordinances pertaining to fire, health, zoning, safety, etc.

2. Degree programs conform to the minimum standards established by the State Board of Education for similar institutions operating within the State.

3. The Board of Trustees of the out-of-state institution must, by resolution, guarantee to the satisfaction of the State Board of Education that operations in the State of Delaware will be financially solvent.

Section 2 -- Programs May Be Approved for Periods of One to Five Years

Initially, programs will not be approved for longer than a three-year period. In reference to requests to offer credit-bearing courses, but not a degree program, approval will be for a period of only one year.

Section 3 -- Continuing Approval

After the initial approval, renewal approval will be contingent upon a favorable recommendation based upon periodic review by the staff of the Division of Certification and Personnel and usually with the assistance of a consultant(s) from an institution of higher education. This

consultant(s) will have expertise in the program or course offered.

Section 4 -- Obligations To Inform State Board of Education

The institution will be obligated to keep the State Board of Education informed of the names and addresses of those responsible for directing the programs from the parent campus, the names of instructors, the locations of all sites in Delaware where instruction is offered, and the names and addresses of students enrolled in the program and/or course.

Section 5 -- Fees

A license fee of \$100.00 per out-of-state institution will be required for each school year of operation. Program duration of a shorter period, such as one semester or one quarter, will pay a minimum fee of \$50.00.

Section 6 -- Cost of Evaluation

Any and all costs incidental to the evaluation and approval of a program or course, except the salary of personnel from publicly supported education institutions in Delaware, shall be the responsibility of the applicant institution.

Section 7 -- Published List

Each year the State Board of Education will publish a list of all programs and courses approved to operate in the State.

Section 8 -- Agents: Agent Permits -- Application -- Contents -- Fees -- Separate Permits

Every agent representing an institution as herein defined, located outside the State of Delaware, shall make application for an agent's permit to the Board, in writing, upon forms prepared and furnished by the Board. Each application shall state the name of the school which the applicant will represent, contain evidence of the honesty, truthfulness and integrity of the applicant, shall be verified under oath by him/her, and shall be accompanied by he recommendation of two reputable persons, certifying that the applicant is truthful, honest, and of good reputation, and recommending that a permit, as an agent, be granted to the applicant. The fee for an original permit, as an agent, shall be determined by the Board, and there shall be an annual renewal fee determined by the Board. A separate permit shall be obtained for each school represented by an agent.

1. Each applicant for a permit to serve as an agent shall submit with his application a fee in the amount of \$10.00 for the first application. This fee will be required for each institution represented by any one agent. The fee for renewal of the permit to serve as an agent shall be \$5.00 for each institution represented by the agent. The agent shall present a second application for a permit to serve as agent in conjunction with the application for certification by the

second institution that he/she will represent. The fees required in this regulation shall be in addition to service fees charged by the Division of Motor Vehicles, Department of Public Safety.

2. Each agent shall apply for a permit each year at the same time that the institution he/she is to represent makes application for a Certificate of Approval. No permit shall be issued for a period of more than twelve calendar months. No agent shall perform the function of his/her assignment and solicit Delaware enrollees in the institution until he/she has been issued the appropriate identification permit.

3. The discontinuance of the certification of an institution for any cause shall make invalid all agent permits for that institution.

4. The discharge or resignation of any agent shall be reported immediately to the State Board of Education through its designated officer.

5. To the extent that any situation warrants the State Board of Education shall be responsible for publicizing the discontinuance of any certificate or permit.

6. In any instance where the owner of an institution indicates that he/she plans to serve as his own agent, separate fee for the agent permit will be waived, but the permit must be obtained. Any additional agents must obtain permits as otherwise described.

7. The Board, upon approval of an application for or renewal of a permit, shall prepare and deliver to each agent a pocket card which, among other things, shall contain the name and address of the agent and of the employing school, and shall certify that the person, whose name appears thereon, is an authorized agent of the institution.

The pocket card shall be a card designed and issued by the State Department of Education for completion at one of the Inspection Lanes of Division of Motor Vehicles of the Department of Public Safety. The card will include a photo and the signature of the agent, and shall be secured in a laminated jacket card shall be paid by the agent at the Inspection Lane where the photograph will be made and the card completed.

Section 9 -- Enforcement/Penalties

Violations of the law and regulations relating to Institutions of Higher Education as herein described shall be referred to the Attorney General of the State of Delaware who shall assume responsibility for enforcement of the law and the regulations.

PART III

Policy statement regarding institutions of higher education, located in other states or territories and not offering programs in-state, wishing to incorporate in Delaware

Pursuant to Section 125, Title 8 of the *Delaware Code Annotated*, the Division of Corporations of the Delaware Department of State forwards requests for incorporation

made by private colleges and universities, located outside of Delaware, and not offering programs in-state, to the State Board of Education for approval prior to incorporation.

With respect to these requests for incorporation, the State Board of Education recognizes the following: 1) the interest of each state and territory of the United States to grant the authority to award degrees to institutions located within that state or territory; 2) the legitimate request of private colleges and universities located outside of Delaware to make a business decision to incorporate in the State; and 3) the State Board of Education's own right, pursuant to Section 125, to set reasonable limitations to ensure the quality of education offered by such institutions of higher education incorporated in Delaware.

POLICY

Section 1 -- Criteria for Approval

As a matter of comity, the Delaware State Board of Education will not approve the incorporation of colleges, universities or other institutions offering credit-bearing courses, that have a primary site of operation in another state and do not operate in Delaware, unless the institution already is approved by the state degree granting authority of the state in which it is located, or, in states without a degree granting authority, is accredited by a nationally recognized accrediting agency or association approved by the United States Department of Education. A nationally recognized accrediting agency or association is one that appears on the list published as *Nationally Recognized Accrediting Associations*, by the Secretary of Education.

Section 2 -- Authority of Administrator

The Administrator of Programs for Institutions of Higher Education may approve the incorporation of such institutions meeting the criteria described above on behalf of the State Board of Education.

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1.0 Standards for Approval of Post Secondary Institutions

1.1 Purposes and Objectives

1.1.1 An institution shall present a well-defined statement of the broad purposes or goals of the institution and the specific objectives for the students both generally and in each special program or area of study. This statement shall include the reasons for the existence of the institution in its particular community. In addition, the purposes shall be reflected in the types of students and sequence of the offerings of the college in general and in specific programs.

1.1.1.1 The specific objectives shall be presented in behavioral terms and shall be the basis for future student and program evaluation.

[1.1.1.2 The Department's regulation 225 Prohibition of Discrimination that prohibits discrimination on the basis of race, color, creed, national origin, disability or gender in programs receiving approval from the Department applies to Degree Granting Institutions of Higher Education approved by the Department of Education.]

1.2 Administrative Organization

1.2.1 The organizational pattern of the institution as a two-year associate or a four-year baccalaureate or graduate or professional institution, or as a single or multi-purpose institution, shall be clearly defined and shall be related to the purposes of the institution.

1.2.2 The institution shall present a definite statement, including an organizational chart, or its administrative structure and a description of the functions and interrelationships of the governing board (board of trustees), advisory board (if any), the president and the administrative staff, and the faculty.

1.2.3 The functions and responsibilities of the board shall be clearly defined in the Bylaws.

1.2.4 The board shall be moderate in size (between 9 and 25 members) and shall represent different points of view and interests, be selected from persons interested in the institution, willing to give the time necessary for board matters and be appointed or elected for regular or overlapping terms of office. The large majority of the members should be other than the salaried administrators of the institution.

1.2.5 There shall be evidence of established channels of communication between the governing board and the administration and faculty.

1.2.6 There shall be evidence that the administrative staff has the necessary time and assistance to enable members to discharge their duties efficiently.

1.2.7 There shall be evidence that the administrative staff is aware of its three major functions: selection, supervision and support of faculty; selection and supervision of the students and operation of the facilities for the benefit of faculty and students.

1.2.8 There shall be definite policies and procedures concerning academic freedom, tenure, retirement, pensions, leaves of absence, sick leave, the determination of rank and promotions, and the professional development of the faculty, administrative officers and professional staff.

1.3 Financial Administration

1.3.1 The institution shall demonstrate financial resources adequate for the effective accomplishment of its announced purposes. The income shall be so expended as to provide equitably for instruction, administration, maintenance, equipment and supplies, library, and student activities.

1.3.2 The business management shall be under the

direction of a responsible bonded financial officer charged with the preparation and supervision of the budget in accordance with sound financial and educational practices.

1.3.3 A continuing institution shall present an operating statement and proposed balance sheet for the fiscal year and a budget summary for each present fiscal year, comparable in amount of detail to those customarily prepared for trustees.

1.3.4 Information shall be available on the annual surplus or deficit at the end of each of the past five fiscal years.

1.3.5 The general aspects of business administration and the principles of accounting and reporting shall adhere to the widely accepted standards published by the American Council on Education in the current edition of *College and University Business Administration*.

1.4 Student Personnel Program

1.4.1 An institution shall provide evidence of an adequate student personnel program, including student activities and a counseling service and shall be directed by a professionally trained person whose responsibilities embrace the general welfare and discipline of the students.

1.4.2 Provision shall be made in the counseling service for testing of students' abilities and interests as aids to student self-understanding, educational planning and career decisions.

1.4.3 Depending on the scope of the institution and whether it is residential or nonresidential in character, the student personnel program shall be concerned with the living arrangements and health needs of students and with the development of a meaningful program of social, recreational and athletic, education and cultural out of class activities.

1.5 Admission Policies and Procedures

1.5.1 The instruction shall have a carefully stated selective admissions policy that is appropriate to the institution's purposes and organization. Admission criteria shall be established in consideration of the abilities needed by all students to achieve satisfactorily in the various programs of study offered. The institution shall operate in compliance with announced admission policies and procedures.

1.5.2 The admissions office shall be adequately staffed to carry out the admissions policies and procedures.

1.5.3 For admission, the institution shall require either graduation from an accredited secondary school or other recognized standards such as the General Education Development Test scores or the College Entrance Examination Board scores. The applicant's file should contain a complete transcript of the school record including courses, grades, and other appropriate information properly signed by the high school principal, guidance officer or other duly authorized school official.

1.5.4 The institution shall supply evidence such as correlation between admission credentials and freshman

grades, academic attrition studies, objective test results and others, to demonstrate that it selects students qualified to pursue successfully the program of study for which admitted. The institution shall admit students in accordance with its published criteria.

1.5.4.1 The institution may, at ~~their~~ its] discretion employ more flexible and experimental admissions standards but should document with supporting information the criteria used to judge these students for admission and evaluate these criteria based on experience.

1.6 Faculty

1.6.1 The institution shall have clearly defined criteria for faculty appointment, incentives for retention, and provisions for in-service growth and development.

1.6.2 There shall be a well planned incentive program designed for retention of faculty. Such a program shall include policies on academic freedom, tenure, retirement, pensions, leaves of absence including sabbaticals, sick leave, insurance, and other faculty benefits. There shall be a clear statement of criteria for each rank and the requirements for promotion.

1.6.3 There shall be a thorough orientation for all new faculty, periodic evaluation and critique of instructional methods, and, where appropriate, evidence of research accomplishment.

1.6.4 If faculty members serve as advisors, they shall be fully informed about degree requirements, transfer regulations and any other specific requirements such as state teacher certification or professional licensing.

1.6.5 There shall be evidence that there is a faculty organization to carry out the respective educational responsibilities.

1.7 Program

1.7.1 The number and variety of curricula shall be determined by the purposes of the institution, the size of the student body, and the available personnel and resources of the institution.

1.7.2 Curricula in all fields shall evidence recognition of the relationships between broad education and the acquisition of techniques and skills. Degree requirements for each curriculum shall be clearly stated.

1.7.3 Transfer and career programs in a junior college shall include a block of courses in liberal education.

1.8 Graduation Requirements

1.8.1 For authorization to grant an associate degree, an institution shall require 60 semester hours of academic and pre-professional work or equivalent, give credit only for courses completed with a passing grade of the (D) or its Institutional equivalent and require an average of 2.0 or specify clearly what index is required for graduation.

1.8.2 For authorization to grant a baccalaureate degree, an institution shall require a minimum of 120 semester hours for graduation and no less than a 2.0 overall average (on a 4.0 scale).

1.8.3 All graduation requirements shall be clearly delineated for any institution.

1.9 Facilities

1.9.1 Administrative and faculty facilities, classrooms, library, laboratories, and student activity centers shall be suitable for their specific purposes, and convenience for advisement and scheduling, and shall promote the highest standards of learning, health and personal welfare. [The institution shall comply with applicable state and federal standards, with respect to the accessibility of facilities by persons with disabilities.]

1.9.2 Beginning institutions and those planning expansion programs shall have well designed plans for appropriate building expansion.

1.10 Library

1.10.1 The institution shall provide library facilities adequate to the effective realization of its stated educational objectives.

1.10.2 The physical facilities shall be conducive to frequent and effective use of the collections.

1.10.3 The accommodations shall allow for seating from one-fourth to one-third of the student body and there shall be space set aside for quiet study and leisure time reading.

1.10.4 The program shall be administered by a professionally trained library staff adequate in number for the size of the student body.

1.10.5 The collection of volumes shall meet the standards of the American Library Association.

1.10.6 In the case of the non-Delaware institution offering courses, programs of courses, or degrees in Delaware, library facilities shall be imported on a temporary basis or provided through contractual arrangements with other Delaware institutions so that the material available will provide adequate support to the courses offered.

1.11 Outcomes

1.11.1 The institution shall describe its means for assessing the extent to which it achieves its stated purposes and objectives insofar as this is measurable.

1.11.2 Plans for the measurement of outcomes shall include evaluation of undergraduate achievement based on standard tests; a study of the performance of graduates in graduate or professional schools (or of transfer students in the junior or senior years); and a long term study of the achievements based on data gathered periodically and systematically.

1.12 Catalog and Announcements

1.12.1 The catalogs and all other announcements shall give an accurate description of the actual offerings of the institution and show evidence that the institution is managed by educationally competent and morally responsible persons and shall include specifically:

1.12.1.1 Identification data, such as volume number, and date of publication.

1.12.1.2 Names of the institution, the governing board, and the administrative staff and faculty showing earned degrees and the institutions granting them.

1.12.1.3 A complete calendar for the academic year.

1.12.1.4 A statement of its accredited or approval status.

1.12.1.5 A statement of the origin and objectives of the institution.

1.12.1.6 Admission and graduation policies and requirements.

1.12.1.7 Detailed schedule of all fees and other charges as well as refund policies.

1.12.1.8 Information concerning scholarship funds.

1.12.1.9 Description of location of the institution; buildings, grounds and equipment.

1.12.1.10 List of degrees conferred and requirements for each degree.

1.12.1.11 Outline of each curriculum and a description of each course offered during period covered by the catalog and an indication of courses offered at other times. Descriptions shall indicate prerequisites, if any.

1.12.1.12 Number of weeks of instruction per semester and of class meetings per week.

2.0 Procedures for Securing Approval

2.1 Institutions may be granted one of three levels of recognition: Recognized Applicant, Provisional Approval or Full Approval for five years.

2.1.1 Recognized Applicant: An institution shall complete the questionnaire, Application to Confer Academic and Honorary Degrees. This material, presented in duplicate, is reviewed by an evaluation team mutually acceptable to the institution and the Department of Education. After the review and a hearing with the Board of Trustees and the administrative staff of the institution, an on-site visitation may be required if the institution is actually in operation. If all the facts gained appear to meet, or show promise of meeting, a significant portion of the standards as stated in the Delaware Standards for Approving Institutions of Higher Education, the institution shall be notified of Recognized Applicant status valid for one or more years. Recognized Applicant status may be extended yearly or may be terminated. Recommendations shall be made for any changes in or additions to the information previously submitted which would be necessary for consideration for Provisional Approval. A two year institution shall request evaluation for Provisional Approval no later than the beginning of the 4th semester; four year institutions, no later than the 7th semester.

2.1.2 Provisional Approval: Following the on-site visit, required for this second level of approval, the team shall recommend to the Secretary of Education that either the

institution continue to be recognized only as an Applicant without degree granting status, or it be granted Provisional Approval with the right to confer the degrees requested. Those institutions required to remain on Applicant Status will be informed of the changes and improvements necessary to be eligible for Provisional Status. There is no guarantee that a Recognized Applicant institution will be given either Provisional or Full Approval. A Recognized Applicant institution may incorporate but its charter shall not include the right to confer degrees.

2.1.2.1 An institution receiving Provisional Approval may incorporate under 8 Del. C. Section 125 with the right to confer a degree. If the institution has previously incorporated without the right to confer a degree, the charter shall be amended to include the degree-granting privilege. The institution shall retain this status until after the first class has been graduated.

2.1.2.2 An institution shall seek full approval within a minimum of two years following the first graduation but may petition for such approval within the first year. The conferring of final approval may require a second on-site visit.

2.1.2.3 If a Provisionally Approved institution does not receive full approval within four years after the first graduating class, the Department of Education may withdraw all approval and inform the Corporation Division of the State of Delaware that the section in the charter for the institution which refers to the right to confer degrees is no longer valid.

2.1.2.4 It shall be the responsibility of the Department of Education to keep Recognized Applicants and Provisionally Approved institutions apprised of the requirements they must meet in order to achieve the next level of recognition.

2.1.2.5 For Final Approval an institution must meet the minimum standards which are found in the following sections of this document. However, for certain types of organizations such as a junior college of business, or a specialized area within a college such as the library, or a specialized college or school offering degrees, the Department of Education reserves the right to use as additional criteria the regulations of the appropriate accrediting or approving agency. For example, the criteria established by the Accrediting Commission for Business Schools might be used as supplementary requirements to be applied to two-year proprietary business colleges; the standards of the American Association of Collegiate Schools of Business might be applied to nonprofit two or four year institutions. The Guidelines of the American Bar Association might be the basis of approving a law school or college. The standards established by the American Library Association will be applied to all college libraries except where more specific standards are available for professional libraries such as a law library.

2.1.3 Fully Approved institutions shall retain such status for a period of no longer than five years by which time a progress report must be filed with a follow-up visitation required if deemed desirable by the Department of Education. If such an institution is scheduled for a Regional Accreditation evaluation at the time of either the Final Approval or the five-year period review and the Department of Education has a representative on the evaluation team, the Department of Education may accept the Regional Approval in lieu of a separate evaluation.

2.1.3.1 Provisionally Approved and Fully Approved institutions shall keep the Department of Education informed of any changes in the facts as presented in their applications.

2.2 All expenses incurred by a visiting team, with the exception of personnel from publicly supported educational institutions, at any stage in the approval procedures shall be borne by the institution requesting approval. If an institution is located outside of the State of Delaware and is incorporating in Delaware, it ~~must~~ shall] also pay the expenses of Delaware representative appointed by the State Department of Education if such a visit is deemed necessary.

2.3 Proposals or descriptions for graduate programs ~~must~~ shall] be very carefully detailed with emphasis on admission requirements, standards for maintaining graduate status, qualifications of staff, opportunities for research, adaptation of programs to individual needs, and any other facts pertinent to a good graduate program.

3.0 Institutions of Higher Education Application for Degree Granting Authority

3.1 The Applicant Institution shall complete detailed application questionnaires and submit data as requested.

3.2 The Secretary shall appoint an evaluation committee to advise the Secretary and the Applicant Institution from the time of application through the final approval.

3.2.1 The committee shall be composed of persons from the Department of Education, the University of Delaware and other persons with experience in the field of higher education and shall recommend to the Secretary of Education that the Institution receive status as a Recognized Applicant or deny recognition. The status of Recognized Applicant does not carry authorization to confer degrees.

3.3 Near the end of the first full school year of classes but prior to the close of classes, the institution shall file a progress report as described and requested by the committee. The evaluation committee will make an on-site visit to the institution in order to verify the contents of the report and evaluate progress to date.

3.3.1 A written report of the committee's action shall be sent to the Secretary of Education with a recommendation to withdraw approval, to continue the status of Recognized Applicant along with a listing of any

specific recommendations to be met by the institution or to grant new status of Provisional Approval, with the right to confer a degree.

3.4 At a time one or two years following the graduation of the first class from the institution, on an occasion mutually agreed upon by the officials of the institution and the evaluation committee, the institution shall present a third progress report and the committee shall make an on-site visit. In the event that this planned visit is scheduled to occur at approximately the same time as that of a visit from the Commission on Higher Education of the Middle States Association of Colleges and Schools, or another appropriate specialized accrediting agency, it may be recommended to the Secretary of Education that a favorable report by this visiting agency be accepted in lieu of a separate report and on-site visit from the evaluating committee. The recommendation on this occasion may be for final approval of the degree-granting authority of the institution.

3.5 If approval of the institution is denied at any of the three major steps described in this procedure, the institution shall have the right of appeal to the Department of Education but in such appeal will be required to submit necessary evidence to show cause why approval should be granted or why temporary approval should be extended for a longer period of time.

3.6 Any costs incidental to the evaluation and approval of a college, except the salary of personnel from the publicly supported educational institutions in Delaware, shall be the responsibility of the Applicant Institution.

4.0 Procedures for Approval of Non-Delaware Institutions of Higher Education that Offer Courses, Programs of Courses or Degrees Within the State of Delaware

4.1 Out-of-state institutions wishing to offer credit-bearing courses, programs of courses, or degree programs in Delaware shall make application to the Secretary of Education at least one academic year before the requested date of implementation.

4.2 Final application forms with supporting documents shall be presented to the Secretary of Education at least six months prior to the requested date of implementation.

4.3 An accreditation agency designation of Recognized Applicant or any other less than full accreditation designation shall not be accepted.

4.4 Even though an institution is regionally accredited, the Department of Education may at any time require the institution to present a complete and documented application for license if complaints directed against the Delaware operation of the institution by Delaware enrollees seem to warrant a more thorough review.

4.5 The Institution shall prove that the proposed site or facility is in compliance with [applicable Federal,] Delaware and local ordinances pertaining to fire, health,

zoning, safety, etc.[governmental laws and standards pertaining to zoning, occupancy, accessibility, fire, health and safety.]

4.6 The Institution shall prove that the degree programs conform to the minimum standards established by the Department of Education for similar institutions operating within the State.

4.7 The Institution shall guarantee, by resolution of their Board of Trustees, that their operations in the state of Delaware will be financially solvent.

4.8 Programs shall be approved for periods of one to five years but initially programs shall be approved for up to three years. Credit-bearing courses, but not degree programs shall be approved for only one year.

4.9 After the initial approval, renewal approval will be contingent upon a favorable recommendation based upon periodic review by the staff of the Department of Education and usually with the assistance of a consultant(s) from an institution of higher education with expertise in the program or course offered.

4.10 The institution shall be obligated to keep the Secretary of Education informed of the names and addresses of those responsible for directing the programs from the parent campus, the names of instructors, the locations of all sites in Delaware where instruction is offered, and the names and addresses of students enrolled in the program and/or course.

4.11 A license fee of \$100.00 per out-of-state institution shall be required for each school year of operation. Program duration of a shorter period, such as one semester or one quarter, shall pay a minimum fee of \$50.00.

4.12 Any and all costs incidental to the evaluation and approval of a program or course, except the salary of personnel from publicly supported education institutions in Delaware, shall be the responsibility of the applicant institution.

4.13 Each year the Department of Education shall publish a list of all programs and courses approved to operate in the State.

4.14 Every agent representing an institution as herein defined, located outside the state of Delaware, shall make written application for an agent's permit to the Department on forms prepared and furnished by the Department. Each application shall state the name of the school which the applicant will represent, contain evidence of the honesty, truthfulness and integrity of the applicant, shall be verified under oath by him/her, and shall be accompanied by the recommendation of two reputable persons, certifying that the applicant is truthful, honest, and of good reputation, and recommending that a permit, as an agent, be granted to the applicant. The fee for an original permit, as an agent, shall be determined by the Department and there shall be an annual renewal fee determined by the Department. A separate permit shall be obtained for each school represented

by an agent.

4.14.1 Each applicant for a permit to serve as an agent shall submit with the application a fee in the amount of \$10.00 for the first application. This fee will be required for each institution represented by any one agent. The fee for renewal of the permit to serve as an agent shall be \$5.00 for each institution represented by the agent. The agent shall present a second application for a permit to serve as agent in conjunction with the application for certification by the second institution that he/she will represent.

4.14.2 Each agent shall apply for a permit each year at the same time that the institution he/she is to represent makes application for a Certificate of Approval. No permit shall be issued for a period of more than twelve calendar months. No agent shall perform the function of his/her assignment and solicit Delaware enrollees in the institution until he/she has been issued the appropriate identification permit.

4.14.3 The revocation of the certification of an institution for any cause shall make invalid all agent permits for that institution.

4.14.4 The discharge or resignation of any agent shall be reported immediately to the Department of Education.

4.14.5 To the extent that any situation warrants the Department of Education shall be responsible for publicizing the discontinuance of any certificate or permit.

4.14.6 In any instance where the owner of an institution indicates that he/she plans to serve as his own agent, separate fee for the agent permit will be waived, but the permit must be obtained. Any additional agents must obtain permits as otherwise described.

4.15 Violations of the law and regulations relating to Institutions of Higher Education as herein described shall be referred to the Attorney General of the State of Delaware who shall assume responsibility for enforcement of the law and the regulations.

5.0 Institutions of Higher Education, Located In Other States or Territories and Not Offering Programs In-State

5.1 Pursuant to 8 Del. C. Section 125, the Division of Corporations of the Delaware Department of State forwards requests for incorporation made by private colleges and universities, located outside of Delaware, and not offering programs in-state, to the Department of Education for approval prior to incorporation.

5.1.1 With respect to these requests for incorporation, the Department of Education recognizes the following: 1) the interest of each state and territory of the United States to grant the authority to award degrees to institutions located within that state or territory; 2) the legitimate request of private colleges and universities located outside of Delaware to make a business decision to incorporate in the State; and 3) the Department of

Education's own right, pursuant to Section 125, to set reasonable limitations to ensure the quality of education offered by such institutions of higher education incorporated in Delaware.

5.1.2 As a matter of comity, the Department of Education will not approve the incorporation of colleges, universities or other institutions offering credit-bearing courses, that have a primary site of operation in another state and do not operate in Delaware, unless the institution already is approved by the state degree granting authority of the state in which it is located, or, in states without a degree granting authority, is accredited by a nationally recognized accrediting agency or association approved by the United States Department of Education. A nationally recognized accrediting agency or association is one that appears on the list published as Nationally Recognized Accrediting Associations, by the Secretary of Education.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Medicaid / Medical Assistance Program

**IN THE MATTER OF:
REVISION OF THE REGULATIONS
OF DELAWARE'S DIVISION OF
SOCIAL SERVICES MANUAL
SECTION(S) 30000 - 30700**

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies related to the Delaware Prescription Assistance Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 Del.C. 10114 and its authority as prescribed by 31 Del.C. 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the November, 2000 **Delaware Register of Regulations**, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 2000 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF INFORMATION SUBMITTED:

The State Council for Persons with Disabilities (SCPD) submitted observations and recommendations to clarify the following sections: Section 30000 - deleting "disabled individuals" and inserting "individuals with disabilities"; Section 30203 - reference "individual" instead of "family income" by deleting "household"; and, Section 30305 - clarify "the individual must not have or must be ineligible for". As such, the Delaware Prescription Assistance Program policy has been amended to grammatically clarify the language.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the November, 2000 Register of Regulations and amended should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Delaware Prescription Assistance Program are adopted and shall be final effective January 10, 2001.

December 13, 2000

Gregg C. Sylvester, M.D.
Secretary

DELAWARE PRESCRIPTION ASSISTANCE PROGRAM

30000	<u>Delaware Prescription Assistance Program</u>
30100	<u>Definitions</u>
30200	<u>General Application Information</u>
30201	<u>Disposition of Applications</u>
30202	<u>Timely Determination of Eligibility</u>
30203	<u>Reporting Changes in Circumstances</u>
30300	<u>Technical Eligibility</u>
30301	<u>Citizenship and Alienage</u>
30302	<u>State Residency</u>
30303	<u>Social Security Number</u>
30304	<u>Aged or Disabled Requirement</u>
30305	<u>No Other Prescription Drug Coverage</u>
30305.1	<u>Exceptions to No Other Prescription Drug Coverage</u>
30306	<u>Inmate of a Public Institution</u>
30400	<u>Financial Eligibility</u>
30401	<u>Countable Income</u>
30402	<u>Excluded Income</u>
30403	<u>Eligibility Determination</u>
30404	<u>Effective Date of Coverage</u>
30405	<u>Redetermination of Eligibility</u>
30500	<u>Benefits</u>
30501	<u>Limitations on Benefits</u>
30502	<u>Co-payment Requirement</u>
30503	<u>Waiver of Co-payment for Good Cause</u>

30600 Confidentiality
30601 Release of Information to DPAP Providers
30602 Release of Information to Others
30700 Fair Hearings

30000 DELAWARE PRESCRIPTION ASSISTANCE PROGRAM

The 140th General Assembly amended Title 16, Delaware Code, by adding Chapter 30B to enact the Delaware Prescription Drug Payment Assistance Program. The purpose of this act is to provide payment assistance for prescription drugs to low-income senior and disabled individuals who are ineligible for, or do not have, prescription drug benefits or coverage through federal, state, or private sources.

The program is administered by the Fiscal Agent under contract with the Delaware Department of Health and Social Services.

The rules in this section set forth the eligibility requirements for coverage under the Delaware Prescription Assistance Program (DPAP). The DPAP is implemented January 1, 2000, with benefits beginning January 14, 2000.

30100 Definitions

Contractor: the agent who is under contract with the State to administer the DPAP.

Department: the Department of Health and Social Services or DHSS

Division: the Division of Social Services or DSS

30200 General Application Information

The application for DPAP must be made in writing on the prescribed DSS form. This request for assistance can be made by the applicant, guardian, or other individual acting for the applicant with his knowledge and consent. The application filing date is the date the application is received in either the Contractor's office or a DSS office.

DPAP will consider an application without regard to race, color, age, sex, disability, religion, national origin, or political belief as per Title VI of the Civil Rights Act of 1964.

Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

30201 Disposition of Applications

The Contractor must include in each applicant's case record facts to support the Contractor's decision on his application. The Contractor must dispose of each application by a finding of eligibility or ineligibility, unless:

a) there is an entry in the case record that the applicant voluntarily withdrew the application, and that the Contractor

sent a notice confirming his decision;

b) there is a supporting entry in the case record that the applicant has died; or

c) there is a supporting entry in the case record that the applicant cannot be located.

d) Certain factors of eligibility must be verified. If all information requested is not received, the Contractor cannot determine or redetermine eligibility. This may result in denial of the application or the termination of eligibility. Verifications received and/or provided may reveal a new eligibility issue not previously realized and this may require additional verifications. Failure to provide additional requested verifications may result in denial or termination of eligibility.

All applicants will receive a notice of acceptance or denial.

30202 Timely Determination of Eligibility

A time standard of 45 days will apply. This standard equals the period from the application filing date to the date that the notice of decision is mailed. The standard must be met except in unusual circumstances, such as:

- A decision cannot be made because the applicant or his representative delays or fails to take a required action.
- There is an administrative or other emergency beyond the Contractor's control.

30203 Reporting Changes in Circumstances

At time of application and redetermination, each individual household must be informed that he is responsible for notifying the Contractor of all changes in his circumstances, which could potentially affect his eligibility for DPAP.

30300 Technical Eligibility

The following requirements are factors of eligibility specific to DPAP.

30301 Citizenship and Alienage

The individual must be a U.S. citizen or a lawfully admitted alien.

30302 State Residency

The individual must be living in the State of Delaware.

30303 Social Security Number

Each individual applying for DPAP must furnish his or her Social Security number.

30304 Aged or Disabled Requirement

The individual must meet one of the following requirements:

- a) be age 65 or over, or

b) be an individual between the ages of 19 and 64 who is receiving disability benefits under Title II of the Social Security Act. An individual is considered to meet the "receiving disability benefits" requirement if the individual is a former recipient of either Social Security Disability Insurance benefits or Supplemental Security Income benefits and was required by the Social Security Administration to accept Social Security Survivors benefits.

30305 No Other Prescription Drug Coverage

The individual must not have or be ineligible for, prescription drug benefits or coverage through federal, state, or private sources regardless of any annual limitations to the benefits.

The individual must not have or be ineligible for:

- a) Medicaid prescription benefits
- b) prescription drug benefits through a Medicare supplemental policy
- c) prescription drug benefits through a third party payer
- d) the Nemours Health Clinic Pharmaceutical benefit as defined on 1/1/99

30305.1 Exceptions to No Other Prescription Drug Coverage

Individuals who are eligible for the following drug benefits will not be excluded from eligibility for DPAP:

- a) individuals eligible for Medicaid as Family Planning Only
- b) individuals covered under a specific disease state insurance program, for example a policy that pays only for cancer drugs
- c) individuals who are members of a discount drug program in which the policy does not actually pay for the drugs, for example American Association of Retired Persons (AARP)
- d) individuals eligible for drug coverage through the Division of Vocational Rehabilitation
- e) individuals eligible for drug coverage through the Division of Alcoholism, Drug Abuse, and Mental Health.

30306 Inmate of a Public Institution

An individual who is an inmate of a public institution is not eligible for DPAP.

An individual is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jail, detention facilities, or other penal facilities. An individual awaiting trial in a detention center is considered an inmate of a public institution.

30400 Financial Eligibility

Income is any type of money payment that is of gain or

benefit to a ~~family~~ an individual. Income is either counted or excluded for the eligibility determination.

30401 Countable Income

Countable income includes but is not limited to:

1. Social Security benefits – as paid after deduction for Medicare premium
2. Pension – as paid
3. Veterans Administration Pension – as paid
4. U.S. Railroad Retirement Benefits – as paid
5. Wages – net amount after deductions for taxes and FICA
6. Senior Community Service Employment – net amount after deductions for taxes and FICA
7. Interest/Dividends – gross amount
8. Capital Gains – gross amount from capital gains on stocks, mutual funds, bonds.
9. Credit Life or Credit Disability Insurance Payments – as paid
10. Alimony – as paid
11. Rental Income from entire dwelling – gross rent paid minus standard deduction of 20% for expenses
12. Roomer/Boarder Income – gross room/board paid minus standard deduction of 10% for expenses
13. Self Employment – countable income as reported to Internal Revenue Service (IRS)
14. Unemployment Compensation - as paid

30402 Excluded Income

Excluded income includes but is not limited to:

1. Annuity payments
2. Individual Retirement Account (IRA) distributions
3. Payments from reverse mortgages
4. Capital gains from the sale of principal place of residence
5. Conversion or sale of a resource (i.e. cashing a certificate of deposit)
6. Income tax refunds
7. Earned Income Tax Credit (EITC)
8. Vendor payments (bills paid directly to a third party on behalf of the individual)
9. Government rent/housing subsidy paid directly to individual (i.e. HUD utility allowance)
10. Loan payments received by individual
11. Proceeds of a loan
12. Foster care payments made on behalf of foster children living in the home
13. Retired Senior Volunteer Program (RSVP)
14. Veterans Administration Aid and Attendance payments
15. Victim Compensation payments
16. German reparation payments

17. Agent Orange settlement payments

18. Radiation Exposure Compensation Trust Fund payments

19. Japanese-American, Japanese-Canadian, and Aleutian restitution payments

20. Payments from long term care insurance or for inpatient care paid directly to the individual

30403 Eligibility Determination

To be eligible for DPAP:

(a) the individual must have countable income that is less than 200% of the Federal Poverty Level, or

(b) the individual has countable income that is equal to or greater than 200% of the Federal Poverty Level and the individual has prescription drug expenses that exceed 40% of his countable income.

The Federal Poverty Level (FPL) is published annually. The income eligibility standard based on the FPL will be issued within 10 business days after the FPL is published. The revised income eligibility standard will be used to determine eligibility for the month following the month in which the standard is issued.

30404 Effective Date of Coverage

Coverage begins on the first day of the month following the month that eligibility is determined. There is no retroactive coverage. Eligible individuals will receive an identification card for DPAP.

30405 Redetermination of Eligibility

A redetermination of eligibility must be completed by July of each year. If an individual's initial coverage begins in April, May, or June, a redetermination will not be required until July of the following year.

30500 Benefits

Prescription drugs covered under DPAP are restricted to medically necessary products manufactured by pharmaceutical companies that agree to provide manufacturer rebates. Policy and guidelines will follow the existing Delaware Medical Assistance Program limitations. Services covered include generic and brand name prescription drugs that have been approved as safe and effective by the Federal Food and Drug Administration as well as cost effective over-the-counter drugs prescribed by a practitioner. Necessary diabetic supplies not covered by Medicare will also be covered. Medications that are covered by Medicare are not covered under DPAP.

30501 Limitations on Benefits

Payment assistance to each eligible individual shall not exceed \$2,500.00 per State fiscal year. Individuals will receive a notice when 75% of the \$2,500.00 cap has been expended.

30502 Co-payment Requirement

There is a co-payment of \$5.00 or 25% of the cost of the prescription whichever is greater. The pharmacy will not dispense or provide the prescription until the co-payment is collected.

30503 Waiver of Co-payment for Good Cause

At the written request of the individual, the co-pay requirement may be waived for good cause.

Good cause for waiver of the co-payment is:

The individual has experienced a catastrophic situation resulting in unexpected, extraordinary expenses related to loss or significant damage to shelter or the well being of the individual or his immediate family.

The written request must explain the circumstances that led to the request. Verification of the circumstances is required in the form of collateral evidence that may include, but is not limited to, repair bills and police or insurance reports. The DPAP will provide written notification to the individual regarding the good cause decision. If good cause is granted, the co-payments will be waived for the remainder of the fiscal year.

30600 Confidentiality

DPAP will provide safeguards that restrict the use or disclosure of information about applicants and recipients to purposes directly connected with the administration of the DPAP.

Purposes directly related to administration of the DPAP include establishing eligibility, providing services for recipients, determining the amount of medical assistance, and conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the program.

At a minimum, the types of information about applicants and recipients that must be safeguarded and not released without consent include:

1. Names and addresses;
2. Medical services provided;
3. Social and economic conditions or circumstances;
4. Contractor evaluation of personal information;
5. Medical data, including diagnosis and past history of disease or disability;
6. Information received for verifying income eligibility and amount of medical assistance payments; and
7. Information about third party liability.

30601 Release of Information to DPAP Providers

DPAP providers have a contractual obligation to safeguard information about recipients. Providers may have access to certain eligibility information if they can provide:

- a. a DPAP identification number, or
- b. two of the following identifying factors:

individual's full name, date of birth, Social Security number;
AND

- c. the date of service.

Providers who supply the above identifying factors may be given the following information:

- a. correct spelling of the recipient's name;
b. DPAP number;
c. date of birth;
d. an indication whether the individual is eligible for the date of service given or for a range of dates given.
Providers may not be given all periods of eligibility.

30602 Release of Information to Others

At the time of application, individuals are informed that all eligibility information is confidential and disclosure without written permission of the individual is limited. DPAP has the authority to responsibly share information concerning applicants and recipients with:

- a. DHSS employees;
b. Federal or federally assisted programs that provide assistance to individuals on the basis of need (SSI, HUD);
c. contracted service providers

Information may be released to comply with a subpoena or other valid court order.

DPAP must obtain specific written permission from the individual before releasing information to any other persons or sources.

30700 Fair Hearings

A fair hearing is an administrative hearing held in accordance with the principles of due process. An opportunity for a fair hearing will be provided, subject to the provisions in policy at DSSM 5000 - 5607.

DEPARTMENT OF JUSTICE

DELAWARE SECURITIES ACT

Statutory Authority: 6 Delaware Code,
Sections 7313, 7314 and 7325
(6 Del.C. 7313, 7314 & 7325)

NOTICE OF INFORMAL RULEMAKING BY THE SECURITIES DIVISION

The Delaware Securities Division of the Attorney General's Office hereby gives notice that it will amend Rule 508(a) to accomplish the following:

Update the Division's referenced securities manuals to reflect the trademark change of Moody's to Mergent's.

The legal authority for this action is found in Section

10113(b)(4) of the Administrative Procedures Act and section 7325 of the Delaware Securities Act. This change will take effect 30 days after the date of publication of this notice.

James B. Ropp
Securities Commissioner

REGULATION

§500 Registration Not Required of Federal Covered Securities

Federal covered securities, as defined in Section 7302(a)(17) of the Act, are not required to be registered] under Section 7304 of the Act. Notwithstanding this rule, however, notice filings are required for registered investment company offerings under Rule 403; and for offers or sales of securities in Delaware pursuant to SEC Rule 506, 17 C.F.R. §230.506.

See 1 DE Reg 1978 (6/1/98)

§501 Designated Exchange Exemption

Any security listed or approved for listing upon notice of issuance on the Boston Stock Exchange or the Chicago Board Options Exchange is exempted from Sections 7304, 7309A and 7312 of the Act pursuant to Section 7309(a)(8) of the Act.

See 1 DE Reg 1978 (6/1/98)

§502 Limited Offering Exemption

(a) Any offer or sale of securities made in compliance with SEC Rule 505, 17 C.F.R. §230.505 (Exemption for Limited Offers and Sales of Securities Not Exceeding \$5,000,000) of Regulation D under the Securities Act of 1933 and the provisions of this Rule is exempt from registration under Section 7309(b)(9) of the Act.

(b) To qualify for the limited offering exemption under Section 7309(b)(9), the following conditions and limitations must be met:

(1) No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered under the Act. It is a defense to a violation of this subsection if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee or other remuneration was not appropriately registered under the Act.

(2) The limited offering exemption is not available if the issuer, any of its directors, officers, general partners, trustees, beneficial owners of ten percent or more of a class of its equity interests, promoters currently connected with it in any capacity, or any person (other than a broker-dealer

currently registered under the Act) that has been or will be paid or given, directly or indirectly, a commission or similar remuneration for the solicitation of a prospective purchaser or in connection with sales of securities under this exemption:

(i) within ten years before the first sale of securities in an offering under this exemption has filed a registration statement or application for exemption from registration that is currently subject to a stop order under any state's securities laws;

(ii) within ten years before the first sale of securities in an offering under this exemption has been convicted of or has pleaded nolo contendere to a felony or misdemeanor in connection with the offer, purchase, or sale of a security or in connection with the making of a false filing with the SEC or with a state securities administrator, or a felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or theft;

(iii) is subject to an order, judgment or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an order, judgment, or decree of a court of competent jurisdiction entered within ten years before the first sale of securities in an offering under this exemption permanently restraining or enjoining, that person from engaging in or continuing any conduct or practice in connection with the offer, purchase, or sale of a security or in connection with the making of a false filing with the SEC or a state securities administrator;

(iv) is the subject of any order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities;

(v) is subject to a state administrative order entered by a state securities administrator in which fraud or deceit was found, if the final order was entered within ten years before the first sale of securities in an offering under this exemption.

(3) Not later than 15 days after the first sale of securities under this regulation, the issuer shall file with the Commissioner a manually signed notice on a completed SEC Form D (Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption), as filed with the SEC and as that form may be amended from time to time. That filing shall constitute an affirmation by the issuer that it has complied with SEC Rule 505 and that upon written request the issuer shall furnish to the Commissioner any and all information furnished by the issuer or its agents to the offerees.

(4) An issuer relying on the exemption from registration under Section 7309(b)(9) of the Act and this regulation that is not filing SEC Form D with the SEC shall file with the Commissioner, not later than 15 days after the

first sale of securities under this regulation, or within six months of commencement of the offering (whichever occurs first), a Delaware Form D-1 (Notice of Sale of Securities Pursuant to Delaware Securities Act Section 7309(b)(9)).

(5) In all sales to nonaccredited investors in Delaware, one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions are satisfied:

(i) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs.

(ii) The purchaser either alone or with his or her purchaser representative(s) has such knowledge and experience in financial and business matters that he or she is or they are capable of evaluating the merits and risks of the prospective investment.

(c) Neither this regulation nor the Act provide an exemption from the provisions of Section 7303 of the Act.

(d) The burden of proving an exemption under this regulation is on the person claiming the exemption.

(e) The Commissioner may, by rule or order, increase the number of purchasers or waive any other condition of this exemption.

§505 Offers of Securities Through the Internet

(a) A communication that is placed on the Internet by or on behalf of an issuer that is designed to raise capital and/or to distribute information on securities, products or services and that is directed generally to anyone having access to the Internet, whether through postings on "Bulletin Boards," displays on "Home Pages," or otherwise (an "Internet Communication") shall not constitute an offer within the meaning of Section 7302(11)(a) of the Act, and shall therefore not be required to be registered] under the Act, provided that:

(1) The Internet Communication indicates by a prominent legend at the beginning of the Internet Communication that the securities are not being offered to any person in a state where such offer or sale would be in violation of the law];

(2) An offer of the issuer's securities is not otherwise directed to any person in Delaware by, or on behalf of, the issuer; and

(3) Unless otherwise exempt under the Act, no sale of the issuer's securities is made in Delaware, as a result of the Internet Communication.

(b) Reliance on the exemption provided by this rule does not preclude an issuer from relying on other available exemptions for offers provided under the Act.

(c) The term "Internet" for the purposes of this rule includes the Internet, the World Wide Web and similar

proprietary and common carrier electronic systems.

§508 Recognized Securities Manuals

(a) Each of the following manuals shall be deemed a "Recognized Securities Manual" for the purposes of 6 Del. C. §7309(b)(2):

- (1) ~~Moody's~~ Mergent's Industrial Manual
- (2) ~~Moody's~~ Mergent's Transportation Manual
- (3) ~~Moody's~~ Mergent's Public Utility Manual
- (4) ~~Moody's~~ Mergent's Bank and Finance

Manual

- (5) Standard & Poor's Standard Corporation

Records

See 1 DE Reg 1978 (6/1/98)

- (6) Fitch's Individual Stock Bulletin
- (7) ~~Moody's~~ Mergent's OTC Industrial Manual

(b) The term "manual" for purposes of this rule includes all commonly recognized formats of publications, including CD-ROM and electronic dissemination over the Internet.

and evidence at the 9:00 a.m. November 29, 2000 hearing in Wilmington, Delaware.

Summary of the Evidence

4. There was no testimony offered. Ms. Anders stated that the public record would be held open following the hearing, until December 1, to receive further written submissions.

5. No further written submissions were received.

Findings of Fact

6. Recommendations were submitted to the Secretary of Labor following the public hearing process to adopt the proposed amendment.

Conclusions of Law

7. The Department of Labor proposed the amendment to the Prevailing Wage Regulations pursuant to its authority granted in 29 Del. C. § 8503.

Decision To Adopt

8. It is the decision and Order of the Department of Labor that the proposed amendment to the Prevailing Wage Regulations, a true and correct copy of which is attached hereto as Exhibit "A", is hereby **ADOPTED**.

SO ORDERED, this ____ day of December, 2000.

Lisa Blunt-Bradley
Secretary of Labor

DEPARTMENT OF LABOR OFFICE OF LABOR LAW ENFORCEMENT

Statutory Authority: 29 Delaware Code,
Section 8503(7) (29 Del.C. §8503(7))

IN RE:

**ADOPTION OF AMENDMENT TO
PREVAILING WAGE REGULATIONS**

ORDER

Nature of the Proceedings

1. Pursuant to notice in accordance with 29 Del.C. § 10115, the Department of Labor proposed an amendment to the Prevailing Wage Regulations. The Prevailing Wage Regulations implement the provisions of Delaware's Prevailing Wage Law, 29 Del.C. §6960, "Prevailing wage requirements." A copy of the amendment is attached as Exhibit "A".

2. The public hearing was held at 9:00 a.m. on Wednesday, November 29, 2000, in the Industrial Affairs Conference Room, Room 203, of the Department of Labor Office Building, 4425 North Market Street, Wilmington, Delaware, the time and place designated to receive written and oral comments.

3. As designated by the Secretary of Labor, Lisa Blunt-Bradley, Susan S. Anders, Administrator of the Office of Labor Law Enforcement, was present to receive testimony

III. CONCEPTS AND DEFINITIONS

This section presents definitions and explanations to provide a basic understanding of elements inherent in collecting wage data and issuing wage determinations, and enforcing prevailing rates.

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

B. "Building" or "Work". The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways,

parkways, streets, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment is not a "building" or "work" within the meaning of the regulations unless conducted at the site of such a building or work.

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

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

- Asbestos Workers
- Boilermakers
- Bricklayers
- Carpenters
- Cement Finishers
- Electricians
- Elevator Constructors
- Glaziers
- Iron Workers
- Laborers
- Millwrights
- Painters
- Plasterers
- Plumbers/Pipefitters/Steamfitters
- Power Equipment Operators
- Roofers
- Sheet Metal Workers
- Soft Floor Layers
- Sprinkler Fitters
- Terrazzo/Marble/Tile Setters
- Terrazzo/Marble/Tile Finishers
- Truck Drivers

~~Definitions for each classification are contained in a separate document entitled "Classifications of Workers~~

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

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

D. Apprentices and Supportive Service Program Trainees.

1. Definitions. As used in this section:

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

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

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

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

e. The term "SSP Trainee" or "trainee" means a participant in the "Supportive Service Program" mandated by the Federal Highway Administration for federally aided state highway projects.

f. The term "registration" means the approval by the Department of Labor of an apprenticeship program or agreement as meeting the basic standards adopted by the

Bureau of Apprenticeship and Training, United States Department of Labor. The term "registration" for SSP Trainees means the individual registration of a participant in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

2. Employment of Apprentices and SSP Trainees on State Projects.

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

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

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

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

3. Records.

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

b. Every joint apprenticeship committee or SSP Program sponsor shall keep a record of the cumulative amount of work experience gained by the apprentice or trainee.

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

d. The records required by paragraphs (a), (b), and

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

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

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

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

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

a. Building Construction. Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment shall not change the project's character as a building. Examples: Alterations and additions to nonresidential buildings; Apartment buildings (5 stories and above); Arenas (enclosed); Auditoriums; Automobile parking garages; Banks and financial buildings; Barracks; Churches; Hospitals; Hotels; Industrial buildings; Institutional buildings; Libraries; Mausoleums; Motels; Museums; Nursing and convalescent facilities; Office buildings; outpatient clinics; Passenger and freight terminal buildings; Police stations; Post offices; City halls; civic centers; Commercial buildings; Court houses; Detention

facilities; Dormitories; Farm buildings; Fire stations; Power plants; Prefabricated buildings; Remodeling buildings; Renovating buildings; Repairing buildings; Restaurants; Schools; Service stations; Shopping centers; Stores; Subway stations; Theaters; Warehouses; Water and sewage treatment plants (building only).

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

c. **Highway Construction.** Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, greenway projects and other similar projects not incidental to building or heavy construction. Examples: Alleys; Base courses; Bituminous treatments; Bridle paths; Concrete pavement; Curbs; Excavation and embankment (for road construction); Fencing (highway); Grade crossing elimination (overpasses or underpasses); Parking lots; Parkways; Resurfacing streets and highways; Roadbeds; Roadways; Shoulders; Stabilizing courses; Storm sewers incidental to road construction; Street Paving; Guard rails on highway; Highway signs; Highway bridges (overpasses; underpasses; grade separation); Medians; Surface courses; Taxiways; Trails.

d. **Multiple Categories.** In some cases a project includes construction items that in themselves encompass different categories of construction. Generally, a project is considered mixed and a "multiple schedule" used if the construction items are substantial in relation to project cost, i.e. more than twenty (20) percent. Only one schedule is used if construction items are "incidental" in function to the overall character of a project (e.g., paving of parking lots

or an access road on a building project), and if there is not a substantial amount of construction in the second category.

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

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

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

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

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

In order to be considered a valid fringe benefit, payments must be made either in cash, or contributed to an irrevocable escrow account at least once each month. "Irrevocable" means that the benefit may not be forfeited. However, a benefit plan can be considered by the Department provided that payments to the plan are made irrevocably by the employer, even though certain employees may forfeit their individual rights to the benefits under certain prescribed conditions. Thus, if payments are made by the employer, and no return of those payments is possible, the plan would be acceptable, even though individual employees might not receive the benefits under certain situations. Benefits forfeited by such employees remain in an escrow account for the use of the other employees.

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

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

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

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

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

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

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

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

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

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

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER EIGHTY-THREE**

WHEREAS, the State of Delaware is committed to providing equal employment opportunities to all Delawareans;

WHEREAS, the State of Delaware is committed to maintaining a high quality workforce that draws upon the talents of our diverse citizenry to operate our government effectively for the benefit of the State's citizens;

WHEREAS, the State of Delaware aspires to be an exemplary employer that embraces the diversity and value of all of its citizens;

WHEREAS, the State of Delaware has consistently recognized the importance of equality of treatment for all of its citizens;

WHEREAS, as many private employers have recognized, a work environment valuing honesty, openness and respect for diversity promotes personal, social and economic growth and well-being;

WHEREAS, this Administration believes that the employment practices of the State of Delaware should be nondiscriminatory in intent and effect in order to promote public confidence in the fairness and integrity of government;

WHEREAS, it is within the Governor's power to provide by Executive Order for the equality of treatment with respect to employment opportunities of State employees and applicants for State employment;

NOW, THEREFORE, I, Thomas R. Carper, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby order and declare the following

:
**SECTION I. NONDISCRIMINATION IN
EMPLOYMENT OPPORTUNITIES.**

A. No state agency or department under the authority of the Governor shall discriminate against any employee or applicant for employment on the basis of race, color, religious creed, ancestry, union membership, age, gender, marital status, sexual orientation, national origin, handicap or disability in the provision of any services or benefits by such state agency or department.

B. All state agencies and departments shall prohibit discrimination based on race, color, religious creed, ancestry, union membership, age, gender, marital status, sexual orientation, national origin, handicap or disability in any matter pertaining to employment by the state including, but not limited to, hiring, job appointment, promotion, tenure, recruitment, and compensation.

C. To the extent not otherwise provided by statute, regulation or existing Executive Order, the Office of State Personnel ("SPO") is hereby directed to promulgate clear and consistent guidelines prohibiting discrimination based on race, color, religious creed, ancestry, union membership, age, gender, marital status, sexual orientation, national origin, handicap or disability to maintain an environment where only job related criteria are used to assess employees or prospective employees of the State.

D. Complaints based on non-compliance with this Executive Order shall proceed as outlined in paragraph (F)(3) of Executive Order Twenty-Eight. Particular effort should be made to conduct investigations with due regard to confidentiality. SPO shall provide access to counseling for employees who feel aggrieved and shall encourage the resolution of employee problems on an informal basis.

SECTION II. APPLICABILITY OF EXECUTIVE ORDER.

A. This Order shall apply to all Cabinet Departments and Executive Agencies of the State. The members of the General Assembly, the Judiciary and Non-Executive Agencies are also encouraged to adopt this Order or promulgate forthwith plans applicable to their respective employees and agencies.

SECTION III. EFFECTIVE DATE.

A. This Order shall become effective immediately.

Thomas R. Carper, Governor

Attest:

Edward J. Freel, Secretary of State

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Child Placement Review Board	Ms. Betty A. Carson	12/06/03
	Mr. Charles E. Ivins, Jr.	12/06/01
	Ms. Elaine I. Keating	12/06/03
Delaware Commission on Veterans Affairs	Mr. James Thompson	11/22/04
Delaware Commission for Women	Ms. Estella M. White	12/10/03
Delaware Emergency Medical Services Oversight Council	Mr. James L. Cabbage	Pleasure of the Governor
Delaware Health Resources Board	Mr. Frederick Carey	10/24/03
Delaware State Housing Authority	Ms. Catherine M. Gregory, Acting Director	Pleasure of the Governor
Juvenile Justice Advisory Group	Mr. Michael Arrington	Pleasure of the Governor
	Honorable M.Jane Brady	Pleasure of the Governor
	Mr. F. Brian Gimlet	Pleasure of the Governor
	Ms. Portia Roy	Pleasure of the Governor
	Mr. Guy H. Sapp	Pleasure of the Governor
	Mr. Willie Savage, II	Pleasure of the Governor
	Mr. Larry Sullivan	Pleasure of the Governor
State Board of Electrical Examiners	Mr. William J. Carson	12/06/03
Workforce Investment Board	Ms. Catherine M. Gregory	Pleasure of the Governor

DEPARTMENT OF EDUCATION

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

FINAL VERSION
December 2000

STATE BOARD OF EDUCATION
HEARING PROCEDURES AND RULES

RULE MAKING HISTORY:

Initial adoption date (see Register of Regulations at www.state.de.us/research/assembly.htm):

1.0 Scope and Purpose of Rules

The State Board of Education (“the State Board”) is authorized by several sections of the Education Code (Title 14 of the Delaware Code) to adopt or approve rules and regulations, resolve disputes, hear appeals, and review decisions of the Secretary of Education. The State Board is also governed by the Administrative Procedures Act (Chapter 101 of Title 29 of the Delaware Code), except where specifically exempted by other law.

These Hearing Procedures and Rules (“Rules”) shall govern the practice and procedure before the State Board in hearings, appeals, and regulatory proceedings.

2.0 General Provisions

2.1 These Rules shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the State Board’s statutory responsibilities and with the Administrative Procedures Act.

2.2 The State Board may for good cause, and to the extent consistent with law, waive any of these Rules, either upon application or upon its own motion.

2.3 Whether a proceeding constitutes an evidentiary hearing, an appeal or regulatory action shall be decided by the State Board on the basis of the applicable laws. A party’s designation of the proceeding shall not be controlling on the State Board or binding on the party.

2.4 The State Board may appoint a representative to act as a hearing officer for any proceeding before the State Board. Except as otherwise specifically provided, the duties imposed, and the authority provided, to the State Board by these Rules shall also extend to its hearing officers.

2.5 Notwithstanding any part of these Rules to the contrary, the State Board, or its counsel, designee or hearing officer, may conduct prehearing conferences and teleconferences to clarify issues, confer interim relief, specify procedures, limit the time available to present evidence and argument, and otherwise expedite the

proceedings.

2.6 The State Board may administer oaths, issue subpoenas, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

2.7 The State Board may elect to conduct joint hearings with the Department of Education and other state and local agencies. These Rules may be modified as necessary for joint hearings.

2.8 Any party to a proceeding before the State Board may be represented by counsel. An attorney representing a party in a proceeding before the State Board shall notify the Executive Secretary of the State Board (“Executive Secretary”) of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be permitted to appear *pro hac vice* before the State Board in accordance with Rule 72 of the Rules of the Delaware Supreme Court.

2.9 The State Board may continue, adjourn or postpone proceedings for good cause at the request of a party or on its own initiative. Absent a showing of exceptional circumstances, requests for postponements of any matter scheduled to be heard by the State Board shall be submitted to the Executive Secretary in writing at least three (3) business days before the date scheduled for the proceeding. The President of the State Board shall then decide whether to grant or deny the request for postponement. If a hearing officer has been appointed, the request for postponement shall be submitted to the hearing officer, who shall then decide whether to grant or deny the request.

2.10 A copy of any document filed with or submitted to the State Board or its hearing officer shall be provided to all other parties to the proceeding, or to their legal counsel. Where a local or other school board participates in a proceeding, copies of filed documents shall be directed to the executive secretary of the board, unless that board appoints a different representative for such purpose.

2.11 For purposes of these Rules, unless otherwise specified “day” shall mean a calendar day. “Business day” shall mean weekdays Monday through Friday, except when those days fall on a legal holiday.

3.0 De Novo and Other Evidentiary Hearings

3.1 Section 3.0 governs proceedings where a statute or regulation provides the right to an original or to a de novo hearing before the State Board to decide a specific controversy or dispute.

3.2 Petitions for Hearing

3.2.1 A party may initiate a hearing on matters within the State Board’s jurisdiction by delivering a petition for hearing to the Executive Secretary. The petition shall be in writing and shall be signed by the party making the request (or by the party’s authorized representative). It shall set forth the grounds for the action in reasonable detail and

shall identify the source of the State Board's authority to decide the matter.

3.2.2 The petition for hearing shall be filed within a reasonable time after the controversy arises, but in no event shall a petition be filed more than thirty (30) days after the petitioning party's receipt of notice that official action has been taken by an authorized person, organization, board or agency.

3.2.3 A copy of the petition for hearing shall be delivered to all other parties to the proceeding at the time it is sent to the Executive Secretary. A copy of any other paper or document filed with the State Board or its hearing officer shall, at the time of filing, also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.

3.2.4 Upon receipt of an adequately detailed petition for hearing, the Executive Secretary shall place the matter on the agenda of the next State Board meeting. At the next meeting, the State Board will either assign the matter to a hearing officer or determine a hearing date for the matter. The parties shall be given at least twenty (20) days notice of the hearing date.

3.2.5 A party shall be deemed to have consented to an informal hearing (as that term is used in Section 10123 of the Administrative Procedures Act) unless the party notifies the Executive Secretary in writing that a formal public hearing is required. Such notice must be delivered to the Executive Secretary within three (3) days of the receipt of the notice scheduling the hearing.

3.3 Record of Prior Proceedings

3.3.1 If proceedings were previously held on the matters complained of in the petition, the agency which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Secretary.

3.3.2 The record shall contain any written decision, a certified copy of any rule or regulation involved, any minutes of the meeting(s) at which a disputed action was taken, a certified, verbatim transcript of the proceedings conducted by the agency below and all exhibits presented to the agency. The certified transcript shall be prepared at the direction and expense of the agency below.

3.3.3 The record shall be filed with the Executive Secretary within ten (10) days of the date the Executive Secretary notifies the agency that the petition has been filed, unless directed otherwise. A copy of the record shall be sent to the petitioner when it is submitted to the Executive Secretary.

3.4 Record Review

3.4.1 If a hearing was previously held on the matters complained of in the petition, the parties to the proceeding before the State Board may agree to submit the matter to the State Board or its hearing officer on the existing record without the presentation of additional evidence.

3.4.2 If the parties agree to submit the matter for

decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The parties' written statements shall be submitted according to a schedule determined by the State Board.

3.4.3 If the parties agree to submit the matter for decision on the existing record, they may nonetheless request oral argument by notifying the Executive Secretary in writing at least ten (10) days before the date written statements are due. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen (15) minutes per side with an additional five (5) minutes for rebuttal.

3.4.4 If the parties agree to submit the matter for decision on the existing record, the State Board's decision shall be based on the existing record, the written statements and oral argument, if any.

3.5 Evidentiary hearings

3.5.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to rest on the existing record, or when the State Board or its hearing officer otherwise decide to receive additional evidence.

3.5.2 The hearing will proceed with the petitioner first presenting its evidence and case. The responding party may then present its case. The petitioner will then have an opportunity to present rebuttal evidence.

3.5.3 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted in the discretion of the State Board or hearing officer.

3.5.4 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the State Board or its hearing officer.

3.6 Evidence

3.6.1 Strict rules of evidence shall not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

3.6.2 The State Board or its hearing officer may exclude evidence and limit testimony as provided in Section 10125(b) of the Administrative Procedures Act.

3.6.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection. Objections to the form of the question will not be considered.

3.6.7 Any document introduced into evidence at the hearing shall be marked by the State Board or the hearing officer and shall be made a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties and to each of the State Board members present for the hearing unless otherwise directed.

3.6.8 Requests for subpoenas for witnesses or other sources of evidence shall be delivered to the Executive Secretary in writing at least fifteen (15) days before the date of the hearing, unless additional time is allowed for good cause. The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

3.7 Creation of Record before State Board

3.7.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing or oral argument. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

3.7.2 If a stenographic reporter is not present at the hearing or argument, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing.

3.8 State Board Decision

3.8.1 When the State Board has appointed a hearing officer, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

3.8.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the State Board and the parties within a reasonable time of the conclusion of the proceedings before the hearing officer.

3.8.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order.

3.8.4 To the extent possible, the State Board shall consider a matter conducted by a hearing officer at its next regular meeting following the parties' submissions, if any, or the end of the comment period, whichever comes first.

3.8.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and written comments thereto, if any, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

4.0 Appeals

4.1 Section 4.0 governs proceedings where a statute or regulation provides the right to appeal to the State Board a decision which resolved a specific controversy or dispute. These proceedings include, but are not limited to, appeals of school district decisions involving rules and regulations of the school board (14 *Del. C.* 1058)¹, and appeals of decisions of the Delaware Secondary School Athletic

Association (DSSAA).

4.2 For purposes of Section 4.0:

4.2.1 "Party" shall mean any person or organization who participated in the proceedings before the agency which rendered the decision being appealed.

4.2.2 "Decision" shall mean the official action taken to resolve the dispute presented below and shall include the factual findings, the rule involved and the agency's conclusion. "Decision" shall not include policy making or the adoption of rules and regulations of future applicability.

4.3 For purposes of determining the State Board's jurisdiction under Section 1058 of the Education Code, "controversies involving the rules and regulations of the school board" shall mean the presentation before the local school board of a dispute involving the application of rules and regulations of the local board in a particular factual context. Certain decisions involving the application of rules and regulations of the local board may not be appealed to the State Board, including:

4.3.1 Decisions involving student disciplinary actions where a student is suspended from school for ten (10) or fewer days, except where a request to expunge the disciplinary action from the student's record has been denied by the local board.

4.3.2 Personnel actions which are covered under a collective bargaining agreement or are otherwise subject to adjudication by the Public Employment Relations Board.

4.3.3 Termination of employees conducted in accordance with Chapter 14 of the Education Code.

4.3.4 Termination or nonrenewal of public school administrators and confidential employees, as those terms are defined in Section 4002 of the Education Code, at the conclusion of an employment contract.

4.4 Notice of appeal

4.4.1 A party may initiate an appeal by filing a notice of appeal with the Executive Secretary. The notice shall be in writing, shall be signed by the party making the request (or by the party's authorized representative), and shall be delivered to the Executive Secretary by registered or certified mail.

4.4.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or regulation involved in the decision, the names of the parties, and the grounds for the appeal.

1. The State Board of Education has held that local boards of education are not subject to the *Administrative Procedures Act* while conducting disciplinary proceedings. See *R.T. v. Sussex County Vocational-Technical School District Board of Education*, SBE No. 99-12 (February 17, 2000) and *M.B. v. Sussex Technical School District Board of Education*, SBE No. 00-03 (April 3, 2000).

4.4.3 The notice of appeal must be postmarked within thirty (30) days of the receipt of the written notice of the decision from which the appeal is taken.

4.4.4 A copy of the notice of appeal shall be sent to the agency which made the decision at the same time the original notice of appeal is sent to the Executive Secretary. A copy of any other paper or document filed with the State Board shall be provided to all parties to the proceeding at the time of filing.

4.4.5 Upon receipt of an adequately detailed notice of appeal involving a student disciplinary decision or a decision of the Delaware Secondary School Athletic Association (DSSAA), the Executive Secretary shall assign the matter to a hearing officer from a roster of hearing officers approved by the State Board. The Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting.

4.4.6 Upon receipt of an adequately detailed notice of appeal involving any matter other than a student disciplinary decision or a decision of DSSAA, the Executive Secretary shall consult with the President of the State Board to determine whether the matter should be assigned to a hearing officer or placed on the State Board's next meeting agenda. The President shall have the authority to authorize the Executive Secretary to assign a hearing officer to the matter from a roster of hearing officers approved by the State Board. In such case, the Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting. Nothing in this subsection shall prevent the State Board from later assigning the matter to a hearing officer.

4.5 The record on appeal

4.5.1 Unless instructed otherwise, within ten (10) days of the receipt of the notice of appeal, the agency which made the decision under appeal shall forward the record of the proceedings below to the Executive Secretary. A copy of the record shall be sent to the party filing the appeal at the same time.

4.5.2 The record shall include the agency's written decision, a certified copy of any rule or regulation involved, the minutes of the meeting(s) at which the decision was made, a certified, verbatim transcript of the hearing conducted by the agency or party below, and all exhibits presented to the agency. The certified transcript shall be prepared at the direction and expense of the agency below.

4.5.3 If a certified transcript of the proceedings below is not or cannot be provided to the State Board, the Executive Secretary shall remand the case to the agency with an instruction that the agency hold a new hearing within ten (10) days.

4.6 Proceedings on appeal

4.6.1 The State Board of Education or its hearing officer shall establish and notify the parties of the date when the State Board or its hearing officer will consider the

appeal, hereafter referred to as the consideration date. The parties shall be given at least twenty (20) days notice of the consideration date. The parties may agree to shorten or waive the notice of the consideration date.

4.6.2 Written statements of position and legal briefs or memoranda, if any, shall be filed no later than (10) days prior to the consideration date. Failure to file a written statement by the time specified may result in a postponement of the consideration date until the statement is filed, or a consideration of the appeal without the written statement, at the discretion of the State Board or its hearing officer.

4.6.3 The 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 concerns a legal issue or interpretation.

4.6.4 Oral argument

4.6.4.1 A party may request that oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written statement of appeal. There will be no oral argument unless it is requested when the written statement of appeal is submitted.

4.6.4.2 Oral argument, if requested, shall be limited to fifteen (15) minutes per side with five additional minutes for rebuttal.

4.6.4.3 Any party may request the presence of a stenographic reporter at oral argument by notifying the Executive Secretary at least ten (10) days prior to the date of the argument. The requesting party shall be liable for the expense of the reporter. If a stenographic reporter is not present at the argument, the State Board or hearing officer shall cause an electronic transcript of the hearing to be made by tape recorder or other suitable device. Electronic transcripts shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the appeal.

4.6.4.4 If the State Board or hearing officer permits a party to present oral argument on an issue which was not identified by the party in their written statement, briefs or legal memoranda, or if in the course of the argument, the State Board or hearing officer raises an issue which was not previously raised by either party, the parties shall have a reasonable opportunity to comment in writing within five (5) business days of the oral argument.

4.6.4.5 The State Board or its hearing officer may limit or restrict argument that is irrelevant, insubstantial or unduly repetitive.

4.7 Standard and Scope of Review

4.7.1 The appellate review of the State Board shall be limited to the record of the proceedings below. Neither the State Board nor the hearing officer will consider testimony or evidence which is not in the record. If the State Board determines that the record is insufficient for its review, it shall remand the case to the agency below with instructions to supplement the record.

4.7.2 The standard of review shall be determined by the law creating the right of appeal. In the absence of a specific statutory standard, the substantial evidence rule will be applied, that is, neither the State Board nor the hearing officer will substitute its judgment for that of the agency below if there is substantial evidence in the record for its decision and the decision is not arbitrary or capricious. The State Board will make an independent judgment with respect to questions of law.

4.8 State Board Decision

4.8.1 After considering the record from the proceedings below, the written submissions and the arguments made by the parties, if any, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

4.8.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the State Board and the parties within fifteen (15) days of the consideration date or the filing of any post argument submissions.

4.8.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order. The parties may agree to shorten or waive the comment period, or to consent to the hearing officer's recommendation without additional comment. When the parties consent to the hearing officer's recommendation, they shall so advise the Executive Secretary.

4.8.4 The State Board shall consider the appeal at its next regular meeting following receipt of the parties' exceptions, comments, and arguments, if any, or the end of the comment period, whichever occurs first.

4.8.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and any written comments thereto, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

4.9 Student Discipline Appeals

4.9.1 To the extent possible, appeals of decisions involving student discipline will be scheduled for consideration by the hearing officer within thirty (30) days of the receipt of the notice of appeal.

4.9.2 If an appeal involves disciplinary action against a student receiving special education and related services, the record must include evidence that a Manifestation Determination Review was conducted pursuant to the Department of Education's Administrative Manual for Special Education Services. Failure to provide such evidence may result in reversal or remand to agency for additional proceedings.

4.9.3 An appeal of or dispute about the Manifestation Determination Review must be made to the

Department of Education as provided in the Administrative Manual for Special Education Services. The State Board of Education will not review such determinations.

5.0 Public Regulatory Hearings

5.1 Section 5.0 governs public hearings before the State Board or its hearing officers where the State Board is required to hold, or decides to hold, such hearings before adopting or approving rules and regulations or taking other regulatory action. See Note 1.

5.2 Notice that the State Board has scheduled a public regulatory hearing shall be provided as required in Section 10115 of the Administrative Procedures Act. Notice of the public hearing shall also be circulated to individuals and agencies on the State Board's mailing list for meeting agendas. The notice of the hearing shall indicate whether the State Board will conduct the hearing, or designate a hearing officer for that purpose.

5.3 Creation of record of public hearing

5.3.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

5.3.2 If a stenographic reporter is not present at the hearing, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing. Any party requesting that a written transcript be made from the recording shall bear the cost of producing the transcript.

5.4 Subpoenas

5.4.1 The State Board or its hearing officer may issue subpoenas for witnesses or other evidence for the public hearing. Where possible, such subpoenas shall be delivered to the party to whom they are directed at least ten (10) days prior to the public hearing.

5.4.2 The State Board or its hearing officer may also, in its discretion, issue subpoenas at the request of a person interested in the proceedings. Requests for such subpoenas shall be delivered to the Executive Secretary at least fifteen (15) days prior to the date of the hearing, unless additional time is allowed for good cause.

5.4.3 The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

5.5 Documents

5.5.1 The State Board or its hearing officer shall, at the beginning of the hearing, mark as exhibits any documents it has received from the public as comment and any other documents which it will consider in reaching its decision. Documents received during the hearing shall also

be marked as exhibits.

5.5.2 Any person or party submitting a document before or during the public hearing shall provide at least eight (8) copies of the document to the State Board, unless directed otherwise.

5.6 Witnesses

5.6.1 The order of witnesses appearing at the hearing shall be determined by the State Board or its hearing officer. The State Board or its hearing officer may direct an agency or organization to designate a single person to present the agency or organization's position at the public hearing.

5.6.2 The State Board or its hearing officer may limit a witness's testimony and the admission of other evidence to exclude irrelevant, insubstantial or unduly repetitious comment and information.

5.6.3 Any person who testifies at a public hearing shall be subject to examination by the State Board or its hearing officer. The State Board or its hearing officer may in their discretion allow cross examination of any witness by other participants in the proceedings.

5.7 At the conclusion of the public hearing, the State Board shall issue its findings and conclusions in a written order in the form provided in Section 10118(b) of the Administrative Procedures Act. The Board's order shall be rendered within a reasonable time after the public hearing.

Note 1: The State Board is not subject to the Administrative Procedures Act when approving (or refusing to approve) regulations or regulatory action of the Department of Education, provided that the Department has complied with applicable portions of the Act. See 14 Del. C. 105(b).

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
COMMISSION ON ADULT ENTERTAINMENT
ESTABLISHMENTS**

Notice of Public Hearing

Commission on Adult Entertainment Establishments

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 1604(g) and 1618(c), the Delaware Commission on Adult Entertainment Establishments proposes to adopt rules and regulations pursuant to its authority under 24 **Del.C.** §1618(c). The proposed regulations (Rule 1.0) will establish various sanctions, which the Commission may impose, for violations of certain provisions of Title 24, Chapter 16 of the **Delaware Code**.

A public hearing will be held on the proposed Rules and Regulations on Thursday, February 1, 2001 at 9:00 a.m. in the ABCC Conference Room, Third Floor, Carvel State Office Building, 820 N. French St., Wilmington, DE. 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 Mary Paskey at Division of Professional Regulation, 861 Silver Lake Blvd., Dover, Delaware 19904. 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 Mary Paskey at the above address or by calling (302) 739-4522.

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

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING**

The Delaware Board of Nursing in accordance with 24 **Del.C.**, Subsection 1906(1) and 24 **Del.C.**, Chapter 19A (Article VI(d)) has proposed to amend 6.10.1.1 of the Board's Rules and Regulations.

This proposed rules and regulations change requires that employers submit to the Board by April 15 a list of only the nurses employed with a nursing license from another compact state.

A public hearing will be held on Wednesday, February 14, 2001 at 9:00 a.m. in the second floor Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover,

Delaware.

Anyone desiring a copy of the proposed change of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 739-4522, ext. 215 or 216. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be February 14, 2001.

**DIVISION OF PROFESSIONAL REGULATION
COUNCIL ON REAL ESTATE APPRAISERS**

The Delaware Council on Real Estate Appraisers has proposed to revise provisions of its rules and regulations. The proposals are intended to eliminate the two year limitation on obtaining experience to qualify for licensure, clarify the responsibilities of licensees who collaborate with other licensees and licensees who supervise licensed trainees, and incorporate provisions of the Administrative Procedures Act and the Freedom of Information Act. The regulations provide for a supplement to be made available that explains the requirements for licensure determined by the Appraiser Qualifications Board that are incorporated under Delaware Law. The Inactive Status is eliminated.

A public hearing will be held on February 20, 2001 at 10:00 in Conference Room A on the second floor of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904 where members of the public can offer comments. Anyone wishing to receive a copy of the Proposed rules and regulations may obtain a copy from Dana Spruill, Administrative Assistant, Division of Professional Regulation, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Individuals may submit written comments at the above address. The final date for receipt of written comments will be at the public hearing.

The Council will consider promulgating the proposed rules and regulations at its regularly scheduled meeting following the conclusion of the public hearing.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS OF PSYCHOLOGISTS**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 3506(a)(1) and (4), the Delaware Board of Examiners of Psychologists proposes to revise its rules and regulations. These revisions are to clarify the acceptable passing score on the EPPP examination for various examination administrations, and to implement new computer based testing procedures established by the Association of State and Provincial Psychology Boards for

administration of the Examination for Professional Practice in Psychology.

A public hearing will be held on the proposed Rules and Regulations on **Monday, February 5, 2001 at 9:00 a.m.** in the Second Floor Conference Room A 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 Gayle Franzolino 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 Gayle Franzolino at the above address or by calling (302) 739-4522, extension 220.

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
HARNESS RACING COMMISSION

PLEASE NOTE THE AMENDMENT TO SECTION 6.3.3.13 PROPOSED IN NOVEMBER 2000 (4 DE REG. 776 (11/1/00)) WAS NOT ADOPTED AND IS BEING REPROPOSED.

The Commission will hold a public hearing on the proposed rule amendment on January 23, 2001 at 10:00 a.m. at the Dover Downs, Dover DE. The Commission will accept written comments from January 1, 2001 through January 30, 2001. Written comments should be sent to John Wayne, Administrator of Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover DE19901.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES
DIVISION OF FAMILY SERVICES

The Delaware Department of Services for Children, Youth and Their Families, Division of Family Services will hold public hearings to discuss proposed "Regulations for Entry on to and Expungement from the Central Child Abuse Registry"

Public hearings will be held January 22, 2001 from 5:30 p.m. - 7:30 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware; January 25, 2001 from 5:30

p.m. - 7:30 p.m. at the Alexis I. duPont Middle School Auditorium, 3130 Kennett Pike, Greenville, Delaware; and February 6, 2001 from 5:30 p.m. - 7:30 p.m. in the Sussex Central High School Auditorium, 301 W. Market Street, Georgetown, Delaware.

Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by January 30, 2001 to:

Linda M. Shannon, Program Manager -
Intake and Investigation
Division of Family Services
1825 Faulkland Road
Wilmington DE 19805
or by faxed to: (302)633-2625

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, January 19, 2001 at 1 p.m. in the Townsend Building, Dover, Delaware.

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

REGISTER NOTICE

TITLE OF THE REGULATION:
TIDAL FINFISH REGULATIONS

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

To amend Tidal Finfish Regulations in order to remain in compliance with fishery management plans, as amended and adopted by the Atlantic States Marine Fisheries Commission, the Mid-Atlantic Fishery Management Council and/or the U.S. Department of Commerce.

Tidal Finfish Regulation No. 4 SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASON is proposed to be amended to adjust the recreational fishing season closure dates, creel limit and/or minimum size limit in order to implement any adjustments to fishing mortality required in the Summer Flounder Fishery Management Plan. Tidal Finfish Regulation No. 7, STRIPED BASS POSSESSION SIZE LIMIT; EXCEPTIONS is proposed to be amended to eliminate the commercial slot size limits of

20 inches-32 inches and in its place return to a commercial minimum size limit of 20 inches or to not amend and leave the slot size limit of 20 inches – 32 inches in place. It also is proposed to allow the transfer of striped bass tags among commercial food fishermen prior to any tags being distributed by the Department.

Tidal Finfish Regulation No. 9, BLUEFISH POSSESSION LIMITS is proposed to be amended by increasing the daily possession limit from 10 bluefish to 15 bluefish per day.

Tidal Finfish Regulation No. 10 WEAKFISH SIZE LIMITS; POSSESSION LIMITS; SEASONS is proposed to be amended to change the 2000 dates when it was illegal to take weakfish with any gear other than hook and line in the Delaware Bay and Ocean to the corresponding calendar dates in 2001. These dates involve 35 days.

Tidal Finfish Regulation No. 14, SPANISH MACKEREL SIZE LIMIT AND CREEL LIMIT is proposed to be amended by increasing the daily possession limit from 10 Spanish mackerel per day.

POSSIBLE TERMS OF THE AGENCY ACTION:

There are no sunset dates for these regulations. However, if Delaware is found to be out of compliance with a Fishery Management Plan by the Atlantic States Marine Fisheries Commission, that particular fishery may be closed by the Secretary of the U.S. Department of Commerce.

NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover Delaware 19901, (302)739-3441. A public hearing on these proposed amendments will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover DE at 7:30 PM on Thursday January 25, 2001. The record will remain open for written comments until 4:30 PM on January 31, 2001.

**DELAWARE RIVER BASIN
COMMISSION**

P.O. Box 7360 West Trenton

The Delaware River Basin Commission will meet on Wednesday, January 9, 2001, in West Chester, Pennsylvania. For more information contact Pamela M. Bush at (609) 883-9500 extension 203.

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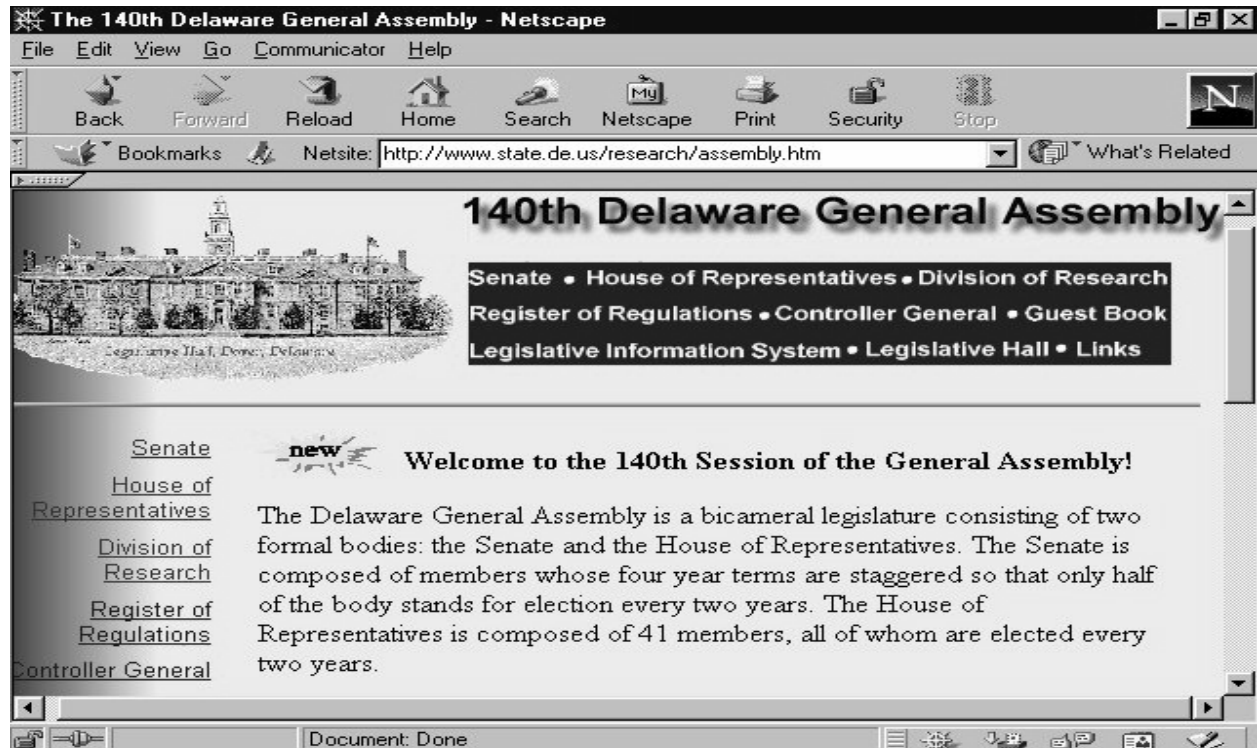
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