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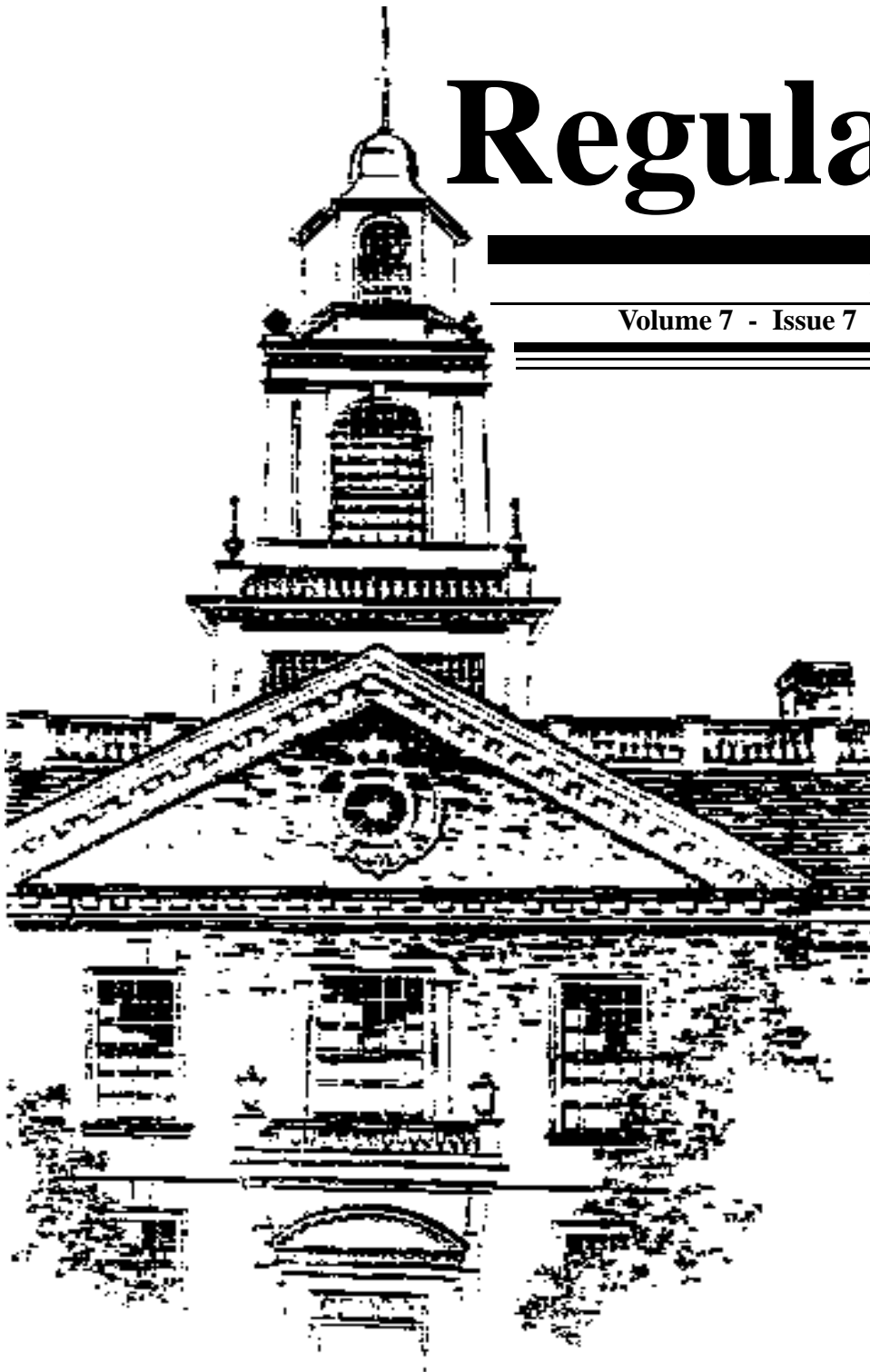
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Calendar of Events &
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Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before December 15, 2003.

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The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

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

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

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

Except as provided in the preceding section,

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
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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Tidal Finfish Regulation 3565, License Lotteries for Apprentices.....	7 DE Reg. 308 (Prop.)
	7 DE Reg. 785 (Final)

DIVISION OF WATER RESOURCES
Surface Water Discharges Section

Surface Water Quality Standards.....	7 DE Reg. 448 (Prop.)
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DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Policy Regulation 45, Concerning Driver Improvement Problem Driver Program.....	7 DE Reg. 524 (Final)
	7 DE Reg. 756 (Prop.)

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES
DIVISION OF FAMILY SERVICES

Child Protection Registry.....	7 DE Reg. 340 (Final)
	7 DE Reg. 488 (Prop.)
	7 DE Reg. 787 (Final)

MERIT EMPLOYEES RELATIONS BOARD

Rules and Regulations.....	7 DE Reg. 493 (Prop.)
	7 DE Reg. 799 (Final)

GOVERNOR’S OFFICE

Executive Order No. 44, Creating Principles for Responsible Industry in Delaware.....	7 DE Reg. 103
Executive Order No. 45, Amendment to Executive Order 20 Regarding State Employees’ Charitable Campaign.....	7 DE Reg. 104
Executive Order No. 46, The Delaware Homeland Security Council	7 DE Reg. 358
Executive Order No. 47, Establishing the Delaware P-20 Council	7 DE Reg. 358
Executive Order No. 48, Amending Executive Order Number Eleven.....	7 DE Reg. 677
Executive Order No. 49, Creating The Community Notification Working Group	7 DE Reg. 677
Executive Order No. 50, Creating The Governor’s Commission On Community-Based Alternatives For Individuals With Disabilities.....	7 DE Reg. 678
Appointments.....	7 DE Reg. 105
	7 DE Reg. 360
	7 DE Reg. 831

HUMAN RELATIONS COMMISSION

Rule 10, Voluntary Termination and Dismissal & Rule 27, Reconsideration.....	7 DE Reg. 34 (Prop.)
	7 DE Reg. 793 (Final)

Symbol Key

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

Proposed Regulations

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

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL GEOLOGISTS**

Statutory Authority: 24 Delaware Code
Section 3606(1) (24 **Del.C.** 3606(1))

PUBLIC NOTICE

The Board of Professional Geologists will hold a hearing pursuant to 24 **Del.C.** §3606(1) and 29 **Del.C.** ch. 101 on Friday, February 6, 2004 at 10:00 a.m. in the Board's Meeting Room, Cannon Building, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware. The Board is proposing to amend Regulation 6.8.3 of the Board Regulations to read:

Peer Review of (12 CEUs) or Peer Reviewed Geologic Publications (12 CEUs)

Persons may obtain a copy of the proposed amendment at the Board's address above and/or present their views in writing by mailing their views to the Board's Office at the above address. The Board will consider those written submittals received prior to the February 6 hearing as well as public testimony offered at the hearing.

6.0 Continuing Education

6.1 The Board will require continuing education as a condition of license renewal. Continuing education shall be waived for the first licensure renewal following the effective date of the Board's Rules and Regulations.

6.2 The continuing education period will be from August 1st to July 31st of each biennial licensing period.

6.3 Each licensed geologist shall complete, biennially, 24 units of continuing education as a condition of license renewal. The licensee is responsible for retaining all certificates and documentation of participation in approved continuing education programs. Upon request, such documentation shall be made available to the Board for random audit and verification purposes 60 days prior to renewal. A continuing education unit is equivalent to one contact hour (60 minutes), subject to the Board's review. The preparing of original lectures, seminars, or workshops in geology or related subjects shall be granted one (1) contact hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

6.4 A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. "Hardship" may include, but is not limited to, disability; illness; extended absence from the jurisdiction; or exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period for which it is made.

6.5 Continuing education shall be prorated for new licensees in the following manner:

6.5.1 If at the time of renewal, a licensee has been licensed for less than one year, no continuing education is required; if he/she has been licensed for more than one year, but less than two years, twelve of the twenty-four hours will be required; if he/she has been licensed for two years or more the full twenty-four hours is required.

6.6 In his/her personal records, each licensee must keep

proof of attendance for each activity listed on the CE log form. If the Board conducts an audit of a licensee's CE records, the Board will request the licensee's documentation of attendance to the CE event listed on the form. Failure to submit proof of attendance during an audit will result in loss of CE credit for that event.

6.7 Continuing education must be in a field related to Geology. Approval will be at the discretion of the Board. CEUs earned in excess of the required credits for the two-(2) year period may not be carried over to the next biennial period.

6.8 Categories of Continuing Education & Maximum Credit Allowed:

- 6.8.1 Courses – 24 CEUs
- 6.8.2 Professional Meetings & Activities/Field Trips – 12 CEUs
- 6.8.3 ~~Peer Reviewed Publications – 12 CEUs~~
Peer Review of (12 CEUs) or Peer Reviewed Geologic Publications (12 CEUs)

- 6.8.4 Presentations – 12 CEUs
- 6.8.5 Research/Grants – 12 CEUs
- 6.8.6 Specialty Certifications – 12 CEUs
- 6.8.7 Home Study Courses – 12 CEUs
- 6.8.8 Teaching – 12 CEUs
- 6.8.9 Service on a Geological Professional Society, Geological Institution Board/Committee or Geological State Board – 6 CEUs
- 6.8.10 For any of the above activities, when it is possible to claim credit in more than one category, the licensee may claim credit for the same time period in only one category.

6.9 Automatic Approval for course work sponsored by the following Professional Societies:

- 6.9.1 American Association of Petroleum Geologists (AAPG)
- 6.9.2 American Association of Stratigraphic Palynologists (AASP)
- 6.9.3 American Geological Institute (AGI)
- 6.9.4 American Geophysical Union (AGU)
- 6.9.5 American Institute of Hydrology (AIH)
- 6.9.6 American Institute of Professional Geologists (AIPG)
- 6.9.7 Association of American State Geologists (AASG)
- 6.9.8 Association of Earth Science Editors (AESE)
- 6.9.9 Association of Engineering Geologists (AEG)
- 6.9.10 Association of Ground Water Scientists & Engineers (AGWSE)
- 6.9.11 Association of Women Geoscientists (AWG)
- 6.9.12 Clay Mineral Society (CMS)
- 6.9.13 Council for Undergraduate Research-

Geology Div. (CUR)

- 6.9.14 Geologic Society of America (GSA)
- 6.9.15 Geoscience Information Society (GIS)
- 6.9.16 International Association of Hydrogeologists/US National Committee (IAH)
- 6.9.17 Mineralogical Society of America (MSA)
- 6.9.18 National Association of Black Geologists and Geophysicists (NABGG)
- 6.9.19 National Association of Geoscience Teachers (NAGT)
- 6.9.20 National Association of State Boards of Geology (ASBOG)
- 6.9.21 National Earth Science Teachers Association (NESTA)
- 6.9.22 National Speleological Society (NSS)
- 6.9.23 Paleontological Research Institution (PRI)
- 6.9.24 Paleontological Society (PS)
- 6.9.25 Seismological Society of America (SSA)
- 6.9.26 Society of Economic Geologists (SEG)
- 6.9.27 Society of Exploration Geophysicists (SEG)
- 6.9.28 Society of Independent Professional Earth Scientists (SIPES)
- 6.9.29 Society for Mining, Metallurgy, and Exploration, Inc. (SME)
- 6.9.30 Society for Organic Petrology (TSOP)
- 6.9.31 Society for Sedimentary Geology (SEPM)
- 6.9.32 Society of Vertebrate Paleontology (SVP)
- 6.9.33 Soil Science Society of America (SSSA)
- 6.9.34 Other professional or educational organizations as approved periodically by the Board.

6.10 Courses not pre-approved by the Board may be submitted for review and approval throughout the biennial licensing period.

Note: Since regulation 6.9 provides the list of sponsors that are automatically approved by the Board for any course work used for Continuing Education units (CEU) towards the total of 24 CEUs in the biennial license period, please note that regulation 6.10, allowing for pre-approval of courses for CEUs, only pertains to courses NOT offered by a sponsor listed in the list provided in regulation 6.9. Furthermore, one CEU = one Contact Hour.

*** PLEASE NOTE: AS THE REST OF THE REGULATIONS WERE NOT AMENDED, THEY ARE NOT BEING PUBLISHED.**

**BOARD OF CLINICAL SOCIAL WORK
EXAMINERS**

24 DE Admin. Code 3900

Statutory Authority: 24 Delaware Code,
Section 3906(1) (24 Del.C. §3906(1))

PLEASE TAKE NOTICE, pursuant to 29 Del.C.

Chapter 101 and 24 **Del.C.** §3906(1), the Delaware Board of Clinical Social Work Examiners proposes to revise its rules and regulations. The proposed revisions clarify the definition of "Clinical Social Work" and the requirements for acceptable clinical social work experience and professional supervision for purposes of licensure.

A public hearing will be held on the proposed Rules and Regulations on Monday, March 15, 2004 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 Karin Stone 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 Karin Stone at the above address or by calling (302) 744-4534.

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

1.0 Election of Officers and Responsibilities

1.1 Officers shall be elected in September of each year, for a one year term. Special election to fill vacancies shall be held upon notice and shall be only for the balance of the original term.

1.2 Officers have the following responsibilities:

1.2.1 The President will preside at all meetings and sign official documents on behalf of the Board.

1.2.2 The Vice-President will perform the duties of the President when the latter is unavailable or unable to perform the duties of the President.

1.2.3 The Secretary will preside over meetings in the absence of the President and Vice-President.

2.0 Definitions

"Clinical Social Work" as provided in 24 Del.C. §3902(2) shall mean the application of social work theory and methods, which may include the person-in-environment perspective, to the assessment, diagnosis, prevention and treatment of biopsychosocial dysfunction, disability and impairment, including mental and emotional disorders, developmental disabilities and substance abuse. The application of social work method and theory includes, but is not restricted to, assessment (excluding administration of the psychological tests which are reserved exclusively for use by licensed psychologists pursuant to Chapter 35 of Title 24 of the Delaware Code), diagnosis, treatment planning and psychotherapy with individuals, couples, families and groups, case management, advocacy, crisis intervention and supervision of and consultation about clinical social work practice.

"Advocacy" means advocacy on behalf of an individual or family, and not on behalf of a cause or a group of people.

"Assessment" of "biopsychosocial dysfunction, disability and impairment" includes ongoing evaluation of a client's functioning and intervention outcomes.

The term "groups" shall mean small groups, consisting of persons who represent themselves and are not representatives of a larger group.

3.0 Acceptable Clinical Social Work Experience

3.1 An applicant for examination and licensure shall submit evidence, verified by oath and acceptable to the Board, that such person has acquired two years (not less than 3200 hours) of clinical social work experience that is acceptable to the Board after receiving a master's degree from an accredited school of social work.

3.2 At least 1600 hours of the required 3200 hours of post-degree clinical social work experience shall be under professional supervision acceptable to the Board in accordance with Section 4.0 of these rules and regulations.

3.2.1 Each Applicant shall demonstrate to the satisfaction of the Board that he or she has satisfactorily completed each of the following practice skills during the 1600 hours of professionally supervised clinical social work experience:

3.2.1.1 Provides adequate clinical diagnoses and biopsychosocial assessments;

3.2.1.2 Performs short-term and/or long-term interventions;

3.2.1.3 Establishes treatment plans with measurable goals;

3.2.1.4 Adapts interventions to maximize client responsiveness;

3.2.1.5 Demonstrates competence in clinical risk assessment and intervention;

3.2.1.6 Recognizes when personal issues affect clinical objectivity;

3.2.1.7 Recognizes and operates within own practice limitations;

3.2.1.8 Seeks consultation when needed;

3.2.1.9 Refers to sources of help when appropriate; and

3.2.1.10 Practices within established ethical and legal parameters.

3.2.2 Use of professional values, professional knowledge, professional identity and use of self and disciplined approach to the practice environment should be reflected in each of the above listed practice skills.

2-0 4.0 Professional Supervision

2-1 Aacceptable supervision shall be that amount of personal oversight by the licensed professional that would be considered usual and customary in the profession consistent with the applicant's level of skill, education and experience,

~~but in any event should include the following activities, by way of example and not by way of limitation:~~

- ~~2.1.1 Individual case reviews.~~
- ~~2.1.2 Evaluations of diagnosis and courses of treatment.~~
- ~~2.1.3 Proper adherence to agency policy and procedures.~~

4.1 Professional supervision that is acceptable to the Board shall be that amount of personal oversight, conducted directly by the licensed clinical social worker, necessary and consistent with the applicant's level of skill, education and experience, to enable both the applicant and the licensed clinical social worker to attest that the applicant has attained the required acceptable clinical social work experience including achievement of the practice competencies and practice skills set forth in Section 3.0 of these Rules and Regulations. When professional supervision by a licensed clinical social worker is not available, the applicant may be supervised by a master's level degree social worker, a licensed psychologist, or a licensed psychiatrist.

2.2 4.2 The amount of supervisory contact shall be at least one hour per week during the supervised period. This contact ~~must~~ may be on a one-to-one face-to-face basis or by live videoconferencing; provided, however, that supervision by live videoconferencing shall not exceed fifty percent (50 %) of the total supervision in any month. Supervision by telephone or e-mail is expressly not permitted.

2.3 4.3 The Board shall require submission of the following information from the supervisor(s): supervisor's name; business address; license number, professional field and State in which the license was granted during the period of supervision; agency in which the supervision took place (if applicable); the number of qualifying practice hours toward the statutory requirement; the number of one-to-one face-to-face supervisory hours; and the number of live videoconferencing supervisory hours (if applicable).

2.4 4.4 A licensed Psychiatrist shall be defined as a licensed Medical Doctor with a specialty in psychiatry or a licensed Doctor of Osteopathic Medicine with a specialty in psychiatry.

See 5 DE Reg. 1072 (11/1/01)

3.0 5.0 Application and Examination

3.1 5.1 Applications will be kept active and on file for two (2) years. If the applicant fails to meet the licensure requirements and/or pass the examination within two (2) years, the application shall be deemed to have expired and the applicant must reapply in the same manner as for initial application, i.e., by submitting the application documentation along with the proper fee to be eligible to sit for the examination.

3.2 5.2 The Board will not review incomplete applications.

3.3 5.3 All signatures must be original on all forms.

3.4 5.4 The applicant shall have obtained the passing score on the national clinical examination approved by the American Association of State Social Work Boards (AASSWB). The Board shall accept the passing grade as determined by the AASSWB.

3.5 5.5 Any applicant holding a degree from a program outside the United States or its territories must provide the Board with an educational credential evaluation from International Consultants of Delaware, Inc., its successor, or any other similar agency approved by the Board, demonstrating that their training and degree are equivalent to domestic accredited programs. No application is considered complete until the educational credential evaluation is received by the Board. (29 Del. C. § 3907(a)(1))

4.0 6.0 Renewal

4.1 6.1 The licensee's failure to receive notices or letters concerning renewal will not relieve the licensee of the responsibility to personally assure delivery of his/her renewal application to the Board.

4.2 6.2 In order to be eligible for license renewal during the first year after expiration, the practitioner shall be required to meet all continuing education credits for continued licensure, pay the licensure fee, and pay any late fee established by the Division of Professional Regulation.

5.0 7.0 Continuing Education

5.1 7.1 Required Continuing Education Hours:

5.1.1 7.1.1 Hours Required. All licensees must complete forty-five (45) hours of continuing education during each biennial license period. For license periods beginning January 1, 1999 and thereafter, documentation, as required by Rule 5.4, of all continuing education hours must be submitted to the Board for approval by October 31 of each biennial license period.

5.1.2 7.1.2 Proration. At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be prorated as follows:

License Granted During First Year Of Licensing Period	Credit Hours Required
January 1 - June 30	35 hours
July 1 - December 31	25 hours
License Granted During Second Year Of Licensing Period	Credit Hours Required
January 1 - June 30	15 hours
July 1 - December 31	5 hours

5.1.3 7.1.3 Hardship. A candidate for license renewal 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. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception.

See 2 DE Reg 775 (11/1/98)

~~5.2~~ 7.2 Definition and Scope of Continuing Education:

~~5.2.1~~ 7.2.1 Continuing Education is defined to mean approved courses offered by colleges and universities, televised and extension courses, independent study courses which have a final exam or paper, workshops, seminars, conferences and lectures oriented toward the enhancement of clinical social work practice, values, skills and knowledge, including self-directed activity and preparation of a first-time clinical course as described herein.

~~5.2.1.1~~ 7.2.1.1 Approved Courses shall be those courses which: increase the clinical social worker (CSW)'s knowledge about, skill in diagnosing and assessing, skill in treating, and/or skill in preventing mental and emotional disorders, developmental disabilities and substance abuse; AND are instructed or presented by persons who have received specialized graduate-level training in the subject, or who have no less than two (2) years of practical application or research experience pertaining to the subject.

~~5.2.1.2~~ 7.2.1.2 Mental and Emotional Disorders, Developmental Disabilities and Substance Abuse are those disorders enumerated and described in the most current Diagnostic and Statistical Manual including, but not limited to, the V Codes and the Criteria Sets and Axes provided for further study.

~~5.2.1.3~~ 7.2.1.3 Self-Directed Activity shall include teaching, research, preparation and/or presentation of professional papers and articles, and other activities specifically approved by the Board.

~~5.2.2~~ 7.2.2 Any program submitted for continuing education hours must have been attended during the biennial licensing period for which it is submitted. Excess credits may not be carried over to the next licensing period.

~~5.2.3~~ 7.2.3 An "hour" for purposes of continuing education credit shall mean 60 minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.

~~5.2.4~~ 7.2.4 The Board may, upon request, review and approve credit for self-directed activities, to a maximum of 15 hours per biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the

self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

~~5.2.5~~ 7.2.5 The Board may award a maximum of 5 continuing education hours for the first-time preparation and presentation of a clinical social work course, in-service training, workshop, or seminar. A copy of the course syllabus and verification that the course was presented is required for Board approval.

~~5.3~~ 7.3 Continuing Education Content Requirements:

During each biennial licensing period, licensees shall complete a minimum of thirty (30) hours of continuing education in Category I courses. The remaining fifteen (15) continuing education hours may be taken in Category II courses. At least three (3) of the 30 Category I hours shall consist of courses acceptable to the Board in the area of ethics for mental health professionals.

Category I: Courses which have as their primary focus and content the assessment, diagnosis, and biopsychosocial (biological, psychological and social) treatment of mental and emotional disorders, developmental disabilities, and/or substance abuse; courses which have as their primary focus and content the ethical practice of social work.

Category II: Courses in any of the following areas which are related to and increase the CSW's knowledge of mental and emotional disorders, developmental disabilities, and/or substance abuse

- research methods and findings;
- psychology and sociology;
- human growth and development;
- child and family constructs;
- physical illness and health;
- social action;
- advocacy;
- human creativity;
- spirituality
- HIV

~~5.4~~ 7.4 Continuing Education Reporting and Documentation

~~5.4.1~~ 7.4.1 Continuing Education Reporting Periods

Licenses are valid for 2 year periods, renewing on January 31 of odd numbered years (e.g. January 31, 2001, 2003). Continuing education reporting periods run from October 31 to October 31 of the preceding two even-numbered years (e.g. credits for the January 2001 license renewal may be obtained between October 31, 1998 and

October 31, 2000). The Board will allow credits obtained between October 31 and January 31 to apply to either (but not both) of the biennial licensing periods, at the licensee's discretion.

Beginning with the January 2003 license renewal, all required continuing education should be completed within the previous two year October to October period (e.g. between October 31, 2000 and October 31, 2002 for January 2003 renewal). The Board shall continue to have the discretion, however, to grant extensions of time in which to complete continuing education in cases of hardship, pursuant to **24 Del.C. §3912** and Rule ~~5.1.3~~ 7.1.3.

~~5.4.2~~ 7.4.2 In order to assure receipt of continuing education credits, a licensee must complete and submit the appropriate continuing education form provided by the Division of Professional Regulation no later than October 31st of the biennial licensing period.

~~5.4.3~~ 7.4.3 In addition to the form, each licensee must submit the following documentation as to each course attended: a certificate of attendance or completion signed by the presenter and attesting to the number of hours the licensee attended; documentation identifying the date and location of the course, the total number of CE hours attended and the agenda, outline or brochure describing the course. Originals or photocopies will be accepted and retained by the Board. The Board reserves its right to request additional documentation, such as copies of program materials, to verify CE compliance. Statutory Authority: **24 Del.C. §§ 3906(7), 3912.**

See 3 DE Reg 1680 (6/1/00)

See 4 DE Reg 1815 (5/1/01)

6.0 8.0 Inactive Status (24 Del. C. § 3911(c))

~~6.1~~ 8.1 A licensee asking to have his/her license placed on inactive status must notify the Board of his/her intention to do so, in writing, prior to the expiration of his/her current license. Each subsequent request for extensions of inactive status must be submitted to the Board in writing, before the end of the immediately prior inactive period.

~~6.2~~ 8.2 A licensee on inactive status must comply with Rule 5.0, "Continuing Education," for each period of inactivity. A licensee on inactive status seeking to re-enter practice must notify the Board in writing of his/her intention, pay the appropriate fee, and provide the Board with documentation of any continuing education hours required by Rule 5.0.

~~6.3~~ 8.3 On written request and a showing of hardship, the Board may grant additional time for completion of continuing education requirements to licensees returning to practice from inactive status. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities.

See 2 DE Reg 775 (11/1/98)

See 3 DE Reg 1680 (6/1/00)

7.0 9.0 Ethics

~~7.1~~ 9.1 Duties to Client

~~7.1.1~~ 9.1.1 The LCSW's primary responsibility is the welfare of the client.

~~7.1.2~~ 9.1.2 In providing services, the LCSW must not discriminate on the basis of age, sex, race, color, religion/ spirituality, national origin, handicap, political affiliation, or sexual orientation.

~~7.1.3~~ 9.1.3 When a client needs other community services or resources, the LCSW has the responsibility to assist the client in securing the appropriate services.

~~7.1.4~~ 9.1.4 The LCSW should refer a client to other service providers in the event that the LCSW cannot provide the service requested. In the case of a referral, no commission, rebate or any other remuneration may be given or received for referral of clients for professional services, whether by an individual or an organization.

~~7.1.5~~ 9.1.5 The LCSW must, in cases where professional services are requested by a person already receiving therapeutic assistance from another professional, clarify with the client and the other professional the scope of services and division of responsibility which each professional will provide.

~~7.1.6~~ 9.1.6 The LCSW must maintain appropriate boundaries in his/her interactions with a client. The LCSW must not engage in sexual activity with a client. The LCSW must not treat a family member or close personal friend where detached judgment or objectivity would be impaired. Business, social or professional relationships with a client (outside of the counseling relationship) should be avoided, where such relationships may influence or impair the LCSW's professional judgment.

~~7.2~~ 9.2 Confidentiality/privileged Communications

~~7.2.1~~ 9.2.1 The LCSW must safeguard the confidentiality of information given by clients in the course of client services.

~~7.2.2~~ 9.2.2 The LCSW must discuss with clients the nature of and potential limits to confidentiality that may arise in the course of therapeutic work.

~~7.2.3~~ 9.2.3 No LCSW or employee of such person may disclose any confidential information they may have acquired from persons consulting them in their professional capacity except under the following conditions:

~~7.2.3.1~~ 9.2.3.1 With the written consent of the person or persons (the guardian, in the case of a minor) or, in the case of death or disability, of his/her personal representative, or person authorized to sue, or the beneficiary of an insurance policy on his/her life, health or physical condition, or

~~7.2.3.2~~ 9.2.3.2 Where the communication reveals the contemplation of a crime or harmful act.

~~7.2.3.3~~ 9.2.3.3 When the person waives the

privilege by initiating formal charges against the LCSW.

~~7.2.3.4~~ 9.2.3.4 When otherwise specifically required by law or judicial order.

~~7.2.4~~ 9.2.4 The disclosure of confidential information, as permitted by Rule 7.2.3, is restricted to what is necessary, relevant, verifiable and based on the recipients' need to know. The LCSW should, provided it will not adversely affect the client's condition, inform the client about the nature and scope of the information being disclosed, to whom the information will be released and the purpose for which it is sought.

~~7.3~~ 9.3 Ethical Practice

~~7.3.1~~ 9.3.1 The LCSW is responsible for confining his/her practice to those areas in which he/she is legally authorized and in which he/she is qualified to practice. When necessary the LCSW should utilize the knowledge and experience of members of other professions.

~~7.3.2~~ 9.3.2 The LCSW is responsible for providing a clear description of what the client may expect in the way of scheduling services, fees and any other charges or reports

~~7.3.3~~ 9.3.3 The LCSW, or any employee or supervisee of the LCSW, must be accurately identified on any bill as the person providing a particular service, and the fee charged the client should be at the LCSW's usual and customary rate. Sliding fee scales are permissible.

~~7.3.4~~ 9.3.4 An LCSW employed by an agency or clinic, and also engaged in private practice, must conform to contractual agreements with the employing facility. He/She must not solicit or accept a private fee or consideration of any kind for providing a service to which the client is entitled through the employing facility.

~~7.3.5~~ 9.3.5 An LCSW having direct knowledge of a colleague's impairment, incompetence or unethical conduct should take adequate measures to assist the colleague in taking remedial action. In cases where the colleague does not address the problem, or in any case in which the welfare of a client appears to be in danger, the LCSW should report the impairment, incompetence or unethical conduct to the Board.

~~7.3.6~~ 9.3.6 The Board has voted to adopt the Voluntary Treatment Option, in accordance with 29 Del.C. §8807(n).

~~7.3.7~~ 9.3.7 An LCSW should safeguard the welfare of clients who willingly participate as research subjects. The LCSW must secure the informed consent of any research participant and safeguard the participant's interests and rights.

~~7.3.8~~ 9.3.8 In advertising his or her services, the LCSW may use any information so long as it describes his/her credentials and the services provided accurately and without misrepresentation.

~~7.3.9~~ 9.3.9 In the areas of computer and Internet technology and non-established practice, the LCSW should

inform the client of risks involved. The LCSW should exercise careful judgment and should take responsible steps (such as research, supervision, and training) to ensure the competence of the work and the protection of the client. All precautions should be taken with computer-based communications to ensure that no confidential information is disseminated to the wrong individual and identities are protected with respect to privacy.

~~7.4~~ 9.4 Clinical Supervision

~~7.4.1~~ 9.4.1 The LCSW should ensure that supervisees inform clients of their status as interns, and of the requirements of supervision (review of records, audiotaping, videotaping, etc.). The client shall sign a statement of informed consent attesting that services are being delivered by a supervisee and that the LCSW is ultimately responsible for the services. This document shall include the supervising LCSW's name and the telephone number where he/she can be reached. One copy shall be filed with the client's record and another given to the client. The LCSW must intervene in any situation where the client seems to be at risk.

~~7.4.2~~ 9.4.2 The LCSW should inform the supervisee about the process of supervision, including goals, case management procedures, and agency or clinic policies.

~~7.4.3~~ 9.4.3 The LCSW must avoid any relationship with a supervisee that may interfere with the supervisor's professional judgment or exploit the supervisee.

~~7.4.4~~ 9.4.4 The LCSW must refrain from endorsing an impaired supervisee when such impairment deems it unlikely that the supervisee can provide adequate professional services.

~~7.4.5~~ 9.4.5 The LCSW must refrain from supervising in areas outside his/her realm of competence. Statutory Authority: 24 Del.C. §§3901, 3906(1)(6)(9), 3913, 3915.

See 3 DE Reg 1680 (6/1/00)

~~8.0~~ 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

~~8.1~~ 10.1 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.

~~8.2~~ 10.2 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.

~~8.3~~ 10.3 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).

8-4 10.4 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.

8-5 10.5 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.

8-6 10.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

8-6-1 10.6.1 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.

8-6-2 10.6.2 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.

8-6-3 10.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

8-6-4 10.6.4 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.

8-6-5 10.6.5 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.

8-6-6 10.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

8-7 10.7 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.

8-8 10.8 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.

8-9 10.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

~~8.10~~ 10.10 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.

~~8.11~~ 10.11 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.

~~8.12~~ 10.12 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.

See 3 DE Reg 1680 (6/1/00)

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10005 (3 **Del.C.** §10005)

PUBLIC NOTICE

The Delaware Harness Racing Commission issues the proposed rule amendments pursuant to 3 **Del.C.** §10005 and 29 **Del.C.** §10115. The Commission will accept written comments from January 1, 2004 through February 23, 2004. The Commission will hold a public hearing on the proposed rule amendments on February 25, 2004 at 10:15 a.m. at Dover Downs, Dover, DE. Written comments should be submitted to John Wayne, Administrator of Racing, 2320 S. DuPont Highway, Dover, DE 19901.

The Commission proposes to amend its Rules as follows:

1. Amend Rule 3.1.1.14 to provide for the appointment of a Bleeder Medication Veterinarian, and delete the current reference to Lasix Veterinarian.

2. Amend Rule 3.13 to change the name of the Rule from "State Veterinarian" to "Commission Veterinarian." Amend Rules 3.13.1, 3.13.2, 3.13.2.3, 3.13.2.6, 3.13.2.8, and 3.13.3 to refer to "Commission Veterinarian" instead of the current reference to "State Veterinarian."

3. Amend Rule 3.14 to change the name of the Rule from "Lasix Veterinarian" to "Bleeder Medication Veterinarian." Amend Rule 3.14.1 to refer to "Bleeder

Medication Veterinarian" instead of the current reference to "Lasix Veterinarian." Amend 3.14.1.1 to refer to "Commission Veterinarian" instead of the current reference to "State Veterinarian." Amend Rule 3.14.1.6 to provide that the duties of the Bleeder Medication Veterinarian include administration of furosemide (salix) and aminocaproic acid in accord with Commission Rule 8.3.5. Amend Rule 3.14.2 to change the wording to "Commission Veterinarian" from the current reference to "State Veterinarian."

4. Amend Rule 6.3.3.13 to provide that post race samples can be taken from claimed horses, which differs from the current rule that only refers to urine samples. Further amend Rule 6.3.3.13 to provide that a claimant has the right to void a claim if a postrace blood sample from a horse exhibits a positive response to the EPO antibody test.

5. Amend Rule 8.3.5 to change the title of the Rule to delete the reference to "Lasix" and substitute the words "(Salix) and Aminocaproic Acid (Amicar)."

6. Amend Rule 8.3.5.1 to provide that furosemide (salix) or furosemide with aminocaproic acid may be administered to a horse on the grounds of the association, and to further provide, that said administration may only be permitted after the Commission Veterinarian has placed the horse on the Bleeder List or to facilitate collection of a urine sample.

7. Amend Rule 8.3.5.2 to provide that furosemide or furosemide with aminocaproic acid shall be administered intravenously by the Bleeder Medication Veterinarian unless otherwise determined by that veterinarian. Further amend Rule 8.3.5.2 to provide that permission for an intramuscular administration must be given by the Presiding Judge or designee.

8. Amend Rule 8.3.5.3 to provide that Aminocaproic Acid shall be administered by the Bleeder Medication Veterinarian to horses on the Bleeder Medication List of not more than 7.5 grams and not less than 2.5 grams intravenously, and that Furosemide shall also only be administered to horses on the Bleeder List by the Bleeder Medication Veterinarian. Further amend Rule 8.3.5.3 by deleting Rule 8.3.5.3.1, and renumbering the remaining parts of the Rule.

9. Amend Rule 8.3.5.4 to provide the time for horses to be present in assigned stalls in the paddock for Aminocaproic Acid treatment. Further amend Rule 8.3.5.4 to change the word "Lasix" to "Furosemide."

10. Amend Rule 8.3.5.5 to provide that payment is to be made to the Bleeder Medication Veterinarian for administration of medication.

11. Amend Rule 8.3.5.6 to delete the word "lasix".

12. Amend Rule 8.3.5.7 to provide that a horse may be disqualified for failing to declare or report the use of aminocaproic acid, and may be disqualified for the absence of bleeder medication after declaring the use of bleeder medication. Further amend Rule 8.3.5.7.1 to delete the word

"Lasix" and insert the word "Furosemide." Further amend Rule 8.3.5.7.1.2 and 8.3.5.7.2 to correct renumbering of Rules and to make a grammatical change in the wording of the specific gravity level.

13. Amend Rule 8.3.5.8 to provide that the Bleeder Medication Veterinarian is responsible for written certifications of administrations of Aminocaproic Acid or Furosemide or Furosemide with Aminocaproic Acid.

14. Amend Rule 8.3.5.9 to delete the reference in Rule 8.3.5.9.1 to "Commission Veterinarian" and insert "Bleeder Medication Veterinarian." Further amend Rules 8.3.5.9.1.2 and 8.3.5.9.2 to delete the reference to "Lasix veterinarian." Further amend Rule 8.3.5.9.3 to add language that Furosemide or Furosemide with Aminocaproic Acid if applicable must be administered to horses on the Bleeder List. Amend Rule 8.3.5.9.6 to provide the procedure to discontinue the use of Aminocaproic Acid in a horse. Amend Rule 8.3.5.9.7 to delete the word "Lasix" and add "Furosemide and Aminocaproic Acid" in reference to program symbols to indicate whether a horse from another jurisdiction did not race with Furosemide or Furosemide with Aminocaproic Acid in its last start. Amend Rule 8.3.5.9.8 to delete the word "Lasix" and add "Furosemide or Furosemide with Aminocaproic Acid" and to renumber rule sections referenced in the rule.

3.0 Officials

3.1 General Provisions

3.1.1 Racing Officials

Officials at a race meeting may include the following, as determined by the Commission:

- 3.1.1.1 State Steward;
- 3.1.1.2 Board of judges;
- 3.1.1.3 racing secretary;
- 3.1.1.4 paddock judge;
- 3.1.1.5 horse identifier and equipment

checker;

- 3.1.1.6 clerk of the course;
- 3.1.1.7 official starter;
- 3.1.1.8 official charter;
- 3.1.1.9 official timer;
- 3.1.1.10 photo finish technician;
- 3.1.1.11 patrol judge;
- 3.1.1.12 program director;
- 3.1.1.13 State veterinarian;
- 3.1.1.14 ~~LASIX~~ Bleeder Medication

veterinarian;

- 3.1.1.15 Investigator; and
- 3.1.1.16 Administrator of Racing
- 3.1.1.17 any other person designated by the

Commission.

3.1.2 Eligibility

To qualify as a racing official the appointee must be licensed by the Commission after a

determination that he/she:

3.1.2.1 is of good moral character and reputation;

3.1.2.2 is experienced in and/or knowledgeable of harness racing;

3.1.2.3 is familiar with the duties to which he/she is appointed and with the Commission's rules and regulations;

3.1.2.4 possesses the mental and physical capacity to perform his/her duties; and

3.1.2.5 is not under suspension or ejection by the U.S.T.A., the C.T.A. or any racing jurisdiction.

3.1.3 Approval and Licensing

The Commission, in its sole discretion, may determine the eligibility of a racing official and, in its sole discretion, may approve or disapprove any such official for licensing.

3.1.4 Prohibited Practices

Racing officials and their assistants shall not engage in any of the following activities while serving in an official capacity at a race meeting:

3.1.4.1 participate in the sale or purchase, or own any horse racing at the meeting;

3.1.4.2 sell or solicit horse insurance on any horse racing at the meeting;

3.1.4.3 be licensed in any other capacity without permission of the Commission;

3.1.4.4 wager on the outcome of any live or simulcast race;

3.1.4.5 refuse to take a breath analyzer test or submit to a blood or urine sample when directed by the Commission or its designee; or

3.1.4.6 perform their official duties on any day during which any horse entered in any live race at the association grounds is owned or trained, in whole or in part, directly or indirectly, or is driven by any parent, child or sibling of such official, or participate in the draw for any such race; provided, however, that a parent, child or sibling of an official acting solely as a groom for such a horse shall not be deemed to pose a conflict of interest for the official; provided further, that should any such conflict described above arise, the official will immediately notify the State Steward; and provided, further, that should repeated such conflicts interfere with the official's performance of his/her normal duties, or with any other official's performance of his/her official duties, then the Commission shall appoint another person to replace the official with the familial conflict.

3.1.5 Report of Violations

Racing officials and their assistants shall report immediately to the State Steward or judges every observed violation of these rules and of the laws of this jurisdiction governing racing.

3.1.6 Complaints Against Officials

Any formal complaint against a racing official other than a judge shall be made to the State Steward or Presiding Judge in writing and signed by the complainant. All such complaints shall be reported to the Commission by the State Steward or Presiding Judge, as appropriate, together with a report of the action taken or the recommendation of the State Steward or Presiding Judge. Formal complaints against the State Steward or any judge shall be made in writing to the Commission and signed by the complainant.

3.1.7 Appointment

3.1.7.1 A person shall not be appointed to more than one racing official position at a meeting unless specifically approved by the Commission. No person shall be appointed to or hold any such office or position who holds any official relation to any person, association, or corporation engaged in or conducting harness racing within this State. No Commissioner, racing official, steward, or judge whose duty is to insure that the rules and regulations of the Commission are complied with shall bet on the outcome of any race regulated by the Commission or have any financial or pecuniary interest in the outcome of any race regulated by the Commission. All employees appointed under 3 **Del.C.** §10007(a-c) shall serve at the pleasure of the Commission and are to be paid a reasonable compensation.

3.1.7.2 The Commission shall appoint or approve the State Steward and judges at each harness race meeting. The Commission may appoint such officials on an annual basis. In addition to any minimum qualifications promulgated by the Commission, all applicants for the position of Steward must be certified by a national organization approved by the Commission. An applicant for the position of steward or race judge must also have been previously employed as a steward, patrol judge, clerk of scales or other racing official at a harness racing meeting for a period of not less than forty-five days during three of the last five years, or have at least five years of experience as a licensed driver who has also served not less than one year as a licensed racing official at a harness racing meeting or have ten years of experience as a licensed harness racing trainer who has served not less than one year as a licensed racing official at a harness racing meeting.

3.1.7.3 The Commission may appoint such officers, clerks, stenographers, inspectors, racing officials, veterinarians, and such other employees as it deems necessary, consistent with the purposes of 3 **Del.C.** Chapter 100.

3.1.8 Appointment of Substitute State Steward/Judge

Should any State Steward or any judge be absent at race time, the State Steward, or, in his/her absence the remaining judge(s) shall appoint a deputy for the State Steward or judge(s). If a deputy State Steward or judge is appointed, the Commission shall be notified immediately by

the State Steward or remaining judges.

3.2 State Steward/Judges

3.2.1 General Authority

3.2.1.1 The State Steward and judges for each meeting shall be responsible to the Commission for the conduct of the race meeting in accordance with the laws of this jurisdiction and these rules.

3.2.1.2 The State Steward and judges shall enforce these rules and the racing laws of the State of Delaware.

3.2.1.3 The State Steward's authority includes supervision of all racing officials, licensed personnel, other persons responsible for the conduct of racing and patrons, as necessary to ensure compliance with these rules.

3.2.1.4 The State Steward and Presiding Judge shall have authority to resolve conflicts or disputes related to racing and to discipline violators in accordance with the provisions of these rules.

3.2.1.5 The State Steward and judges have the authority to interpret the rules and to decide all questions of racing not specifically covered by the rules.

3.2.1.6 The State Steward shall be a representative of the Commission at all race meetings which the Commission may direct such State Steward to attend. The State Steward shall be the senior officer at such meetings and, subject to the control and direction of the Commission, shall have general supervision over the racing officials, medication program and drug-testing officials, and all other employees and appointees of the Commission employed at such race meet or meetings. The State Steward shall, subject to the general control of the Commission, monitor the conduct of the racing and the pari-mutuel department, and supervise the testing of horses and drivers. The State Steward at all times shall have access to all parts of the association grounds, including the racecourse, physical plant and grounds. Upon instruction from the Commission, the State Steward shall conduct hearings and investigations, and report his findings to the Commission. The State Steward shall act for the Commission in all matters requiring its attention, to receive from all persons having knowledge thereof information required by the Commission and to perform all other duties for the compliance of the rules and regulations of the Commission and the laws of the State of Delaware.

3.2.2 Period of Authority

The State Steward's and judges' period of authority shall commence five (5) business days prior to the beginning of each race meeting and shall terminate with completion of their official business pertaining to the meeting.

3.2.3 Disciplinary Action

3.2.3.1 The State Steward and judges shall take notice of alleged misconduct or rule violations and initiate investigations into the matters.

3.2.3.2 The State Steward and judges shall have authority to charge any licensee for a violation of these rules, to conduct hearings and to impose disciplinary action in accordance with these rules.

3.2.3.3 The State Steward and judges may compel the attendance of witnesses and the submission of documents or potential evidence related to any investigation or hearing.

3.2.3.4 The State Steward and judges may at any time inspect license documents, registration papers and other documents related to racing.

3.2.3.5 The State Steward and judges have the power to administer oaths and examine witnesses.

3.2.3.6 The State Steward and judges may consult with the State Veterinarian to determine the nature and seriousness of a laboratory finding or an alleged medication violation.

3.2.3.7 The State Steward and judges may impose, but are not limited to, any of the following penalties on a licensee for a violation of these rules:

- 3.2.3.7.1 issue a reprimand;
- 3.2.3.7.2 assess a fine;
- 3.2.3.7.3 require forfeiture or redistribution of purse or award, when specified by applicable rules;
- 3.2.3.7.4 place a licensee on probation;
- 3.2.3.7.5 suspend a license or racing privileges;
- 3.2.3.7.6 revoke a license;
- 3.2.3.7.7 exclude from grounds under the jurisdiction of the Commission; or
- 3.2.3.7.8 any relief deemed appropriate.

3.2.3.8 The State Steward and judges may take any appropriate actions against any horse for a violation or attempted violation of these rules.

3.2.3.9 The State Steward and judges may suspend a license; or they may impose a fine in accordance with these Rules for each violation; or they may suspend and fine; or they may order that a person be ineligible for licensing.

3.2.3.10 A State Steward's or judges' ruling shall not prevent the Commission from imposing a more or less severe penalty.

3.2.3.11 The State Steward or judges may refer any matter to the Commission and may include recommendations for disposition. The absence of a State Steward's or judges' referral shall not preclude Commission action in any matter.

3.2.3.12 Purses, prizes, awards, and trophies shall be redistributed if the State Steward or judges or Commission order a change in the official order of finish.

3.2.3.13 All fines imposed by the State

Steward or judges shall be paid to the Commission within ten (10) days after the ruling is issued, unless otherwise ordered.

3.2.4 Protests, Objections and Complaints

The State Steward or judges shall investigate promptly and render a decision in every protest made to them. They shall maintain a record of all protests. The State Steward or judges shall file daily with the Commission a copy of each protest, objection or complaint and any related ruling. All protests must be in writing and lodged with the State Steward or judges not later than forty-eight (48) hours after the race in question.

3.2.5 Judges' Presence

A board of judges shall be present in the judges' stand during the contesting of each race.

3.2.6 Order of Finish for Pari-Mutuel Wagering

3.2.6.1 The judges shall determine the official order of finish for each race in accordance with the rules of the race (see Rule 7.0).

3.2.6.2 The decision of the judges as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the contesting of the race, shall be final for purposes of distribution of the pari-mutuel wagering pool.

3.2.7 Cancel Wagering

The State Steward or judges have the authority to cancel wagering and order refunds where applicable on an individual betting interest or on an entire race and also have the authority to cancel a pari-mutuel pool for a race or races, if such action is necessary to protect the integrity of pari-mutuel wagering.

3.2.8 Steward's List

3.2.8.1 The judges shall maintain a Steward's List of the horses which are ineligible to be entered in a race.

3.2.8.2 A horse that is unfit to race because it is dangerous, unmanageable or unable to show a performance to qualify for races at the meeting, scratched as a result of a high blood gas test, or otherwise unfit to race at the meeting may be placed on the Steward's List by the Presiding Judge and declarations and/or entries on the horse shall be refused. The owner or trainer shall be notified of such action and the reason shall be clearly stated. When any horse is placed on the Steward's List, the clerk of the course shall make a note on the eligibility certificate of such horse, showing the date the horse was put on the Steward's List the reason and the date of removal if the horse has been removed.

3.2.8.3 All horses scratched by a veterinarian for either lameness or sickness will be put on the Steward's List and can not race for seven (7) days from the date of the scratched race. Entries will be accepted during this seven (7) day period for a race to be contested after the seventh day.

3.2.8.3.1 Veterinarians may put a horse on the Steward's List for sickness or lameness for

more than seven (7) if necessary. In that instance, the horse may not race until proscribed number of days has expired. Entries will be accepted during this period for a race to be contested after the proscribed number of days has expired.

3.2.8.4 No Presiding Judge or other official at a fair meeting shall have the power to remove from the Steward's List and accept as an entry any horse which has been placed on a Steward's List and not subsequently removed therefrom for the reason that he/she is dangerous or an unmanageable horse. Such meetings may refuse declarations and/or entries on any horse that has been placed on the Steward's List and has not been removed therefrom.

3.2.8.5 No horse shall be admitted to any racetrack facilities in this jurisdiction without having had a negative official test for equine infectious anemia within twelve (12) months.

3.2.8.6 The judges may put any horse on the Steward's List for performance when such horse shows a reversal of form or does not race near its own capabilities. Such horse shall qualify in a time comparable to its known capabilities from one to three times, at the discretion of the judges, before being allowed to start.

3.2.8.7 Any horse put on the Steward's List as unmanageable or dangerous must qualify in a satisfactory manner for the judges at least two times.

3.2.8.8 The judges may put any horse on the Steward's List for being noncompetitive or unfit to race at the meeting.

3.2.8.9 The judges may place a horse on the Steward's List when there exists a question as to the exact identification, ownership or management of said horse.

3.2.8.10 A horse which has been placed on the Steward's List because of questions as to the exact identification or ownership of said horse, may be removed from the Steward's List when, in the opinion of the judges, proof of exact identification and/or ownership has been established.

3.2.8.11 A horse may not be released from the Steward's List without the permission of the judges.

3.2.9 List of Nerved Horses

The judges shall maintain a list of nerved horses which are on association grounds and shall make the list available for inspection by other licensees participating in the race meeting.

3.3 Racing Secretary

3.3.1 General Authority

The racing secretary is responsible for setting the conditions for each race of the race meeting, regulating the nomination of entries and determining the amounts of purses and to whom they are due. The racing secretary shall check and verify the eligibility of all horses entered.

3.3.2 Eligibility Certificates

The racing secretary is responsible for

receiving and safeguarding the eligibility certificates of all horses competing at the track or stabled on association grounds.

3.3.3 Race Information

The racing secretary shall be familiar with the age, class and competitive ability of all horses racing at the meeting.

3.3.4 Classifications

The racing secretary shall classify horses in accordance with these rules and list horses in the categories in which they qualify.

3.3.5 Listing of Horses

The racing secretary shall:

3.3.5.1 examine all entry forms and declarations to verify information as set forth therein; and

3.3.5.2 select the horses to start and the also eligible horses from the declarations in accordance with these rules.

3.3.5.3 provide the listing of horses in the daily program.

3.3.6 Nominations and Declarations

The racing secretary shall examine nominations and declarations and early closing events, late closing events and stakes events to verify the eligibility of all declarations and nominations and compile lists thereof for publication.

3.3.7 Conditions

The racing secretary shall establish the conditions and eligibility for entering races and cause them to be published to owners, trainers and the Commission and be posted in the racing secretary's office.

3.3.8 Posting of Entries

Upon completion of the draw each day, the racing secretary shall post a list of entries in a conspicuous location in his/her office and make the list available to the media.

3.3.9 Stakes and Entrance Money Records

The racing secretary shall be caretaker of the permanent records of all stakes and shall verify that all entrance monies due are paid not later than one hour prior to post time, regardless of whether the horse actually starts.

3.3.10 Winnings

3.3.10.1 For the purpose of establishing conditions, winnings shall be considered to include all monies and prizes won up to the time of the start of a race.

3.3.10.2 Winnings during the year shall be calculated by the racing secretary from the preceding January 1.

3.3.11 Cancellation of a Race

In case of unfavorable weather or other unavoidable cause, associations, upon notifying of the State Steward may postpone or cancel races.

3.4 Paddock Judge

3.4.1 General Authority

Under the direction and supervision of the Presiding Judge, the Paddock Judge shall have complete charge of all paddock activities, including but not limited to:

3.4.1.1 Ensuring that all horses entered in a heat or dash are on the racetrack at the time designated by the Presiding Judge to be formed in a parade line; that such horses are attended by their drivers unless specifically excused by the Paddock Judge; that all horses in heat or race parade from the paddock upon the track and before the grandstand not later than five (5) minutes before Post Time; and that drivers not engage in conversation during the post parade. A horse failing to parade without being excused by the Paddock Judge may be scratched from the race or its driver or trainer may be penalized;

3.4.1.2 Supervising the Identifier and Equipment Checker;

3.4.1.3 Supervising the paddock gate operators;

3.4.1.4 Ensuring that all horses are in the paddock at the time prescribed by the Presiding Judge, but in any event not less than one hour but not more than two hours prior to post time of the race in which the horse is to compete. Except for warm-up trips, no horse shall leave the paddock until called to the post;

3.4.1.5 Maintaining a proper check-in and check-out of horses and drivers. No driver, trainer, owner-trainer or groom once admitted to the paddock or receiving barn shall leave the same other than to warm up said horse until such race, or races, for which he was admitted is contested; provided, however, that in the event of an emergency, trainers or grooms may leave the paddock but only with the permission of the Paddock Judge, in which case the Paddock Judge shall maintain a written record thereof, which shall be delivered to the Presiding Judge. No person except an owner who has another horse racing in a later race, or an official, shall return to the paddock until all races of that program have been completed;

3.4.1.6 Directing the activities of the paddock blacksmith;

3.4.1.7 Ensuring that only properly authorized persons are permitted in the paddock, to wit:

3.4.1.7.1 Owners of horses competing on the date of the race and whose horses are in the paddock;

3.4.1.7.2 Trainers of horses competing on the date of the race and whose horses are in the paddock;

3.4.1.7.3 Drivers of horses competing on the date of the race and whose horses are in the paddock;

3.4.1.7.4 Grooms of horses competing on the date of the race and whose horses are in the paddock;

3.4.1.7.5 Officials whose duties require their presence in the paddock or receiving barn; and

3.4.1.7.6 Such other persons as are authorized by the Commission; Provided, that no more than two members of a registered stable, other than the driver,

shall be entitled to admission to the paddock on any racing day, except by permission of the Presiding or Paddock Judge, or written approval by the Commission;

3.4.1.7.7 Notifying the Presiding Judge of any change in racing equipment or shoes before the race;

3.4.1.7.8 Inspecting and supervising the maintenance of all emergency equipment kept in the paddock;

3.4.1.7.9 Notifying the judges of the reason for any horse returning to the paddock after having entered the track for the post parade and before the start of the race;

3.4.1.7.10 Supervising and maintaining the cleanliness of the paddock; and

3.4.1.7.11 Supervising the conduct of all persons in the paddock.

3.4.2 Report to the Presiding Judge

The Paddock Judge shall:

3.4.2.1 Immediately notify the Presiding Judge of anything that could in any way change, delay or otherwise affect the racing program; and

3.4.2.2 Report to the Presiding Judge any observed cruelty to a horse; and

3.4.2.3 Any other violations of these rules.

3.5 Horse Identifier & Equipment Checker

3.5.1 General Authority

The Horse Identifier & Equipment Checker shall be present for each race. The duties of the Identifier & Equipment Checker are:

3.5.1.1 Maintain a listing of all equipment worn, including shoes, and the tattoo or freeze brand number for each horse racing at the meeting;

3.5.1.2 Each time a horse races, identify the horse by checking the lip tattoo or freeze brand; and

3.5.1.3 Compare the type and condition of equipment actually being used by each horse for each race with the approved equipment listed; and

3.5.2 Report Violations

The Horse Identifier & Equipment Checker shall report to the Paddock Judge immediately any discrepancies or faulty equipment discovered by the investigations specified in this Rule, which findings are to be reported immediately to the Presiding Judge. The Presiding Judge's ruling in these matters is final.

3.6 Clerk of the Course

3.6.1 General Authority

The clerk of the course shall be responsible for keeping and verifying the judges' book and eligibility certificates provided by the U.S.T.A./C.T.A. and recording therein all required information and:

3.6.1.1 names and addresses of owners;

3.6.1.2 the standard symbols for medications, where applicable;

3.6.1.3 notations of placings, disqualifications and claimed horses;

3.6.1.4 notations of scratched or ruled out horses;

3.6.1.5 returning the eligibility certificate to the horse's owner or the owner's representative after the race, when requested;

3.6.1.6 notifying owners and drivers of penalties assessed by the officials;

3.6.1.7 assisting in drawing post positions, if requested; and

3.6.1.8 maintaining the Steward's List.

3.7 Official Starter

3.7.1 General Authority

3.7.1.1 The starter is responsible to provide a fair start for each race.

3.7.1.2 The starter shall be an employee or contractor of the association.

3.7.1.3 An assistant starter may be employed or contracted if deemed necessary by the association.

3.7.1.4 The starter shall ensure that the starter, the starter's assistant(s) and driver are cognizant of and capable of performing all required emergency procedures.

3.7.2 Report Violations

The official starter shall report violations of these rules occurring at the start of a race to the judges.

3.7.3 Disciplinary Action

The official starter shall have authority to assess fines and to suspend the license of drivers for any violation of these rules from the formation of the parade until the word "Go" is given.

3.7.4 Starter's List

The official starter or the starter's assistant shall school horses as may be necessary and shall prepare a list of horses not qualified to start, which shall be delivered to the judges and entered on the Steward's List. The Steward's List shall be posted in the racing secretary's office with the list of horses not qualified to start.

3.8 Official Charter

3.8.1 General Authority

The official charter is responsible for providing a complete and accurate chart of each race. An accurate chart shall include the following:

3.8.1.1 horse's name;

3.8.1.2 driver's name;

3.8.1.3 date and place of the race;

3.8.1.4 track size, if other than a half-mile track;

3.8.1.5 track condition and temperature;

3.8.1.6 type of race (trot or pace);

3.8.1.7 classification of race;

3.8.1.8 distance;

3.8.1.9 fractional times of the leading horse,

including the race time;

3.8.1.10 post position, position at the 1/4-mile, the 1/2-mile and the 3/4-mile poles and at the head of the stretch with lengths behind the leader and finish position with lengths behind the winner;

3.8.1.11 official order of finish;

3.8.1.12 individual time of each horse;

3.8.1.13 closing dollar odds (with favorite designated by an asterisk);

3.8.1.14 the standard symbols for breaks, park outs free legged pacers, and hobbled trotters where applicable;

3.8.1.15 the standard symbols for medications, where applicable;

3.8.1.16 in claiming races, the price for which the horse is entered to be claimed less allowances for age and sex;

3.8.1.17 names of the horses placed first, second and third by the State Steward and judges; and

3.8.1.18 notations of placings, disqualifications and claimed horses.

3.9 Official Timer

3.9.1 General Authority

The official timer shall accurately record the time elapsed between the start and finish of each race.

3.9.2 Timing Procedure

The time shall be recorded from the instant that the first horse leaves the point from which the distance is measured until the first horse reaches the finish line.

3.9.3 Timing Races

3.9.3.1 In every race, the time of each heat shall be accurately recorded by two timers or an approved electrical timing device, in which case, there shall be one timer.

3.9.3.2 Times of heats shall be recorded in minutes, seconds and fifths of a second.

3.9.3.3 Immediately following each heat, the elapsed time of the heat shall be publicly announced and/or posted on the totalisator board.

3.9.3.4 No unofficial timing shall be announced, posted or entered into the official record.

3.9.4 Error in Reported Time

3.9.4.1 In circumstances involving an error in timing, no time shall be announced, posted or recorded for that heat.

3.9.4.2 In any case of alleged error regarding a horse's official time, the time in question shall not be changed to favor the horse or its owner, except upon the sworn statement of the judges and official timers who officiated in the race.

3.10 Photo Finish Technician

3.11 Patrol Judge

3.11.1 General Authority

The Patrol Judge(s), when utilized, is

responsible for observing the race and reporting information concerning the race to the judges. If the track's video replay system is deemed adequate by the Commission, use of patrol judges is optional.

3.12 Program Director

3.12.1 General Authority

The program director is responsible for furnishing the public complete and accurate past performance information.

3.13 State Commission Veterinarian

3.13.1 General Authority

The State Commission Veterinarian shall:

3.13.1.1 be appointed by the Commission;

3.13.1.2 be a graduate veterinarian and be licensed to practice in the State of Delaware;

3.13.1.3 recommend to the judges any horse deemed unsafe to be raced, or a horse that it would be inhumane to allow to race;

3.13.1.4 place horses on the Veterinarian's List, when necessary, and remove horses from the Veterinarian's List;

3.13.1.5 place horses on the Bleeder List and remove horses from the Bleeder List;

3.13.1.6 maintain a continuing health and racing soundness record of each horse given a racing soundness inspection;

3.13.1.7 supervise the taking of all specimens for testing according to procedures approved by the Commission;

3.13.1.8 provide proper safeguards in the handling of all laboratory specimens to prevent tampering, confusion or contamination;

3.13.1.9 report to the Commission the names of all horses humanely destroyed or which otherwise expire at the meeting and the reasons therefore;

3.13.1.10 maintain all required records of postmortem examinations performed on horses which have died on association grounds;

3.13.1.11 refrain from directly treating or prescribing for any horse scheduled to participate during his/her term of appointment at any recognized meeting except in cases of emergency, accident or injury;

3.13.1.12 refuse employment or payment, directly or indirectly, from any owner or trainer of a horse racing or intending to race in this jurisdiction while employed as the official veterinarian for the Commission;

3.13.1.13 review and make recommendations regarding Commission license applications of practicing veterinarians;

3.13.1.14 cooperate with practicing veterinarians and other regulatory agencies to take measures to control communicable and/or reportable equine diseases;

3.13.1.15 periodically review all horse papers under the jurisdiction of the Commission to ensure

that all required test and health certificates are current and properly filed in accordance with these rules; and

3.13.1.16 be authorized to humanely destroy any horse deemed to be so seriously injured that it is in the best interests of the horse to so act.

3.13.2 Racing Responsibilities

With respect to the conduct of each race, and each race meeting authorized by the Commission, the State Commission Veterinarian shall:

3.13.2.1 be available to the racing secretary and/or State Steward or Presiding Judge prior to scratch time each racing day at a time designated by the State Steward or Presiding Judge, to inspect any horses and report on their condition as may be requested by the State Steward or by the judges;

3.13.2.2 inspect any horse when there is a question as to the physical condition of such horse;

3.13.2.3 recommend scratching a horse to the judges if, in the opinion of the State Commission Veterinarian, the horse is physically incapable of exerting its best effort to win;

3.13.2.4 inspect any horse which appears in physical distress during the race or at the finish of the race; and shall report such horse together with his/her opinion as to the cause of the distress to the judges;

3.13.2.5 refrain from directly treating or prescribing for any horse scheduled to participate during his/her term of appointment at any recognized meeting except in cases of emergency, accident or injury;

3.13.2.6 refuse employment or payment, directly or indirectly, from any owner or trainer of a horse racing or intending to race in the State of Delaware while employed as the State Veterinarian;

3.13.2.7 conduct soundness inspections on horses participating in races at the meeting;

3.13.2.8 place horses on or remove them from the State Commission Veterinarian's List.

3.13.3 State Commission Veterinarian's List

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

3.14 ~~Lasix~~ Bleeder Medication Veterinarian

3.14.1 General Authority

The ~~Lasix~~ Bleeder Medication veterinarian shall:

3.14.1.1 Be subject to the supervision of the State Veterinarian;

3.14.1.2 Be a graduate veterinarian and be licensed to practice in the State of Delaware;

3.14.1.3 Report to the State Lasix stall at least one-half hour before the first Lasix horse is due for Lasix injection (i.e., four and one-half hours before post time);

3.14.1.4 Record the name of the horse and the time that the Lasix is administered, and denote "IV" or "IM", as appropriate;

3.14.1.5 Report to the Paddock Judge any horse that fails to show, or is late to the State Lasix stall;

3.14.1.6 Administer ~~Lasix~~ Furosemide (Salix) to each horse on the Bleeder list, and administer Aminocaproic Acid in accordance with Rule ~~8.3.6~~ 8.3.5 of these Rules;

3.14.1.7 Collect fees for each injection at the time of administration; credit shall not be given at any time;

3.14.1.8 Turn in the list of horses and times of administration to the Paddock Judge prior to leaving each race day; and

3.14.1.9 Report any unusual findings to the Paddock Judge without delay.

3.14.2 Bleeder List

The ~~Lasix~~ Bleeder Medication Lasix veterinarian cannot place horses on the Bleeder List; the State Commission Veterinarian is the only person authorized to place horses on the Bleeder List.

3.15 Investigator

3.15.1 The Commission may appoint a racing inspector or investigator for each harness racing meet. Such racing inspector shall perform all duties prescribed by the Commission consistent with the purposes of this chapter. Such racing inspector shall have full and free access to the books, records, and papers pertaining to the pari-mutuel system of wagering and to the enclosure or space where the pari-mutuel system is conducted at any harness racing meeting to which he shall be assigned for the purpose of ascertaining whether the holder of such permit is operating in compliance with the Commission's rules and regulations. The racing inspector shall investigate whether such rules and regulations promulgated by the commission are being violated at such harness race track or enclosure by any licensee, patron, or other person. Upon discovering any such violation, the racing inspector shall immediately report his or her findings in writing and under oath to the Commission or its designee as it may deem fitting and proper. The racing inspector shall devote his full time to the duties of his office and shall not hold any other position or employment, except for performance of similar duties for the Thoroughbred Racing Commission.

3.15.2 Subject to the approval of the Commission, and under the direction of the Administrator of Racing, the Investigator may be delegated one or more of the following responsibilities:

3.15.2.1 Supervising the licensing function of the Commission, including performing background checks and fingerprinting applicants for licensure, and facilitating the Commission's participation in a uniform, multi-jurisdictional, reciprocal licensing scheme;

3.15.2.2 Consulting with track security and with law enforcement agencies both within and outside of Delaware;

3.15.2.3 Supervising the human and equine drug-testing programs provided for in these Rules;

3.15.2.4 Conducting vehicle and stall searches;

3.15.2.5 Intelligence gathering and dissemination;

3.15.2.6 Responding to patron complaints regarding the integrity of racing; and

3.15.2.7 Where appropriate, presenting complaints to the Commission for disposition, including complaints seeking disciplinary action against licensees of the Commission.

3.16 Administrator of Racing

The Commission may employ an Administrator of Racing who shall perform all duties prescribed by the Commission consistent with the purposes of this rule. The Administrator of Racing shall devote his full time to the duties of the office and shall not hold any other office or employment, except that he can perform the same duties as Administrator of Racing for the Thoroughbred Racing Commission. The Administrator of Racing shall be the representative for the Commission at all meetings of the Commission and shall keep a complete record of its proceedings and preserve, at its general office, all books, maps, documents, and papers entrusted to its care. He shall be the executive officer of the Commission and shall be responsible for keeping all Commission records and carrying out the rules and orders of the Commission. The Commission may appoint the Administrator of Racing to act as a hearing officer to hear appeals from administrative decisions of the steward or racing judges.

3.17 Any Other Person Designated by the Commission

The Commission may create additional racing official positions, as needed. Persons selected for these positions shall be considered racing officials and shall be subject to the general eligibility requirements outlined in Rule 3.1.1 of this chapter.

See 1 DE Reg. 504 (11/01/97)

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

See 2 DE Reg. 1764 (04/01/99)

See 4 DE Reg 336 (8/1/00)

See 5 DE Reg. 832 (10/1/01)

6.0 Types of Races

6.1 Types of Races Permitted

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

6.1.1 Overnight events which include:

6.1.1.1 Conditioned races;

6.1.1.2 Claiming races;

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

6.1.1.4 Schooling races; and

6.1.1.5 Matinee races

6.1.2 Added money events which include:

6.1.2.1 Stakes;

6.1.2.2 Futurities;

6.1.2.3 Early closing events; and

6.1.2.4 Late closing events

6.1.3 Match races

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

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

6.2 Overnight Events

6.2.1 General Provisions

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

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

6.2.1.3 A fair and reasonable racing opportunity shall be afforded both trotters and pacers in reasonable proportion from those available and qualified to race.

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

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

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

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

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

6.2.2 Conditions

6.2.2.1 Conditions may be based only on:

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

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

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

6.2.2.1.4 sex;

6.2.2.1.5 number of starts during a specified period of time;

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

6.2.2.1.7 the exclusion of schooling races; or

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

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

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

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

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

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

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

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

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

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

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

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

6.2.2.9 In overnight events, on a half mile racetrack there shall be no trailing horses. On a bigger racetrack there shall be no more than one trailing horse. At least eight feet per horse must be provided the starters in the front tier.

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

6.3 Claiming Races

6.3.1 General Provisions

6.3.1.1 Claiming Procedure and Determination of Claiming Price. -- The trainer or authorized agent entering a horse in a claiming race warrants that he/she has authorization from the registered owner(s) to enter said horse in a claiming race for the designated amount. In the event of a claim, the owner(s) or authorized agent shall submit a signed registration to the State Steward or Presiding Judge prior to receiving proceeds from the claim and the registration shall be immediately forwarded to the U.S.T.A. registrar for transfer.

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

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

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

6.3.1.5 The claiming price, including any allowances, of each horse shall be printed on the official

program adjacent to the horse's program number and claims shall be for the amount designated, subject to correction if printed in error.

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

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

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

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

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

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

6.3.2 Prohibitions on Claims

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

6.3.2.2 A person shall not directly or indirectly offer, or directly or indirectly enter into an agreement, to claim or not to claim or directly or indirectly

attempt to prevent another person from claiming any horse in a claiming race.

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

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

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

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

6.3.2.7 Any mare which has been bred shall not be declared into a claiming race for at least 30 days following the last breeding of the mare, and thereafter such a mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal. Any mare pronounced in foal shall not be declared into a claiming race. Where a mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding which occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the successful claimant provided the mare is subjected to a pregnancy examination within 18 days of the date of the claim, and is found pregnant as a result of that pregnancy examination. A successful claimant seeking to void the claim must file a petition to void said claim with the judges within 10 days after this pregnancy examination and shall thereafter be heard by the judges after due notice of the hearing to the parties concerned.

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

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

6.3.3 Claiming Procedure

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

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

6.3.3.3 The claim form shall be completed and signed by the claimant prior to placing it in an envelope provided for this purpose by the association and approved by the Commission. The claimant shall seal the envelope and

identify on the outside the date, time of day, race number and track name only.

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

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

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

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

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

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

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

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

6.3.3.12 Every horse entered in a claiming race shall race for the account of the owner who declared it in the event, but title to a claimed horse shall be vested in the successful claimant from the time the horse is deemed to have started, and the successful claimant shall become the owner of the horse, whether it be alive or dead, or sound or

unsound, or injured during or after the race. If a horse is claimed out of a heat or dash of an event having multiple heats or dashes, the judges shall scratch the horse from any subsequent heat or dash of the event.

6.3.3.13 A post-race ~~urinalysis~~ urine 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~~ 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, or if a blood sample exhibits a positive response to the erythropoietin (EPO) antibody test. The horse's halter must accompany the horse. Altering or removing the horse's shoes will be considered a violation, and, until the Commission chemist issues a report on his forensic analysis of the samples taken from the horse, the claimed horse shall not be permitted to be entered to race.

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

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

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

6.3.3.17 The judges shall rule a claim invalid:

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

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

6.3.3.18 Mares and fillies who are in foal are ineligible to claiming races. Upon receipt of the horse, if

a claimant determines within 48 hours that a claimed filly or mare is in foal, he/she may, at their option, return the horse to the owner of the horse at the time of entry for the race from which the horse was claimed.

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

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

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

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

6.4 Added Money Events

6.4.1 General Provisions

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

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

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

6.4.2 Conditions

Conditions for added money events must specify:

6.4.2.1 which horses are eligible to be nominated;

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

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

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

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

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

6.4.3 Requirements of Sponsors/Presenters

6.4.3.1 Sponsors or presenters of stakes, futurities or early closing events shall provide a list of nominations to each nominator or owner and to the associations concerned within sixty (60) days after the date

on which nominations close, other than for nominations payable prior to January 1st of a horse's two-year-old year.

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

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

6.4.3.4 The Commission may require the sponsor or presenter to file with the Commission a surety bond in the amount of the fund to ensure faithful performance of the conditions, including a guarantee that the event will be raced as advertised and all funds will be segregated and all premiums paid. Commission consent must be obtained to transfer or change the date of the event, or to alter the conditions. In any instance where a sponsor or presenter furnishes the Commission with substantial evidence of financial responsibility satisfactory to the Commission, such evidence may be accepted in lieu of a surety bond.

6.4.4 Nominations, Fees and Purses

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

6.4.4.2 Dates for added money event nominations payments are:

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

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

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

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

6.4.4.3 Dates for added money event sustaining payments are:

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

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

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

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

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

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

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

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

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

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

6.4.4.12 If conditions for early or late closing events allow transfer for change of gait, such transfer shall be to the lowest class the horse is eligible to at the adopted gait, eligibility to be determined at the time of

closing nominations. The race to which the transfer may be made must be the one nearest the date of the event originally nominated to. Two-year-olds, three-year-olds, or four-year-olds, nominated in classes for their age, may only transfer to classes for the same age group at the adopted gait to the race nearest the date of the event they were originally nominated to, and entry fees to be adjusted.

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

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

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

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

6.4.4.17 The maximum size of fields permitted in any added money event shall be no more than one trailer unless otherwise approved by the Commission.

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

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

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

6.4.4.21 Where a race other than a stake or futurity is divided, each division must race for at least 75

percent of the advertised purse.

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

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

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

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

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

6.5 Cancellation of a Race

In case of cancellation of races, see Rule 7.3

--"Postponement and Cancellation."

6.6 Delaware Owned or Bred Races

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

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

6.6.3 All horses to be entered in Delaware owned or bred races must first be registered and approved by the Commission or its designee. The Commission may establish a date upon which a horse must be wholly-owned by a Delaware resident(s) to be eligible to be nominated, entered, or raced as Delaware-owned. In the case of a corporation seeking to enter a horse in a Delaware-owned or bred event as a Delaware-owned entry, all owners, officers, shareholders, and directors must meet the requirements for a Delaware resident specified below. In the case of an association or other entity seeking to enter a horse in a Delaware owned or bred event as a Delaware-owned entry, all owners must meet the requirements for a Delaware resident specified below. Leased horses are ineligible as Delaware owned entries unless both the lessor and the lessee are Delaware residents as set forth in this Rule and 3 Del.C. section 10032.

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

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

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

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

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

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

6.6.5 The Commission or its designee shall determine all questions about a person's eligibility to participate in Delaware-owned races. In determining whether a person is a Delaware Resident, the term "resident" shall mean the place where an individual has his or her

permanent home, at which that person remains when not called elsewhere for labor or other special or temporary purposes, and to which that person returns in seasons of repose. The term "residence" shall mean a place a person voluntarily fixed as a permanent habitation with an intent to remain in such place for the indefinite future.

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

6.6.6.1 Where the person lives and has been living;

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

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

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

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

6.6.6.6 The state in which the person is registered to vote;

6.6.6.7 Ownership of property in Delaware or outside of Delaware;

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

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

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

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

6.6.7 Each owner and trainer, or the authorized agent of an owner or trainer, or the nominator (collectively, the "entrant"), is required to disclose the true and entire ownership of each horse with the Commission or its designee, and to disclose any changes in the owners of the registered horse to the Commission or its designee. All licensees and racing officials shall immediately report any questions concerning the ownership status of a horse to the

Commission racing officials, and the Commission racing officials may place such a horse on the steward's or judge's list. A horse placed on the steward's or judge's list shall be ineligible to start in a race until questions concerning the ownership status of the horse are answered to the satisfaction of the Commission or the Commission's designee, and the horse is removed from the steward or judge's list.

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

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

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

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

6.6.12 Any person whose license is suspended or revoked under subsection (k) of this rule shall be required to apply for reinstatement of licensure and the burden shall be on the applicant to demonstrate that his or he licensure will not reflect adversely on the honesty and integrity of harness racing or interfere with the orderly conduct of a race meeting. Any person whose license is reinstated under this subsection shall be subject to a two year probationary period, and may not participate in any Delaware-owned or bred race

during this probationary period. Any further violations of this section by the licensee during the period of probationary licensure shall, absent extraordinary circumstances, result in the Commission imposing revocation of all licensure privileges for a five year period along with any other penalty the Commission deems reasonable and just.

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

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

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

See 2 DE Reg. 1765 (4/1/99)

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

See 3 DE Reg 1520 (5/1/00)

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

See 4 DE Reg 1652 (4/1/01)

See 5 DE Reg. 1691 (3/1/02)

See 6 DE Reg. 862 (1/1/03)

8.0 Veterinary Practices, Equine Health Medication

8.1 General Provisions

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

8.2 Veterinary Practices

8.2.1 Veterinarians Under Authority of Commission Veterinarian

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

8.2.2 Treatment Restrictions

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

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

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

8.2.2.2.2 a non-injectable substance

on the direction or by prescription of a licensed veterinarian; or

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

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

8.3 Medications and Foreign Substances

Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the State Steward or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International and shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The State Steward may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

8.3.1 Uniform Classification Guidelines

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

8.3.1.1 Class 1

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

8.3.1.2 Class 2

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

8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;

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

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

8.3.1.2.4 Drugs with prominent CNS depressant action;

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

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

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

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

8.3.1.3 Class 3

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

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

8.3.1.3.2 A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not

related to the anesthetic effect of the drug (procaine);

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

8.3.1.3.4 Primary vasodilating/hypotensive agents; and

8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

8.3.1.4 Class 4

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

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

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

8.3.1.4.2.1 Drugs used solely as topical vasoconstrictors or decongestants

8.3.1.4.2.2 Drugs used as gastrointestinal antispasmodics

8.3.1.4.2.3 Drugs used to void the urinary bladder

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

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

8.3.1.4.4 Mineralocorticoid drugs;

8.3.1.4.5 Skeletal muscle relaxants;

8.3.1.4.6 Anti-inflammatory

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

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

8.3.1.4.6.2 Corticosteroids (glucocorticoids); and

8.3.1.4.6.3 Miscellaneous anti-inflammatory agents.

8.3.1.4.7 Anabolic and/or androgenic steroids and other drugs;

8.3.1.4.8 Less potent diuretics;

8.3.1.4.9 Cardiac glycosides and antiarrhythmics including:

8.3.1.4.9.1 Cardiac glycosides;

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

8.3.1.4.9.3 Miscellaneous

cardiotonic drugs.

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

8.3.1.4.11 Antidiarrheal agents; and

8.3.1.4.12 Miscellaneous drugs

including:

8.3.1.4.12.1 Expectorants with little or no other pharmacologic action;

8.3.1.4.12.2 Stomachics; and

8.3.1.4.12.3 Mucolytic agents.

8.3.1.5 Class 5

Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.

8.3.2 Penalty Recommendations

The following penalties and disciplinary measures may be imposed for violations of these medication and prohibited substances rules:

8.3.2.1 Class 1- in the absence of extraordinary circumstances, a minimum license revocation of eighteen months and a minimum fine of \$5,000, and a maximum fine up to the amount of the purse money for the race in which the infraction occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.2 Class 2- in the absence of extraordinary circumstances, a minimum license revocation of nine months and a minimum fine of \$3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.3 Class 3- in the absence of extraordinary circumstances, a minimum license revocation of ninety days, and a minimum fine of \$3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

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

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

8.3.2.6 In determining the appropriate penalty with respect to a medication rule violation, the State Steward or other designee of the Commission may use his discretion in the application of the foregoing penalty recommendations, and shall consult with the State Veterinarian, the Commission veterinarian and/or the Commission chemist to determine the seriousness of the laboratory finding or the medication violation. Aggravating or mitigating circumstances in any case should be considered and greater

or lesser penalties and/or disciplinary measures may be imposed than those set forth above. Specifically, if the State Steward or other designee of the Commission determine that mitigating circumstances warrant imposition of a lesser penalty than the recommendations suggest, he may impose a lesser penalty. If the State Steward or other designee of the Commission determines that aggravating circumstances require imposition of a greater penalty, however, he may only impose up to the maximum recommended penalty, and must refer the case to the Commission for its review, with a recommendation for specific action. Without limitation, the presence of the following aggravating circumstances may warrant imposition of greater penalties than those recommended, up to and including a lifetime suspension:

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

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

8.3.2.6.3 Violations which endanger the life or health of the horse.

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

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

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

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

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

8.3.2.9 At the discretion of the State Steward

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

8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

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

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

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

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

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

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

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

accordance with the penalty recommendation applicable to a Class 2 substance.

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

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

8.3.4 Medical Labeling

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

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

8.3.4.2.1 the name of the product;

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

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

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

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

8.3.5 Furosemide (~~Lasix~~) (Salix) and Aminocaproic Acid (Amicar)

8.3.5.1 General

Furosemide (~~Lasix~~) (Salix) and Aminocaproic Acid (Amicar) may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. ~~Except under the~~

~~instructions of the Commission Veterinarian for the purpose of removing a horse from the Steward's List or to facilitate the collection of a post-race urine sample, Furosemide (~~Lasix~~) or Furosemide with Aminocaproic Acid shall be permitted only after the Commission Veterinarian has placed the horse on the Bleeder List or to facilitate the collection of a post-race urine sample.~~

8.3.5.2 Method of Administration

~~(Lasix) Furosemide or Furosemide with Aminocaproic Acid shall be administered intravenously by a the licensed practicing Bleeder Medication Veterinarian, unless the Commission Veterinarian he/she determines that a horse cannot receive an intravenous administration of (~~Lasix~~) Furosemide or Furosemide with Aminocaproic Acid, and gives permission for an intramuscular administration must be authorized by the Presiding Judge or his/her representative; provided, however, that once (~~Lasix~~) Furosemide or Furosemide with Aminocaproic Acid is administered intramuscularly, the horse shall remain in a detention area under the supervision of a Commission representative until it races.~~

8.3.5.3 Dosage

~~Lasix Aminocaproic Acid shall be administered to a horse on the Bleeder List only by the licensed Bleeder Medication Veterinarian, who will administer not more than 7.5 grams or less than 2.5 grams intravenously. Furosemide shall be administered to horses on the Bleeder List only by a the licensed practicing Bleeder Medication Veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:~~

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

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

8.3.5.3.3 ~~2~~ The dosage administered may not vary by more than 250 milligrams from race to race without the permission of the Commission Veterinarian.

8.3.5.4 Timing of Administration

Horses must be presented at their assigned stalls in the paddock for Aminocaproic Acid treatment. Aminocaproic Acid will be administered not more than 90 minutes (1 1/2 hours) and not less than 60 minutes (1 hour) prior to post time of their respective races and must be treated prior to going on the track the first time. Failure to meet this time frame will result in scratching the horse and the trainer

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

8.3.5.5 Veterinary Charges

It is the responsibility of the owner or trainer, prior to the administration of the medication, to pay the licensed ~~practicing~~ Bleeder Medication Veterinarian at the rate approved by the Commission. No credit shall be given without approval of the Bleeder Medication Veterinarian.

8.3.5.6 Restrictions

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

8.3.5.7 Post-Race Quantification

The presence of Aminocaproic Acid in a horse following the running of the race in which it was not declared or reported, may result in the disqualification of the horse or other sanctions being imposed upon the trainer and the administering veterinarian.

Conversely, the absence of a bleeder medication following the running of a race, which was declared and reported may result in the disqualification of the horse and other sanctions being imposed upon the trainer and the bleeder Medication Veterinarian

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

8.3.5.7.1.1 Was administered intramuscularly as provided in 8.3.5.2; or

8.3.5.7.1.2 Exceeded 500 milligrams as provided in 8.3.5.3.2 1.

8.3.5.7.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of ~~1.010 or lower~~ less than 1.01, and provided that the dosage of furosemide was not administered intramuscularly as provided in ~~8.3.5.3.2~~ 8.3.5.2 or exceeded 500 milligrams as provided in 8.3.5.3.2 1., then a penalty shall be imposed as follows:

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

8.3.5.7.2.2 If such overage is the second violation of this rule within a 12-month period: Up to

a \$1,000 fine and loss of purse.

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

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

8.3.5.8 Reports

8.3.5.8.1 The ~~licensed~~ practicing Bleeder Medication Veterinarian who administers ~~Lasix~~ Aminocaproic Acid or Furosemide or Furosemide with Aminocaproic Acid to a horse scheduled to race shall prepare a written certification indicating the time, dosage and method of administration.

8.3.5.8.2 The written certification shall be delivered to a Commission representative designated by the ~~State Steward~~ Judges at least within one (1) hour of the last scheduled race for that day before the horse is scheduled to race.

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

8.3.5.9 Bleeder List

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

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

8.3.5.9.1.1.1 during a race;

8.3.5.9.1.1.2 immediately

post-race or post-exercise on track; or

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

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

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

identification of bleeders are satisfactory to the Commission Veterinarian.

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

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

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

8.3.5.9.4.1 1st time - 10 days;

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

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

8.3.5.9.4.4 4th time - barred for life.

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

8.3.5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a 10-day rest period following such request, and then re-qualifies. A horse may discontinue the use of Aminocaproic Acid without a ten (10) day rest period or having to requalify provided the horse was on Aminocaproic Acid for thirty (34) days or more. In addition, once a horse discontinues the use of Aminocaproic Acid, it is prohibited from using said medication for ninety (90) days from the date of its last administration for Aminocaproic Acid.

8.3.5.9.7 Any horse on the Bleeder List which races in a jurisdiction where it is not eligible for bleeder medication, whether such ineligibility is due to the fact that it does not qualify for bleeder medication in that jurisdiction or because bleeder medication is prohibited in that jurisdiction, shall automatically remain on the Bleeder List at the discretion of the owner or trainer, provided that such decision by the owner or trainer must be declared at the time of the first subsequent entry in Delaware, and the ~~Lasix Furosemide and Aminocaproic Acid~~ symbols in the program

shall appropriately reflect that the horse did not receive ~~Lasix Furosemide or Furosemide with Aminocaproic Acid~~ its last time out. Such an election by the owner or trainer shall not preclude the Commission Veterinarian, State Steward or Presiding Judge from requiring re-qualification whenever a horse on the Bleeder List races in another jurisdiction without bleeder medication, and the integrity of the Bleeder List may be questioned.

8.3.5.9.8 Any horse on the Bleeder List which races without ~~Lasix Furosemide or Furosemide with Aminocaproic Acid~~ in any jurisdiction which permits the use of ~~Lasix Furosemide or Furosemide with Aminocaproic Acid~~ shall automatically be removed from the Bleeder List. In order to be restored to the Bleeder List, the horse must demonstrate EIPH in accordance with the criteria set forth in subdivision ~~+~~ 8.3.5.9.1 above. If the horse does demonstrate EIPH and is restored to the Bleeder List, the horse shall be suspended from racing in accordance with the provisions of ~~8.3.6.4~~ 8.3.5.9.4 above.

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

8.3.5.10 Medication Program Entries

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

8.3.6 Phenylbutazone (Bute)

8.3.6.1 General

8.3.6.1.1 Phenylbutazone or oxyphenbutazone may be administered to horses three years of age and older in such dosage amount that the official test sample shall contain not more than 2.0 micrograms per milliliter of blood plasma. Phenylbutazone or oxyphenbutazone is not permissible at any level in horses two years of age and if phenylbutazone or oxyphenbutazone is present in any post-race sample from a two year old horse, said horse shall be disqualified, shall forfeit any purse money, and the trainer shall be subject to penalties including up to a \$1,000 fine and up to a fifty day suspension.

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

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

8.3.6.1.3.1 For an average between

2.6 and less than 5.0 micrograms per milliliter:

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

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

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

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

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

8.4 Testing

8.4.1 Reporting to the Test Barn

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

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

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

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

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

8.4.2 Sample Collection

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

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

8.4.3 Procedure for Taking Specimens

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

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

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

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

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

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

8.4.3.3.1 The owner;

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

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4

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

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

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

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

8.4.3.5.2 The Commission Veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

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

8.4.3.5.2.3 Place the detached

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

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

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

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

8.4.3.5.6 When the Commission chemist has reported that the “primary” sample delivered contains no prohibited drug, the “secondary” sample shall be properly disposed.

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

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

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

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

8.4.3.5.10.1 If testing of the “secondary” sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing

within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

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

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

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

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

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

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

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

8.5 Trainer Responsibility

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

8.5.1 The trainer is responsible for the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted

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

8.5.2 A trainer shall prevent the administration of any drug or medication or other foreign substance that may cause a violation of these rules.

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

8.5.4 The trainer is responsible for:

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

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

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

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

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

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

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

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

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

registration;

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

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

8.5.5.9 maintaining a knowledge of the medication record and status;

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

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

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

8.5.5.13 ensuring proper bandages, equipment and shoes;

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

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

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

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

8.6 Physical Inspection of Horses

8.6.1 Veterinarian's List

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

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

8.6.2 Postmortem Examination

8.6.2.1 The Commission may conduct a postmortem examination of any horse that is injured in this jurisdiction while in training or in competition and that subsequently expires or is destroyed. In proceeding with a

postmortem examination the Commission or its designee shall coordinate with the trainer and/or owner to determine and address any insurance requirements.

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

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

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

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

8.7 Prohibited Practices

8.7.1 The following conduct shall be prohibited for all licensees:

8.7.1.1 The possession and/or use of a drug substance, or medication, specified below for which a recognized analytical method has not been developed to detect and confirm the administration of such substance including but not limited to erythropoietin, darbepoietin, and perfluorcarbon emulsions; or the use of which may endanger the health and welfare of the horse or endanger the safety of the driver; or the use of which may adversely affect that integrity of racing.

8.7.1.2 The possession and/or use of a drug, substance, or medication that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States.

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

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

See 3 DE Reg 1520 (5/1/00)

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

See 4 DE Reg 336 (8/1/00)

See 5 DE Reg. 832 (10/1/01)

See 5 DE Reg. 1691 (3/1/02)

See 6 DE Reg. 862 (1/1/03)

DEPARTMENT OF EDUCATION

14 DE Admin. Code 220

Statutory Authority: 14 Delaware Code,
Section 220 (14 Del.C. §220)

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

220 Diversity

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend regulation 220 Diversity. The regulation defines diversity and requires the local school districts to take certain steps to infuse diversity concepts into student classrooms. The amendments update the language to focus on issues of inclusion and diversity and since it is a regulation of the Department of Education the reference to the State Board of Education has been eliminated. Regulation 220 Diversity was previously advertised for re-adoption in the November 1, 2003 Register of Regulations but it is now being re-advertised as an amended regulation with the changes indicated.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help to contribute to student achievement by promoting diversity.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will assist in supporting concepts that support equitable education opportunities.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses diversity not student health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses diversity not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the 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 the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is no less burdensome method for addressing the purpose of the amended 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 local school boards of compliance with the amended regulation.

***PLEASE NOTE THAT REGULATION 220 IS A RE-PROPOSAL. THE ORIGINAL PROPOSED REGULATION APPEARED IN THE NOVEMBER 1, 2003 REGISTER AT PAGE 554.**

220 Diversity

1.0 Definition: A school community that values diversity is one which embraces and builds on the strengths of individual and group differences, and by so doing enriches the educational program for all students. A curriculum that is ~~multicultural and~~ inclusive of many racial, ethnic, regional, religious, linguistic, and socio-economic groups, and which gives visibility to both women and men, to people of all ages, and to persons with disabilities, affirms the richness of our pluralistic society. The Secretary of Education ~~and the State Board of Education~~ believes that students achieve their best in classrooms where diversity is commonplace.

2.0 Each school district shall:

2.1 Infuse information on diverse cultural groups throughout the K-12 curriculum in order to equip students with the knowledge and skills necessary to participate productively in a culturally diverse society.

2.2 Provide professional development to equip all teachers with various instructional techniques and best practices ~~for infusing multicultural information into the curriculum and effectively meeting~~ to effectively meet the

needs of diverse learners.

2.3 Describe in district ~~strategic~~ plans and school plans how disparities and gaps in student achievement associated with the student's gender, race, ethnicity, socioeconomic status, limited English proficiency, or disability will be identified and eliminated.

2.4 Provide student counseling, assessment, discipline and placement that is sensitive to the needs of diverse populations.

2.5 Provide appropriate instruction to limited English proficient students so that they will have success in a mainstream classroom where the medium of instruction is English.

2.6 Describe in the district ~~strategic~~ plan a strategy to attract and retain a highly skilled and committed faculty and staff reflective of the diversity in the school community.

2.7 Enact measures to avoid and address inequitable and prejudicial behaviors among employees and students.

2.8 Describe in the school plans specific ways principals and building staff create an atmosphere which recognizes, accepts and values diversity as a positive, integral resource of a democratic society.

See 2 DE Reg. 1244 (1/1/99)

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

225 Prohibition of Discrimination

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend regulation 225 Prohibition of Discrimination by adding the word "age" after the word disability and adding the word "unlawful" before the word excluded. The regulation is a statement of non-discrimination in programs and activities approved by the Department of Education. Since it is a regulation of the Department of Education, the reference to the State Board of Education was removed. The Regulation 225 Prohibition of Discrimination was previously advertised for re-adoption in the November 1, 2003 Register of Regulations but it is now being re-advertised as an amended regulation with the changes indicated.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses nondiscrimination as required by federal statute.

2. Will the amended regulation help ensure that all

students receive an equitable education? The amended regulation addresses non discrimination which contributes to providing for an equitable education for all students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses non-discrimination not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is about non-discrimination which is a part of students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the 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 the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The regulation is required by federal statute.

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

***PLEASE NOTE THAT REGULATION 225 IS A RE-PROPOSAL. THE ORIGINAL PROPOSED REGULATION APPEARED IN THE NOVEMBER 1, 2003 REGISTER AT PAGE 556.**

225 Prohibition of Discrimination

1.0 No person in the State of Delaware, shall, on the basis of

race, color, creed, national origin, disability, age or gender, be unlawfully excluded from participation in, ~~be~~ denied the benefits of, or ~~be~~ subjected to discrimination under any program or activity receiving approval or financial assistance from or through ~~the Delaware State Board of Education and/or~~ the Delaware Department of Education.

See 2 DE Reg. 1246 (1/1/99)

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

235 Teacher of the Year

A. Type of Regulatory Action Required
Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 235 Teacher of the Year. The amendments to sections 1.0 and 2.0 are necessary to align the regulation with current practice and changes were made to 2.1 to incorporate the involvement of the charter schools.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses procedures for the teacher of the Year program not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses procedures for the Teacher of the Year program not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses procedures for the Teacher of the Year program not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses procedures for the Teacher of the Year program not students' legal rights.

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

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

makers at the local board and school levels.

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The regulations are required by *Delaware Code*.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The amended regulation does not add any additional cost to the state and local boards.

235 Teacher of the Year Award

This program shall be administered in accordance with 14 **Del.C.** Chapter 89, and the following rules and regulations.

1.0 Qualifications ~~To be considered for the Teacher of the Year award, a person shall have taught, continuously or intermittently, for an accumulative period of nine months or more previous to the date of such person's nomination; shall have been formally nominated; and be actively teaching in this State at the time of nomination. A nominee shall be a person fully certified by the Department of Education for the position held.~~ To be considered for the Teacher-of-the-Year award, a person shall have taught, continuously or intermittently, for an accumulative period of three years or more previous to the date of such person's nomination; shall have been formally nominated; and be actively teaching in this state at the time of nomination. A nominee shall have met all the requirements for a Standard Certificate for the position held, as approved by the Professional Standards Board and the State Board of Education.

2.0 Nominations - The following shall apply in preparing nominations in accordance with the requirements of the Act.

2.1 ~~The Department of Education shall annually send to each school district superintendent detailed instructions and proper forms for the presentation of nominees. Each district superintendent is invited to nominate one teacher employed~~

~~by the district. The Department of Education shall meet annually with the district coordinators of the Teacher of the Year Program and the coordinator for the charter schools for the purpose of providing them with detailed instructions and proper forms for the presentation of nominees. Each district is invited to nominate one teacher employed by the district and the charter schools are invited to select one nominee to represent all of the charter schools.~~

2.2 Nominees shall be skillful and dedicated teachers, pre-kindergarten through Grade 12, who plan to continue as teachers. Personnel whose main responsibilities are administrative or supervisory, such as principals or guidance counselors, are not eligible.

~~2.3 Nominees shall have the respect and admiration of students, parents, and co-workers. They should play active and useful roles in their communities as well as in their schools. They should be poised and articulate and have the energy and equanimity to be able to withstand a busy schedule.~~

~~2.4 The most important qualification is a superior ability to inspire students of all backgrounds and abilities to learn.~~

~~2.5~~ 2.3 Each district Nominees shall submit a portfolio describing the nominee themselves and setting forth ~~her or his~~ their positions on educational issues. Format will be based on ~~that of~~ the National Teacher of the Year program.

~~2.6 Staff members of the Department shall review each portfolio and shall observe each teacher at work. Based on reading of the portfolios and observations, the Department selectors will designate not more than five finalists for consideration by judges.~~

~~2.7 Judges from outside of the Department shall evaluate the finalists. Those invited as judges will be the three most recent previous state Teachers of the Year; the president of the State PTA; the president of the State Student Council Association; and a member of the State Board of Education.~~

~~2.8 The judges shall recommend one person for the Secretary of Education to declare as state Teacher of the Year.~~

2.4 Following the submission of the portfolios, selected Department of Education staff members and selected former state and local district Teachers of the Year shall be assigned in pairs to read the portfolios of two nominees and observe those nominees in the classroom based on the criteria stipulated in the Teacher of the Year Nomination Information Document that is updated each year. Another group of Department of Education Staff members are assigned to read all of the portfolios and rate them based on forms found in the Teacher of the Year Nomination Information Document. Based on the numerical ratings from both the portfolio readers and from the observations, three nominees shall be identified as finalists for consideration by a panel of judges.

2.5 The panel of judges shall include: the current State

Teacher of the Year; the President of the State Congress of Parents and Teachers; the President of the State Student Council Association; a member of the State Board of Education; a representative of the Chamber of Commerce; the President of the Delaware State Education Association; and the Chair of the Professional Standards Board or, if necessary, their designees.

2.6 The judges shall recommend one person for the Secretary of Education to declare as the State Teacher of the Year.

See 3 DE Reg. 104 (7/1/99)

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

**511 Credit Requirements for High School Graduation
515 High School Diplomas and Certificate
of Performance
520 Options for Awarding Credit Toward High School
Graduation**

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend regulations 511 Credit Requirements for High School Graduation, 515 High School Diplomas and Certificate of Performance and 520 Options for Awarding Credit Toward High School Graduation by combining them into a single regulation 505 High School Graduation Requirements and Diplomas. Regulation 520 Options for Awarding Credit Toward High School Graduation was under review as per the five year review cycle and the Department decided that combining these three regulations was a more efficient and helpful method of presenting the regulatory material contained in these regulations. In 2.1.5 the words nationally accredited were removed from correspondence schools because the meaning was not universally understood and in addition, schools and districts make the primary decision as to the quality of any correspondence schools under consideration for use for high school credit.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation simply combines three separate regulations into a single regulation for clarity and ease of use.

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

regulation simply combines three separate regulations into a single regulation for clarity and ease of use.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation simply combines three separate regulations into a single regulation for clarity and ease of use.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation simply combines three separate regulations into a single regulation for clarity and ease of use.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The amended regulation simply combines three separate regulations into a single regulation for clarity and ease of use.

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 State and to the local school boards of compliance with the amended regulation.

~~**515 High School Diplomas and Certificate of
Performance**~~

~~1.0 A State sanctioned diploma shall be granted to students who meet the state and local district requirements for graduation pursuant to regulation 511 Credit Requirements for High School Graduation and to 14 Del.C.~~

~~§152(b)(c)and(d).~~

~~2.0 A State sanctioned certificate of performance will be granted to students who meet the requirements of 14 Del. C. §152 (e).~~

~~3.0 Diplomas from one school year shall not be issued after December 31 of the next school year.~~

~~4.0 Duplicate diplomas or certificates of performance will not be issued, but legitimate requests for validation of the diploma or the certificate of performance will be satisfied through a letter of certification. Requests for diploma information from graduates of Delaware high schools should be directed to the high school the student was attending at the time of graduation. If the school does not have the records then the student should contact the Department of Education in Dover for a notarized letter of certification that contains the name of the applicant, the name of the school, the date of graduation, and the diploma registry number (if available).~~

~~5.0 State High School Diploma for World War II veterans pursuant to 14 Del. C. § 159 (a) (b) (e)).~~

~~5.1 "World War II Veteran" means any veteran who performed wartime service between December 7, 1941 and December 31, 1946. If the veteran was in the service on December 31, 1946, continuous service before July 16, 1947 is considered World War II.~~

~~5.2 The Department of Education shall provide a high school diploma to any World War II veteran who:~~

~~5.2.1 Left a Delaware high school prior to graduation in order to serve in the armed forces of the United States.~~

~~5.2.2 Did not receive a high school diploma, or received a G.E.D., as a consequence of such service and;~~

~~5.2.3 Was discharged from the armed forces under honorable circumstances.~~

~~5.3 The diploma may also be awarded posthumously if the deceased veteran meets the qualifications in 4.2.1 through 4.2.3.~~

~~5.4 Applications for this high school diploma shall be made on forms designated by the Delaware Department of Education and the Delaware Commission of Veterans Affairs and shall have a copy of the candidate's honorable discharge papers attached to the application.~~

~~See 5 DE Reg. 625 (9/1/01)~~

520 Credit Requirements for High School Graduation

~~1.0 No public Credit Requirements for High School Graduation public school student shall be granted a State of Delaware Diploma unless such student shall have successfully completed a minimum of twenty-two credits in order to graduate including:~~

~~4 credits in English Language Arts, 3 credits in mathematics, 3 credits in science, 3 credits in social studies,~~

~~1 credit in physical education, 1/2 credit in health, 1 credit in computer literacy, 3 credits in a career pathway, and 3 1/2 credits in elective courses.~~

~~1.1 Definitions:~~

~~1.1.1 "Credit" means a minimum of 135 hours of actual classroom instruction or a demonstration of competency.~~

~~1.1.2 "Credit for Computer Literacy" means credit granted toward graduation at any point when the student can demonstrate competency in the required skill areas either through an integrated approach, a specific course, or a demonstration of accumulated knowledge over the student's educational career.~~

~~1.1.3 "Career Pathway" means a planned program of sequenced or specialized courses designed to develop knowledge and skills in a particular career or academic area.~~

~~2.0 Local school boards may establish requirements over and above the minimum number of credits required by the State Department of Education.~~

~~See 4 DE Reg. 995 (12/1/00)~~

520 Options for Awarding Credit Toward High School Graduation

~~1.0 The following options are approved by the Department of Education as means for awarding credit toward high school graduation. In all cases listed the option or options selected shall be approved ahead of time by the local school board or their designee(s) and shall incorporate the appropriate state content standards.~~

~~1.1 Courses taken at or through an accredited community college, two or four year college.~~

~~1.2 Voluntary community service as defined in 14 Del.C. §§ 8901A, 8902A.~~

~~1.3 Supervised work experience in the school and the community which meets the educational objectives or special career interest of the individual student.~~

~~1.4 Independent Study.~~

~~1.5 Nationally Accredited Correspondence Courses.~~

~~1.6 Distance Learning Courses. These courses may be synchronous or asynchronous via videos or online format.~~

~~1.7 High school courses taken while in the middle school in conjunction with an articulated agreement between the district middle school and the district high school(s).~~

~~1.8 Course credit transferred from another high school.~~

~~1.9 Course credit earned through summer or evening school classes, as a member of the military service and/or as part of the James H. Groves Adult High School.~~

~~1.10 Tutoring programs taught by a teacher certified in the subject being taught.~~

~~1.11 Course credit awarded by agencies or instrumentalities of the state other than public schools which~~

~~provide educational services to students. A description of the program provided to the student, grades given, and the number of clock hours of instruction or a demonstration of competency must be provided to the school district prior to receipt of credit.~~

~~See 2 DE Reg. 1542 (3/1/99)~~

505 High School Graduation Requirements and Diplomas

1.0 Credit Requirements

1.1 No public school student shall be granted a State of Delaware Diploma unless such student shall have successfully completed a minimum of twenty-two credits in order to graduate including: 4 credits in English Language Arts, 3 credits in mathematics, 3 credits in science, 3 credits in social studies, 1 credit in physical education, 1/2 credit in health, 1 credit in computer literacy, 3 credits in a career pathway, and 3 1/2 credits in elective courses.

1.2 Definitions:

1.2.1 "Credit" means a minimum of 135 hours of actual classroom instruction or a demonstration of competency.

1.2.2 "Credit for Computer Literacy" means credit granted toward graduation at any point when the student can demonstrate competency in the required skill areas either through an integrated approach, a specific course, or a demonstration of accumulated knowledge over the student's educational career.

1.2.3 "Career Pathway" means a planned program of sequenced or specialized courses designed to develop knowledge and skills in a particular career or academic area.

1.3 Local school boards may establish requirements over and above the minimum number of credits required by the State Department of Education.

~~See 4 DE Reg. 995 (12/1/00)~~

2.0 Options for Awarding Credit Toward High School Graduation

2.1 The following options are approved by the Department of Education as means for awarding credit toward high school graduation. In all cases listed the option or options selected shall be approved ahead of time by the local school board or their designee(s) and shall incorporate the appropriate state content standards.

2.1.1 Courses taken at or through an accredited community college, two or four year college.

2.1.2 Voluntary community service as defined in 14 Del.C. §§ 8901A, 8902A.

2.1.3 Supervised work experience in the school and the community which meets the educational objectives or special career interest of the individual student.

2.1.4 Independent study.

2.1.5 Correspondence Courses.

2.1.6 Distance learning courses. These courses may be synchronous or asynchronous via videos or online format.

2.1.7 High school courses taken while in the middle school in conjunction with an articulated agreement between the district middle school and the district high school(s). Such credit shall also transfer to a high school in another district.

2.1.8 Course credit transferred from another high school.

2.1.9 Course credit earned through summer or evening school classes, as a member of the military service and/or as part of the James H. Groves Adult High School.

2.1.10 Tutoring programs taught by a teacher certified in the subject being taught.

2.1.11 Course credit awarded by agencies or instrumentalities of the state other than public schools which provide educational services to students. A description of the program provided to the student, grades given, and the number of clock hours of instruction or a demonstration of competency must be provided to the school district prior to receipt of credit.

~~See 2 DE Reg. 1542 (3/1/99)~~

3.0 High School Diplomas and the Certificate of Performance

3.1 A State sanctioned diploma shall be granted to students who meet the state and local district requirements for graduation pursuant to regulation 14 Del. C. §152 (a) (b) (c) and (d).

3.2 A State sanctioned certificate of performance will be granted to students who meet the requirements of 14 Del. C. §152 (e).

3.3 Diplomas from one school year shall not be issued after December 31 of the next school year.

3.4 Duplicate diplomas or certificates of performance will not be issued, but legitimate requests for validation of the diploma or the certificate of performance will be satisfied through a letter of certification. Requests for diploma information from graduates of Delaware high schools should be directed to the high school the student was attending at the time of graduation. If the school does not have the records then the student should contact the Department of Education in Dover for a notarized letter of certification that contains the name of the applicant, the name of the school, the date of graduation, and the diploma registry number (if available).

3.5 State High School Diploma for World War II veterans pursuant to 14 Del. C. §159 (a) (b) (c).

3.5.1 "World War II Veteran" means any veteran who performed wartime service between December 7, 1941 and December 31, 1946. If the veteran was in the service on December 31, 1946, continuous service before July 16, 1947

is considered World War II.

3.5.2 The Department of Education shall provide a high school diploma to any World War II veteran who:

3.5.2.1 Left a Delaware high school prior to graduation in order to serve in the armed forces of the United States.

3.5.2.2 Did not receive a high school diploma, or received a G.E.D., as a consequence of such service and.

3.5.2.3 Was discharged from the armed forces under honorable circumstances.

3.5.3 The diploma may also be awarded posthumously if the deceased veteran meets the qualifications in 3.5.2.1 through 3.5.2.3.

3.5.4 Applications for this high school diploma shall be made on forms designated by the Delaware Department of Education and the Delaware Commission of Veterans Affairs and shall have a copy of the candidate's honorable discharge papers attached to the application.

See 5 DE Reg. 625 (9/1/01)

PROFESSIONAL STANDARDS BOARD

Educational Impact Analysis Pursuant to 14 Del.C. Section 122 (D)

120 Required Inservice Training Activities for Delaware Public School Administrators

A. Type Of Regulatory Action Requested

Repeal

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to repeal regulation 120 Required Inservice Training Activities for Delaware Public School Administrators. This regulation concerns the requirement for administrators to successfully complete 15 hours of professional development annually. It is necessary to repeal this regulation as the subject is regulated by regulation 1511 Issuance and Renewal of Continuing License, which is in compliance with 14 Del. C. § 1211 and § 1213. Regulation 120 is, therefore, no longer necessary.

C. Impact Criteria

1. Will the repeal of the regulation help improve student achievement as measured against state achievement standards? The repealed regulation concerns professional development for educators, not student achievement.

2. Will the repeal of the regulation help ensure that all

students receive an equitable education? The repealed regulation concerns professional development for educators, not equitable education for students.

3. Will the repeal of the regulation help to ensure that all students' health and safety are adequately protected? The repealed regulation concerns professional development for educators, not students' health and safety.

4. Will the repeal of the regulation help to ensure that all students' legal rights are respected? The repealed regulation addresses educator professional development, not students' legal rights.

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

6. Will the repealed regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The repeal of the 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 regulation to be repealed rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

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

10. What is the cost to the state and to the local school boards of compliance with the repeal of the regulation? There will be no cost to the state or to local school boards resulting from the repeal of the regulation.

~~120 Required Inservice Training Activities for Delaware Public School Administrators~~

~~1.0 All administrators responsible for the supervision, management and evaluation of instruction shall complete a~~

minimum of 15 clock hours of staff development between July 1 and June 30 of each year, beginning July 1, 1988. The purpose for this staff development program is to assist new administrators to obtain and veteran administrators to maintain skills in and knowledge of effective teaching, staff supervision and evaluation, and building management.

1.1 Persons newly appointed to administrative positions responsible for the supervision, management and evaluation of instruction and who do not have backgrounds in or experience with effective teaching and/or training in the use of the Delaware Performance Appraisal System shall contact the Department of Education to make arrangements to receive training in these two areas.

1.1.1 Such training may be provided by a local school district or through DOE and shall include a minimum of 15 clock hours in effective teaching and 15 clock hours in the use of the Delaware Performance Appraisal System.

1.1.2 These hours shall count toward the minimum 15 clock hour requirement.

1.2 School districts shall maintain written records of each administrator's participation in staff development programs. Once an administrator has accumulated a total of forty-five clock hours of training, but no less than a minimum of fifteen clock hours in any one year, the district superintendent shall forward a signed copy of that administrator's record on a form approved by the Department to the Department of Education. A certificate will then be sent to the district superintendent to be awarded to the administrator along with the verification of three inservice credits by the Department of Education. An administrator may then begin accumulating another forty-five clock hours of training realizing that no previous training is to be repeated if credit is desired. Cumulative records for each administrator will be kept by the Department of Education.

1.3 Department of Education staff who are responsible for the supervision, management and evaluation of instruction shall complete a minimum of 15 clock hours of staff development between July 1 and June 30 of each year.

1.4 Administrators at the local or state level, not responsible for the supervision, management and evaluation of instruction may, but are not required to, complete the minimum of 15 clock hours of staff development each year.

1.5 A variety of programs will be available to administrators for meeting the required hours of staff development. Options include:

1.5.1 Delaware Principal's Academy programs in management, evaluation and effective instruction.

1.5.2 Workshops for administrators sponsored by the Department of Education and/or school districts in management, evaluation and effective instruction.

1.5.3 Special programs and institutes co-sponsored by the University of Delaware and the Department of Education in management, evaluation and

effective instruction.

1.5.4 Graduate level college courses in management and evaluation.

1.5.5 Programs related to management and evaluation which are offered by state or national educational or professional organizations.

1.5.6 Workshops, seminars, and institutes provided by institutions or organizations from the public or private sector in management or evaluation.

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

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

PUBLIC NOTICE

The Department of Health and Social Services, Division of Long Term Care Residents Protection, has prepared regulations setting forth requirements for training Paid Feeding Assistants in nursing facilities and assisted living facilities. The regulations provide for general requirements for Paid Feeding Assistant programs as well as specific curriculum requirements and competencies to be demonstrated by Paid Feeding Assistants.

These regulations supplement the federal final rule on Requirements for Paid Feeding Assistants in Long Term Care Facilities published by the Centers for Medicare and Medicaid in the Federal Register on September 26, 2003. Upon adoption of these regulations, both the federal and state regulations pertaining to Paid Feeding Assistants will become effective in Delaware.

Invitation For Public Comment

Public hearings will be held as follows:

Tuesday, February 3, 2004, 10:00 AM
Department of Natural Resources and
Environmental Control Auditorium
89 Kings Highway
Dover

Wednesday, February 4, 2004, 9:00 AM
Room 301, Main Building
Herman Holloway Campus
1901 N. DuPont Highway
New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed regulations and should be sent to the following address:

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

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

73.0 Regulations for Training of Paid Feeding Assistants

Introduction

These regulations allow for the use of Paid Feeding Assistants, as single task workers, to provide feeding assistance in nursing facilities and assisted living facilities. To ensure consistency in the training of Feeding Assistants, the Division of Long Term Care Residents Protection has developed minimum requirements for Feeding Assistant training programs. Each Feeding Assistant training program shall be approved by the Division of Long Term Care Residents Protection. The intent of these regulations is to provide more residents with help in eating and drinking, or encouraging the resident so that more of the meal is consumed, making mealtime a more pleasant experience, and potentially reducing the incidence of unplanned weight loss and dehydration. The determination of which residents may receive assistance from a Feeding Assistant shall be based on the needs and potential risks to a resident as observed and documented in the resident's plan of care and the comprehensive assessment of the resident's functional capacity.

Section 73.100 – Definitions

73.101 Division – The Division of Long Term Care Residents Protection.

73.102 Feeding Assistant – An unlicensed, uncertified person trained to assist residents with nutrition and hydration who has successfully completed an initial training program and has demonstrated competency.

73.103 Feeding Assistant Program - Policies and procedures established by a facility to provide supervision of Feeding Assistants, resident selection criteria, and implementation of Section 73.200 of these regulations.

73.104 Instructors – Registered nurses, advanced practice nurses, dietitians, speech pathologists, or a combination of such professionals, who train Feeding Assistants.

73.105 Resident – A person admitted to a nursing facility or assisted living facility licensed pursuant to 16 Del.

Chapter 11.

73.106 Student – A person enrolled in an approved Feeding Assistant training program.

73.107 Supervision – Direct oversight by a registered nurse or licensed practical nurse who is in the unit or on the floor where feeding assistance is furnished.

73.108 Supervisory Nurse - The nurse who is responsible for a specific area of a facility such as a floor or unit.

Section 73.200 – General Requirements

73.201 Facilities implementing Feeding Assistant Programs shall have policies and procedures in place that include each item in Section 73.200.

73.202 Facilities implementing Feeding Assistant Programs shall strictly limit the responsibilities of each Feeding Assistant.

A. The facility shall ensure that each Feeding Assistant performs only those duties for which he/she has been specifically trained.

B. The facility shall ensure that each Feeding Assistant seeks assistance from other members of the resident care team for all resident needs other than nutrition/hydration.

73.203 Each Feeding Assistant employed by any facility either as facility or contract/agency staff shall be required to meet the following:

A. Each unlicensed or uncertified individual who feeds and hydrates residents in a facility, with the exception of family members and volunteers, shall complete a Feeding Assistant training program approved by the Division of Long Term Care Residents Protection.

B. Feeding Assistants shall be required to successfully complete an approved Feeding Assistant training program before providing nutrition/hydration to residents.

C. A Feeding Assistant may provide nutrition/hydration to a resident only under the supervision of a registered nurse or licensed practical nurse who is present in the unit or on the floor where the task is performed and is readily available to provide assistance to the Feeding Assistant when needed.

D. A Feeding Assistant may provide nutrition/hydration only for those residents who have been assessed and approved by the supervisory nurse for such assistance. The resident assessment shall be based on the needs of, and potential risks to, the resident as observed and documented in the resident's written plan of care and the latest comprehensive assessment of the resident's functional capacity.

E. A Feeding Assistant shall not feed residents who are assessed to have complicated feeding problems such as recurrent lung aspirations, difficulty swallowing, feeding tubes, parenteral/IV feedings, chronic coughing or choking.

F. The supervisory nurse shall request a physician referral to a speech pathologist for an assessment of a resident served by a Feeding Assistant when indicated, e.g., when there has been a change in the resident's swallowing ability.

73.204 Participating facilities shall maintain records regarding the following:

A. The names of Feeding Assistants hired solely to provide nutrition and hydration.

B. The names of Feeding Assistants performing additional paid tasks in the facility.

C. The names of residents served by the Feeding Assistants.

73.205 The facility shall have policies and procedures in place to assure that Feeding Assistants report and record appropriate observations made while providing nutrition and hydration to nursing staff.

73.206 The resident's record shall have documentation that the resident may be fed by a Feeding Assistant. Examples of such documentation include care plans, minimum data sets, uniform assessment instruments and flow charts.

73.207 The facility shall maintain a list of facility staff qualified to train Feeding Assistants.

73.208 Feeding Assistants shall not be counted toward meeting any minimum staffing requirement.

Section 73.300 – Feeding Assistant Training Program Requirements

73.301 General Training Requirements

A. Each Feeding Assistant training program shall be approved by the Division.

B. To obtain approval, the curriculum content for the Feeding Assistant training programs shall meet each of the following requirements:

1. The program shall be a minimum of 12 hours to include classroom instruction and demonstrated competency.

2. Classroom instruction and demonstrated competency in each requirement shall be completed prior to students providing resident nutrition/hydration. Programs shall maintain documentation of completion of requirements.

3. At the completion of training, each student who has satisfactorily completed a Feeding Assistant training program shall be provided with documentation of completion of a Delaware Feeding Assistant Program which shall be transferable among facilities with Feeding Assistant programs.

4. The instructor shall directly supervise students at all times while students are demonstrating competency.

5. Programs shall notify the Division in writing when changes to the program or the instructors are

made.

73.302 Curriculum Content

A. Feeding Assistant Role and Function

1. On-the-job conduct, appearance, grooming, personal hygiene and ethical behavior.

2. Responsibilities and limitations of a Feeding Assistant.

(a) A Feeding Assistant shall perform only those duties for which he/she has been specifically trained.

(b) A Feeding Assistant shall seek assistance from other members of the resident care team for all resident needs other than nutrition/hydration.

3. Reporting and documenting incidents.

4. Knowledge of the "chain of command" in the facility.

5. Importance of punctuality and commitment to the job.

B. Resident Rights

1. Providing dignity and maintaining confidentiality.

2. Promoting the resident's right to make personal choices to accommodate individual needs.

3. Maintaining care and security of resident's personal possessions.

4. Providing care which ensures that the resident is free from abuse, mistreatment, neglect or financial exploitation.

C. Psychosocial Factors

1. Verbal and non-verbal communication and interpersonal skills with residents, including those with dementia.

2. Religious, ethnic and personal food preferences.

D. Appropriate Responses to Resident Behaviors

1. Identifying behaviors which require assistance from professional staff.

2. Recognizing and reporting changes in residents that are inconsistent with their normal behavior.

3. Distinguishing between normal eating and drinking behaviors and those which need to be reported.

E. Safety and Emergency Procedures

1. Recognizing emergencies which require assistance from other members of the resident care team.

2. Learning appropriate use of the resident call system.

3. Identifying when a resident is choking.

4. Learning how to perform the Heimlich maneuver.

F. Nutrition/Hydration

1. Understanding of therapeutic diets, supplements and dietary restrictions, including consistency restrictions.

2. Understanding of fluid needs and

restrictions.

3. Understanding tips to encourage intake.
4. Understanding of food substitution policy.
5. Understanding use of special feeding

devices, including use of straws when deemed appropriate and beneficial to a resident.

6. Understanding the components of a healthy diet.

7. Understanding factors that cause higher risk for nutrition and hydration problems.

G. Infection Control

1. Knowledge of proper hand washing and hygiene.

2. Knowledge of disease transmission and infection prevention.

H. Monitoring and Reporting Intake

1. Fluids

(a) Identifying amounts consumed according to facility policy and procedures.

(b) Identifying items that are liquid or classified as liquid.

(c) Recording liquid intake accurately.

2. Foods

(a) Identifying percentage of food consumed according to facility policy and procedure.

(b) Recording amount eaten accurately.

(c) Reporting food-related resident

problems.

73.303 Competencies

A. Feeding Techniques

1. Check resident's identification and diet card to ensure that resident has received the correct tray.

2. Provide resident with napkin and clothing protector, as needed.

3. Describe selection and location of foods on tray.

4. Assist resident with food preparation, as needed.

5. Observe to make sure each mouthful of food is swallowed before more is ingested.

6. Offer liquids at intervals with solid food.

7. Record food and fluid intake separately and accurately.

B. Social/Environmental Factors

1. Encourage resident to eat independently, if appropriate.

2. Provide cuing and prompting during meals as needed.

3. Make pleasant conversation, but refrain from asking questions while the resident has food in his/her mouth or asking questions that require lengthy answers.

4. Never rush the resident while feeding.

5. Sit next to the resident to convey an unhurried feeling.

6. Keep the resident focused on eating.

Avoid distractions.

7. Be aware of infection control techniques, including avoidance of blowing on hot food and sharing or sampling resident's meal.

C. Special Needs

1. Use hand on hand to assist resident, as needed.

2. Help resident to grasp eating utensils and beverage containers.

3. Help resident with assistive devices such as plate guards and adaptive eating utensils.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Temporary Assistance For Needy Families

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) as it relates to the Temporary Assistance for Needy Families (TANF) program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by January 31, 2004.

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

Summary Of Proposed Changes

- Revised definition of unemployable so that DSS can count nursing assistant type duties without pay as work.
- Added vocational rehabilitation, nursing assistant type duties without pay, and, generic language that will permit Bridge Program as work activities.
- Revised TANF supportive services section to reflect that DSS contracted vendors now handles this function.

- Corrected manual language so that the third (3rd) sanction for school attendance is not permanent but curable.
- Corrected discrepancy in the manual on how to determine assistance groups and budget groups for needy non-relative adults who are caring for a minor child.
- Added clarifying language in the Diversion Assistance policy that will assist staff in making determinations.
- Added language to reflect that the Division of Child Support Enforcement (DCSE) cannot accept child support payments unless DCSE has a Delaware order in place.

**DSS PROPOSED REGULATION #03-42
REVISIONS:**

1009 Procedures for Serving Non-English Speaking Clients

Non-English speaking clients who need an interpreter will be identified by the receptionist at the time of arrival. The receptionist will notify the unit supervisor who will make arrangements for a bilingual staff person or contracted vendor to translate for the client.

DSS has contracts for translation services with the following:

- EDS (1-800-996-9969 and press Option 8),
- Family and Children Services of Delaware, Inc. (655-6486),
- Cammie Santiago-Hall (410-548-4740 or HARBORRD@aol.com),
- Latin American Community Center (655-7338); and
- Para-Plus Translations, Inc. (1-800-558-3011).

For complete detailed procedures in accessing these services read the most recent administrative notice on translation services.

3001 Definitions

J. PAY AFTER PERFORMANCE - A work experience program is required for families with employable adults where the adult has either not found employment or have lost a job. Families who were continuously on TANF prior to 01/01/2000 will have 24 months before being required to enter into this program. Families applying or reapplying on/or after 01/01/2000 will immediately enter this program. Participants will work to earn TANF benefits.

M. UNEMPLOYABLE - the inability to engage in activities necessary to work for at least the minimum wage; the person is prohibited either because s/he is caring for a

~~disabled family member or s/he is physically or mentally disabled. The disabled family member can either be living in the home or outside of the home but must be within the 5th degree of relationship to the adult caring for him or her.~~ An unemployable individual cannot participate in employment or activities necessary to seek and obtain employment, e.g., job search, job training, job readiness, etc.

The determination and duration of unemployability are made by a health care professional (e.g., doctor, nurse, nurse practitioner, therapist, etc.). Periods of unemployability are not counted toward the cumulative months of benefit eligibility under the time-limited program.

3006.3 TANF Employment and Training Activities

The Division of Social Services, in conjunction with the Delaware Department of Labor and the Delaware Economic Development Office, has developed employment and training programs to move TANF clients to economic independence self-sufficiency. These agencies will conduct initial and ongoing assessments of client employability and appropriateness of employment and training related activities. For individuals deemed unable to work because s/he is physically or mentally disabled a referral is to be made to the Division of Vocational Rehabilitation. Use Form 134.

The Division will establish agreements with the Delaware Department of Labor and the Delaware Economic Development Office to employment and training activities.

The goal is to place the adult recipient in an unsubsidized job in as timely a manner as possible. The Department of Labor will have the option of recycling through job search those adult recipients who are unsuccessful in finding work, and/or placing the adult recipient in an alternative work experience, OJT, remediation, or a skills training program. Also, both the Division and the Department of Labor are jointly responsible for the development of an Employability Development Plan.

Although the Department of Labor assumes primary responsibility for assigning adult recipients to employment-related activities for this age group, the Division retains responsibility for ~~supportive services~~, sanctions, federal reporting and other TANF requirements.

3006.4 TANF Employment and Training Activities Which Constitute Participation Under TANF

The following are employment-related activities counting as participation:

- Education, training and job search activities. with the types and length of education, training and job search determined on an individual basis depending on age and other relevant factors; The Eligibility eligibility will be determined by the employment contractors.
- Pay-after-performance work experience, with the

hours determined by dividing the benefits by the minimum wage, plus up to 10 hours of job search weekly;

- Regular school attendance or appropriate alternative activity (e.g. training or employment) for dependent children and minor parents;
- Job search may be required for applicants and recipients.
- Vocational Rehabilitation program for eligible recipients.
- Nursing or nursing assistant activities performed without pay are considered work experience.
- Other work-related activities that assist in obtaining or maintaining employment or improving work performance.

3007 TANF Supportive Services and Transitional Benefits

The Division will ensure that Supportive Services, ~~such as child care, transportation as required to participate in employment and training activities, and assistance with other work-related expenses (as defined in the State Supportive Services Plan)~~ are available. The Division will ensure the availability of these services, to the extent it determines they are necessary for a recipient to participate. ~~The Division will provide child care in accordance with its Child Care policy as outlined in Section 11000.~~

Currently child care is provided in accordance with child care policy in DSSM 11000. All other supportive services are included and provided by the vendors as specified in the employment contracts.

TANF pays a Support services are based on the actual cost of services. The limit is imposed when the cost exceeds the maximum allowed. Participants are not automatically entitled to the maximum cost. Support services are paid or reimbursed to the participant based on the verified actual amount and the participant's need.

3007.1 Child Care

The State IV-A agency must guarantee child care for a dependent child(ren) who resides in the home and who is:

- under 13,
- or children 13 or and older who is are physically or mentally handicapped incapable of caring for themselves, or under court order requiring adult supervision
- or active with the Division of Family services.

and for A child who would be a dependent child except for the receipt of benefits under SSI or foster care payments can receive child care, to the extent that such child care is necessary to permit an a TANF eligible family member to:

- A. accept employment or remain employed; or

B. participates in an approved TANF Employment and Training education or training activity (including self-initiated education or training). ~~participate in an approved education or training activity under First Step — TANF (including self-initiated education or training).~~

~~Payment may be made or continued when the participant is waiting for entry into employment on an approved education training, or First Step — TANF components for: to begin an approved TANF Employment and Training component for: for entry into employment on an approved education training, or First Step — TANF components for:~~

A. up to two weeks; or

B. up to 30 days if it is verified that the child care arrangement would be lost if payment is not made or continued.

NOTE: Refer to the Child Care Subsidy Manual 11000 for further information.

3007.2 Fees

~~Fees include purchase of either certificates, licenses or testing needed for education or to obtain employment, such as Commercial Divers License (CDL) or license for nursing assistants, and GED test fees.~~

~~A. Basis For Determining Need: Evaluate each education testing or licensing request on an individual basis. Give consideration for jobs where such licenses are necessary for employment or to obtain such employment. Education testing includes GED test fees.~~

~~B. Monetary Limit of Service / Expense: Verified actual cost up to \$200.00 per individual for licensing and/or testing per occurrence as determined by need.~~

3007.3 CWEP Payments

~~A. CWEP payments include reimbursement to the participant or vendor payment to the provider for the following costs: purchase of lunch, personal grooming aids, clothing, and transportation.~~

~~CWEP payments include reimbursement for purchase of lunch, as well as needed personal grooming aids, in order to enhance participation in CWEP. In addition, payments can be made to help CWEP participants purchase clothes for wear at their community placement sites.~~

~~CWEP activity involves real job situations in a general office environment. For this reason, it is important for participants to look and dress appropriately. Looking and dressing well also adds to feelings of self-worth and can lead to a positive attitude toward work. Payments for lunches, grooming aids and clothing help to support CWEP participants in the performance of their CWEP activities and creates a beneficial atmosphere for CWEP participation.~~

~~CWEP payments may also include transportation expenses. These costs are paid above and beyond the lunch~~

and grooming payments.

A. ~~Basis for Determining Need:~~ A participant's ability to afford this expense.

B. ~~Monetary Limit of Service / Expense:~~

1. ~~Verified actual cost up to \$4.00 per day per participant up to \$92.00 per month as determined by need, for lunch and grooming aids. Need is determined by actual attendance at the CWEP site. Verify attendance by receipt of the attendance sheet completed by the CWEP agency and signed by the participant.~~

2. ~~Verified actual cost up to \$150.00 per participant as determined by need, for clothing voucher. This service may be paid one time only.~~

3. ~~Provide bus tokens to cover the expense of public transportation and to reimburse for participant mileage at \$.20 per mile for participants not served by public transportation. The transportation limitation is \$200 per month, per individual.~~

~~PROCEDURE: CWEP Check Stop Payments: Use the following procedures to place a stop payment on a CWEP check that is reported by a participant as lost, stolen, or not received at least five days after the mailing date:~~

A. ~~Have the participant sign the Affidavit of Forgery and Request for Replacement of Lost Check or ATP (Form 124) indicating that the CWEP check was not received, or was lost or stolen.~~

B. ~~Complete the Stop Payment or Rescind Payment (Form 230) requesting a stop payment on the CWEP check.~~

C. ~~Forward Form 230 and Form 124 to the Division of Management Services.~~

D. ~~Division of Management Services will mail a replacement check to the recipient four working days after the receipt of the affidavit.~~

~~B. CWEP Over-Payments~~

~~When it is determined that a participant receiving CWEP supportive services was actually ineligible for the service and thus an over-payment took place, forward all pertinent information to the Welfare Fraud Unit. Complete a Notice of Overpayment (Form 940).~~

~~NOTE: Refer to DSSM 7001, 7003 to 7009 for procedures in such cases.~~

3007.4 Accessories For Work Or Training

~~These services include purchase of either safety equipment, uniforms, shoes, or tools required to participate in training or work.~~

A. ~~Basis for Determining Need:~~ Evaluate each request on an individual basis. Give consideration for jobs where such safety equipment or tools are required by Office of Safety and Health Administration (OSHA) regulations.

B. ~~Monetary Limit of Service / Expense:~~ Verified actual cost up to \$100.00 per individual, per month as

determined by need.

3007.5 Remedial Medical

A. ~~Physical Exam~~

1. ~~Basis for Determining Need:~~ When a participant is required to undergo a physical exam to participate in training or accept employment and such exam is not available through a public health facility or covered by Medicaid.

2. ~~Monetary Limit of Service / Expense:~~ Verified actual cost up to \$100.00 per individual, per month as determined by need.

~~B. Dental Services~~

1. ~~Basis for Determining Need:~~ When a participant's dental condition poses a significant barrier to employment.

2. ~~Monetary Limit of Service / Expense:~~ Verified actual cost up to \$400.00 per individual, per month as determined by need.

~~C. Eye exams and eyeglasses~~

1. ~~Basis for Determining Need:~~ When the Assessment indicates the individual's vision is impaired, or when the individual indicates difficulty in seeing, or when the individual needs glasses to continue in a component of job.

2. ~~Monetary Limit of Service / Expense:~~ Verified actual cost up to \$200.00 per individual, per month as determined by need.

~~D. Transportation~~

~~Provide bus tokens to cover expense of public transportation and to reimburse for participant mileage at \$.20 / mile for participants not served by public transportation.~~

1. ~~Basis for determining need:~~ Participant must live at least 10 blocks from services provided.

2. ~~Monetary limit of Service / Expense:~~ Verified actual cost up to \$200.00 monthly per individual, as determined by need.

3011.1 Employment and Training Requirements

Clients must keep appointments with employment and training staff, cooperate in the development of the Employability Plan, and participate in employment and training activities.

Clients who have secured employment are expected to continue employment unless they have good cause for terminating a job (see Good Cause definition under 3001 Definitions)

Parents are expected to cooperate with school officials and other service providers in helping their child(ren) maintain satisfactory attendance. Penalties can be imposed if parents do not cooperate. Since parents with children under age 16 are expected to exert more influence over their children, and since early school attendance is so important in

moving children down the path to self-sufficiency, this requirement is grouped with employment and training and work requirements as part of the overall self-sufficiency requirements, which invoke harsher penalties for noncompliance. (See section DSSM 3012 for requirements and sanctions related to cooperation to ensure school attendance by children over the age of 16). A third non-compliance will not result in a permanent but a curable penalty of loss of cash benefits. See DSSM 3011.2.

3011.2 Sanctions for Failing to Comply With Requirements

Self-sufficiency requirements include those related to employment and training, work, and cooperation with officials to ensure satisfactory school attendance by dependents under age 16.

The fiscal sanction for failure without good cause to meet school attendance requirements for a child under 16, are the same as for other self-sufficiency requirements. This includes teen parents who are dependent children.

The penalty for noncompliance with any of the self-sufficiency requirements will be:

- a) for the first offense, a 1/3 reduction in TANF
- b) for the second offense, a 2/3 reduction in TANF
- c) for the third offense, a loss of all cash benefits.

The duration of the first and second sanctions will each be two months or until the person complies, whichever is shorter. If, after one month, the person has not complied, DSS will schedule an interview to explain again the participation requirements. If at the end of the two month period there is no demonstrated compliance, the sanction will increase to the next level. If the penalty is related to work non-compliance then the third penalty is permanent loss of benefits, unless the adult is deemed unemployable. Then the case may be reopened for the length of time that the adult is not able to work. If there is a third penalty and it is related to school attendance, it can be cured by the adult caretaker cooperating with school officials to remedy the situation.

The penalty for individuals who quit their jobs without good cause, but who comply with subsequent job search requirements, will be:

- a) for a first offense, a 1/3 reduction in TANF, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.
- b) for a second offense, a 2/3 reduction in TANF, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.
- c) for a third offense, a permanent loss of all cash benefits.

The penalty for individuals who quit their jobs without good cause and do not comply with subsequent job search requirements will be loss of all cash benefits for two months

or until the individual obtains a job of equal or higher pay.

3021 Unrelated Children

A needy child (one whose income is less than the GA Standard of Need), who lives with an unrelated adult caretaker, is technically eligible for General Assistance. The caretaker is payee for the child's grant and may be included in the GA budget group unit if he/she is also needy and meets at least one of the conditions specified in DSSM 3019.

In such cases, DSS will document the child's presence in the home and the reason that the child is not living with his/her parents. The possibility of financial support from the parents is also investigated.

In all such cases, the DFS will be notified of the child's placement so a study of the home can be made.

3028 Assistance Units

3028.1 Mandatory Composition of Assistance Units

EXAMPLE: In GA, establish a separate assistance unit for an unrelated child and the adult caretaker who is also eligible to receive GA on their own. For instance, the adult caretaker is age 55 or older- is needed in the home to care for an unrelated child under age six. There is no other person able to care for the child. Establish two separate GA assistance units; one for the caretaker and one for the child. They may be in separate budget groups. (See DSSM 4001)

3028.2 Optional Composition of Assistance Units

3. In TANF married or unmarried couple cases where each adult has children from previous relationships who are eligible for TANF, they have the option of being in one assistance unit or two separate assistance units. If the unit fails financially, a separate assistance unit may be established for the child(ren) of the previous relationships.

EXAMPLE: A couple each have a child from previous relationships. Initially, we place all the family members into one TANF assistance unit. Income from the male partner's job makes the family ineligible for TANF. We have the option of placing the female partner and her child from a previous relationship into a TANF assistance unit. In this scenario, if the couple were married, a step-parent situation would exist. If the couple were not married, eligibility is based solely on the information from the female partner and her child.

8. For children eligible for GA who are living with a non-relative caretaker, include the child. The caretaker may also be included if the child is under six and the caretaker is needy.

EXAMPLE: In GA, establish a separate assistance unit for an unrelated child and the adult caretaker who is also eligible to receive GA because, the adult caretaker is needed in the home to care for an unrelated child under age six and there is no other person able to care for the child. Establish two separate GA assistance units; one for the caretaker and one for the child but keep one budget group. (See DSSM 4001)

3032 Diversion Assistance

3032.1.3 Items/Services Covered:

A. The Diversion Assistance payment may be used for items and/or services such as but not limited to:

- Transportation (such as vehicle repairs, tires, insurance, driver’s license fee, gas, etc.),
- Clothing such as uniforms or other specialized clothing and footwear or other employment-related apparel,
- Tools and equipment,
- Medical expenses not covered by Medicaid (for example, eye glasses),
- Union dues, special fees, licenses or certificates,
- Up-front costs of employment such as agency fees and testing fees,
- Unpaid child care expenses which, if they remain unpaid, preclude the provision of future child care,
- Relocation expenses for verified employment in another county or state. These expenses may include:
- Moving equipment rental, gas, and lodging for the days of the move, the first month’s rent, rental and utility deposit.

B. If transportation is the issue an expectation is that there is a discussion with the person regarding the cost effectiveness of repairing a vehicle versus purchasing a used vehicle or a new vehicle. We can authorize diversion assistance to be used as a down payment for purchasing a vehicle.

C. If the diversion assistance payment is requested for the down payment on a vehicle several things must be considered in determining if it is approved. DSS will need to determine if the family’s income will be enough to meet the regular household expenses such as rent, utilities, and food, as well as the costs involved with owning and maintaining a vehicle. The costs of owning the vehicle include gas to fuel the vehicle, monthly payments, vehicle insurance, and maintenance. Consider that fuel costs can vary based on the price of gas and the amount needed to drive to and from work and other daily life activities when the customer and DSS determines the potential monthly expense.

D. The Division of Vocational Rehabilitation has an

Independent Living Program that will assist with home modifications and vehicle modifications. They will not purchase the vehicle. The only requirement is that they are disabled. They operate on a first come first serve basis and maintain a waiting list. If an individual has another agency to assist in the cost sharing they do get served more quickly. If we assisted in the purchase of the vehicle they would consider this a cost share. we would see if we could have the customer purchase an unmodified vehicle and then have DVR help with the modification. Then compare the DVR estimate in determining if the person could still accept or retain the employment with the expected wait for the modification. Call 302-378-5779, if you have a situation for which this program may be beneficial.

Use the following guide to determine if the purchase request is fiscally sound and can be reasonably afforded.

1. Monthly Take Home Pay:	\$ _____
2a. Basic Living Expenses:	
Mortgage or Rent	\$ _____
Utilities	_____
Food	_____
Clothing	_____
Home/Renter Insurance	_____
Medical Expense	_____
Vehicle Maintenance	_____
Vehicle Insurance	_____
Gas for Vehicle	_____
School Supplies	_____
Household Expenses	_____
Dependent Care Expenses	_____
Other Regular Expenses	_____

2b. Total Basic Expenses _____
(copy total into second column)

3. Subtract line 2b from line 1 _____
(take home pay minus basic expenses)

4. Divide the amount in line 3 by 3 _____
(money left after basic living expenses ÷3)

- Monthly take home pay is the after-tax net income received.
- School supplies include the following: pens, pencils, notebooks, field trips.
- Household expenses include, but are not limited to, the following: cleaning supplies, furniture, laundry cost, napkins, and tissues.
- Utilities include the following expenses: gas and / or electric, heating and cooling, sewer, water, trash disposal and telephone.
- Dependent care expenses are monthly costs for child care, after school care, or adult care.

- Other regular expenses includes all other items for which a regular monthly payment is made such as other credit card purchases, personal entertainment, newspaper delivery or cellular telephone charges.

The money in line 4 is how much can be safely spent on monthly payments each month. This guide is to be used anytime when the diversion request will result in the person making monthly payments to complete the purchase.

The Delaware Money School considers the following good money management. Spending from housing costs are @40%, utilities are @10%, Food and other grocery items are @15%, travel and transportation costs are @15%, savings should be @10% and miscellaneous costs of clothing, medical, cleaning and bath supplies etc. to be @10% of the take home pay.

NOTE:

It is not for DSS to provide a down payment on luxury class new vehicles when other suitable less expensive and reliable vehicles for purchase are available. For instance, assuming that a specially equipped vehicle is not needed and the number of family members can be seated properly in the average vehicle, a request for a down payment on a **new** \$30,000 Lexus is to be denied since there are many new vehicles that would fit the needs of the requestor and provide reliable transportation for much less that amount. That said, DSS will not set a monetary value on the vehicle to be purchased due to needs such as large family size or medically necessary specially equipped vehicles that will increase the cost of a vehicle. If all other eligibility and cost consideration factors are met and **using the guide above** the family can afford a \$20,000 Toyota, diversion assistance can be approved if all that is needed is money for a down payment.

Documentation Required:

The payment document can be in the form of an invoice, bill, or cost estimate. It needs to be on the vendor's letterhead. All payment documents must include the name, address, and telephone number of the vendor and an original "live" signature. This information is necessary to ensure that proper fiscal accountability procedures are followed.

For automobile purchases or down payments the amount of purchase, year, make, model, and vehicle identification number (VIN) must be included on the payment document.

A check is issued to the vendor only. Make sure the customer name, customer address, MCI number, time period, the specific needs of the family, and the vendor's name and address are sent with the written estimate(s). The unit supervisor will then approve the diversion payment. The supervisor will sign the approval form. Keep a copy of the form for the file. Forward the information to the DSS Fiscal

Office. The information will be then added to a database that will keep track of all diversion payments made. Staff will need to screen families through this database to make certain a person has not received Diversion Assistance during a time period that makes a family ineligible for it again or Delaware's TANF program.

The mailing address of the DSS Fiscal Office is:

Division of Social Services
Fiscal Office: Attention Diversion Assistance
Herman Holloway Sr. DHSS Campus
1901 N. DuPont Highway - Lewis Building
New Castle, DE 19720
H150

DSS doesn't make any claims as to the quality of service provided, work performed, or goods delivered. It is up to the diversion assistance requestor to seek remedy if the quality or performance is substandard. If the service provided, work performed, or goods delivered is of substandard quality, DSS will make attempts to stop payment on checks written, when able, and will provide copies of canceled checks to verify payment was made to the vendor in question if needed. It is up to the diversion assistance recipient to verify the quality was substandard. Diversion assistance will not be re-approved in a case in which the vendor has cashed the check unless good cause is claimed, the person verifies that they are taking legal means to have the situation rectified, and the request is approved by the Chief of Operations.

4001 Family Budget Group

4. A needy caretaker caring for an unrelated child under the age of six (6) who is needed in the home to care for the child because no one else is available can receive General Assistance (GA) for him/her self and the child in two assistance units but one budget group. SEE DSSM 3028.

5. A caretaker caring for an unrelated child may be able to receive GA for the child in one assistance unit while receiving GA for him/her self as well, in a separate assistance unit as long as one condition in DSSM 3019, other than #4 is met. They would be in two separate budget groups.

4001.1 Examples to illustrate rules regarding budget groups.

5. Mr. Smith is caring for a three year old child for whom he is not related. Mr. Smith is needy. Someone is needed in the home to care for the child but there is no one else available.

Mr. Smith and the child could each receive GA in separate assistance units. They would be in one budget group capped by the GA size for two (2) people.

6. Mrs. Robinson is caring for a child for whom she is

not related. Mrs. Robinson is fifty-five (55) years of age.

Mrs. Robinson and the child could each receive GA in separate assistance units. They would be two (2) separate budget groups.

NOTE: When income is included in any of the above situations, it is possible that some of the recipients would be denied by maintaining separate budget groups, but all recipients could remain eligible if the groups are combined. In those situations the budget groups can be combined if the caretaker so chooses.

4005.1 Child Support Payments – TANF

In the TANF Program, the first \$50.00 of child support received in a month is disregarded in determining financial eligibility. Child support in excess of \$50.00 is counted as unearned income. If a unit is determined financially eligible, child support is disregarded in determining the amount of the grant.

For active cases, child support is collected and retained by the Division of Child Support Enforcement. The first \$50.00 of child support that is collected each month by DCSE is paid to the TANF payee as a bonus check. If the amount of support collected is less than \$50.00, the bonus check will equal the amount collected.

Pass-through/Disregard Bonus checks are paid the month following the month that the DCSE collects support. They are disregarded in determining TANF financial eligibility and grant amounts; however, they are counted as unearned income in the Food Stamp Program.

In the month of application if support is received prior to approval of a TANF grant, the support received minus the \$50.00 child support disregard is budgeted as unearned income. Support received after approval of the grant is subject to collection by the DCSE. DCSE cannot accept child support payments unless a Delaware support order is in place. Therefore, we should count the child support money received by the recipient prior to a support order in place as unearned income until such time as DCSE has a support order in place and can accept the payments.

EXAMPLE: A woman applies for TANF for herself and her children on 2/15. She reports that she received a \$100.00 support payment on 2/10 and expects to receive an additional \$100.00 on 2/24. She is found eligible for TANF on 2/15. In February, \$50.00 of child support is included in the TANF budget as unearned income. (\$100.00 received prior to approval of the grant - \$50.00 disregard = \$50.00 budgetable.) The recipient will receive a \$50.00 bonus check in March based on the \$100.00 payment collected by the DCSE on 2/24.

7002.1 Cash Assistance Overpayments

F. Exceptions To Repayment To DSS

For cases where TANF recipients retain child support payments assigned to the State, and DCSE has established a support order, the DCSE will file a claim, obtain a debt acknowledgment, and establish a repayment agreement with the indebted recipient.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Temporary Assistance For Needy Families

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Temporary Assistance to Needy Families (TANF) State Plan as it relates to services to move families to work.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by January 31, 2004.

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

Summary Of Proposed Changes

- Adds activities that assist in obtaining or maintaining employment or improve work performance as a work-related activity.

DSS PROPOSED REGULATION #03-43

REVISION:

Services to Move Families to Work

Delaware's goal is to place the adult recipient in unsubsidized employment as quickly as possible. To accomplish this goal, the current menu of services includes:

- Work readiness/Life skills

- Job search/Job placement
- Job retention
- Work Experience/OJT
- Education, including vocational education, as described in SB 101, effective July 2, 1999
- Provide financial management training;
- Work-related activities that assist in obtaining or maintaining employment or improve work performance.

Non-exempt TANF participants will participate in the job search program, consisting of job readiness classes and supervised job search activity. Unsuccessful job search participants can be placed in another job search sequence or another work-related activity such as an alternative work experience, OJT, remediation or a skills training program.

Clients must keep appointments with Employment and Training staff, cooperate in the development of the employment activities included in their Contract of Mutual Responsibility, and participate in employment and training activities. The penalty for non-compliance with any of the above client responsibilities will be subject to sanctions as described in "Sanctions: Failure to Comply with the Contract and Imposition of Sanctions" on page 29.

DEPARTMENT OF LABOR
OFFICE OF LABOR LAW ENFORCEMENT
 Statutory Authority: 19 Delaware Code,
 Sections 105, 114 (19 Del. C. §§105, 114)

PUBLIC NOTICE

Wage Payment & Collection Act Payroll Debit Cards

Pursuant to the Department of Labor's authority to promulgate regulations effecting Title 19, Chapter 11, under the Wage Payment and Collection Act at 19 Del.C. §§105, 114 and, in accordance with the procedures set forth in Title 29 Subchapter II, Agency Regulations at 29 Del.C. §10115, the public and interested parties are herein given NOTICE of the Department of Labor's intent to consider whether PAYROLL DEBIT CARDS as a form of wage payment depicts suitable arrangements for cashing checks or voluntary programs for credit to employees' bank accounts under the WAGE PAYMENT and COLLECTION ACT. Interested parties may submit written comments to the Department of Labor before January 26, 2004 at the address below or present views at public hearings which will be held on January 23, 2004 in New Castle County and on January 26, 2004 in Kent County at the locations below.

The Department of Labor has received inquiries from

Delaware employers regarding the use of payroll debit cards for wage payment in lieu of checks or deposits to employee's bank accounts. The Wage Payment and Collection Act recognizes wage payment in the form of checks – conveniently cashed without cost to the employee or credit to employees' bank accounts. Employers suggest that payroll debit cards benefit employees because the process provides a safe and convenient form of payment without offending the Act. The process offers employers a less expensive form of payment than written checks issued to employees and gives employees more flexibility in cashing the wage payment.

In order to consider the issue of whether payroll debit cards are an acceptable and beneficial form of wage payment under the Act, the Department of Labor invites the public, interested parties, employers and employees to provide their views in writing or by attending a public hearing. Interested parties may provide written comments by methods described below.

1. submit **written comments** to the Director of Industrial Affairs James G. Cagle, Jr. at the Department of Labor, **4425 North Market Street, Wilmington, Delaware 19802** before January 26, 2004; and/or
2. express their views at a public hearing which will be held on January 23, 2004 at the Department of Labor Annex, **19 Lea Boulevard, Wilmington Delaware 19802** at **9:00 a.m.**
3. express their views at a public hearing which will be held on January 26, 2004 at the Department of Health & Social Services Office, **18 N. Walnut Street, Milford, Delaware 19963** at **9:00 a.m.**

If the Department of Labor finds payroll debit cards beneficial and acceptable as a form of wage payment under the Act, the Department will promulgate regulations identifying the standard for its use in Delaware. Under all circumstances, the use of payroll debit cards as a form of wage payment must comply with all conditions set forth in the Act including, but not limited to the following:

1. Employers must inform new employees in writing, at the time of hire, when the employer will fulfill the exchange rate obligations (§1108 (1));
2. Employers must pay the employee within 7 days from the close of the pay period for the work performed (§1102 (a));
3. Employers must pay the employee no less than once a month on a day designated in advance by the employer (§1102 (b));
4. Employers must pay the employee in legal tender of cash, check payable on demand, or by credit to the employee's bank account when requested in writing

- by the employee (§1102(a));
5. Employers must pay the full wages owed on the regular payday and account for lawful deductions specified under §1107 and related regulations; and
 6. Employers must provide a written record reciting the hours worked, hours paid, benefits accrued, lawful deductions, and any information for historical purposes effecting the wage arrangement for three years (§1108 (4) and (6)).

The Department of Labor has considered the following proposed language for **Definitions and Regulations** setting forth standards regulating the use of payroll debit cards by Delaware employers for wage payment under the Act.

Payroll Debit Cards

1.0 Definitions

1.1 **ATM** means the automatic teller machine activated by a magnetically encoded card and the transmission of a code which allows card holders to perform routine banking transactions including the withdrawal of cash.

1.2 **Cash** means lawful money.

1.3 **Credit** means the amount of money which is added to an employee's bank account.

1.4 **Demand Deposit Account** means funds that an employee or card holder may withdraw from a bank with no advance notice usually by writing a check or using an automatic teller machine.

1.5 **Direct Deposit** means automatic deposit of wages or benefits into an employee's bank account.

1.6 **Exchange Rate** means the rate agreed upon by the employer and employee as compensation for the performance of work by the employee.

1.7 **Functional Equivalent** means a change in the form of the payment of wages without impacting the substantive rights or value of the employee's wages. For example, a debit card in lieu of cash, check, or credit must provide the full amount of wages without cost to the employee on the regular payday.

1.8 **Payroll Debit Card** is a card that provides an employee with the appropriate means of obtaining all wages earned in a defined pay period in a form that is the equivalent of payment by cash, check, or direct deposit.

1.9 **Unbanked Employee** means an employee who does not transact banking business under their own individual account.

2.0 Payroll Debit Card in Lieu of Cash or Check

Delaware's Wage Payment & Collection Act requires the payment of wages to employees in lawful money or checks payable on demand, "provided suitable arrangements are made by the employer for cashing such checks for the full amount of the wages due at a bank or other business

establishment convenient to the place of employment. Employers may comply with this requirement by issuing a payroll debit card which provides the functional equivalent of cash or a check. It is the employers' responsibility to effectuate a payroll debit card system which will allow full payment of wages on the employee's regular payday and without cost to the employee. Employers may use a pre-paid debit card or general payroll fund account to establish suitable arrangements for converting wages into employee's disposable income.

3.0 Payroll Debit Card and Account Option for the Unbanked Employee

Delaware's Wage Payment & Collection Act allows for, but does not require a voluntary program of automatic deposit or credit to a designated bank account of the employee. For employers who presently honor such a system, the employer may offer a similar option to unbanked employees upon the written request for the benefit of the employee who desires an individual bank account in their name. Employees are required to provide a written authorization to the employer for the transfer of wages into the individual bank account. All employees shall have notice that direct deposit into individual account programs are initiated and terminated by the employees' written requests. Costs associated with accounts established for the unbanked employee who voluntarily participates in the payroll debit card individual account program must be reasonable under the circumstances.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION
Statutory Authority: 7 Delaware Code,
Chapter 60 (7 Del. C. Ch. 60)**

**Register Notice
SAN # 2003-22**

1. Title Of The Regulations:

Amendments To Delaware Phase II Attainment Demonstration For The Philadelphia-Wilmington-Trenton Ozone Non-attainment Area, Including A Revision of the Mid-Course Review Schedule.

2. Brief Synopsis Of The Subject, Substance And Issues:

The Clean Air Act Amendments of 1990 (CAAA)

require Delaware to submit to the U.S. Environmental Protection Agency (EPA) a SIP revision to demonstrate its capability of attaining the 1-hour National Ambient Air Quality Standard (NAAQS) for the ground-level ozone in Kent and New Castle Counties in 2005. This SIP revision, termed the Phase II Attainment Demonstration, was initially submitted to the EPA in May 1998, and amended in October 1998, January 2000, December 2000, October 2001, and June 2003.

As a condition of approval of the Phase II Attainment Demonstration SIP of each state in the Philadelphia-Wilmington-Trenton non-attainment area, EPA required that a Mid-Course Review (MCR) be conducted. Pursuant to this EPA requirement, Delaware committed in its January 2000 SIP revision to perform a MCR by December 31, 2003. Following this, the U.S. Court of Appeals for D.C. Circuit delayed the implementation of the EPA NO_x Transport SIP Call from 2003 to 2004. Because the NO_x Transport SIP Call is a significant part of the overall 1-hour ozone attainment strategy, EPA allowed states to revise their MCR due date to a date after 5/31/2004.

The purpose of the action proposed herein is to amend the Phase II Attainment Demonstration to revise Delaware's MCR date to December 31, 2004.

3. Possible Terms Of The Agency Action:

None.

4. Statutory Basis Or Legal Authority To Act:

7 Del. C., Chapter 60, Environmental Control

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice Of Public Comment:

A public hearing will be held on January 28, 2004 beginning at 6:00 PM in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, Delaware.

7. Prepared By:

Frank F. Gao, Project Leader, (302) 323-4542
December 8, 2003

**Amendments To
Delaware Phase II Attainment Demonstration For The
Philadelphia - Wilmington - Trenton Ozone
Non-Attainment Area Including A Revision Of The
Mid-Course Review Schedule
January 2004**

List of References

1. *Federal Clean Air Act*, 42 U.S.C.A. 7401 et seq., as amended by the Clean Air Act Amendments of 1990, P.L.

101-549, November 15, 1990.

2. *Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area*. Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, May 1998, as amended in January 2000, December, 2000, July 2001, and June 2003.

3. *Notice of Proposed Action on Attainment Demonstrations for the 1-Hour National Ambient Air Quality Standard for Ozone*. Federal Register Vol. 64, No. 241, pp 70317-70319, December 16, 1999.

4. *Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration*. Guidance Memorandum from L.N. Wegman, Director, Air Quality Strategies and Standard Division, and J.D. Mobley, Acting Director, Emission Monitoring and Analysis Division, Office of Air Quality Planning and Standards, US EPA, March 28, 2002.

5. *Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard, US EPA*. Federal Register Vol. 68, No. 105, pp 32802-32870, June 2, 2003.

1. Introduction

Under the Clean Air Act Amendments of 1990 (CAAA, Reference 1), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour National Ambient Air Quality Standard (NAAQS) for ground-level ozone. The CAAA requires Delaware to submit to the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to demonstrate that the 1-hour ozone standard can be attained in 2005 in these two counties with necessary and adequate control measures for VOC and NO_x emission sources. That SIP revision, entitled "Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area," was originally submitted to EPA in May 1998, and amended in October 1998, January 2000, December 2000, October 2001, and June 2003 (Reference 2).

In order to settle a complaint filed by six environmental groups in U.S. District Court, EPA required, as a condition of approval of the Phase II Attainment Demonstration SIP of each state in the Philadelphia-Wilmington-Trenton non-attainment area, that a mid-course review (MCR) be conducted to evaluate the progress being made toward attainment of the 1-hour ozone standard (Reference 3). The results of the MCR were required to be submitted to EPA by December 31, 2003, and would be used to determine if any additional controls would be necessary to ensure the attainment by 2005. Pursuant to this EPA requirement, Delaware committed in its January 2000 SIP revision to perform an MCR by December 31, 2003. This MCR requirement was also imposed on other states with severe 1-

hour ozone non-attainment areas.

Following this, an order of the U.S. Court of Appeals for D.C. Circuit delayed the implementation of EPA's NOx Transport SIP Call from 2003 to 2004. The NOx Transport SIP Call is a significant part of the overall 1-hour ozone attainment strategy. In response to this court order, EPA allowed states to revise the MCR due date to a date after May 31, 2004. The later MCR date is believed to better serve the MCR purpose (i.e., to enable states to evaluate the adequacy of their attainment strategy, and to facilitate initiation of additional control measures if necessary). Many states affected by the NOx SIP Call emission reductions have revised their commitment to conduct and submit the MCR on a schedule later than May 31, 2004 (Reference 4).

2. Proposed Action

The document proposed herein is to revise the date of Delaware's MCR from December 31, 2003 to December 31, 2004. In addition to EPA's afore-mentioned rationale of postponing the MCR process to allow for inclusion of the implementation of the NOx SIP Call in the analysis, Delaware believes that the following reasons further validate the proposed action:

(1) To give EPA more time to develop final guidance on performing the MCR.

In the recent proposed rule to implement the 8-hour ozone standard, EPA has indicated that it is updating the 1-hour MCR policy and technical guidance to include the 8-hour matrices, and the final MCR guidance will be available around the end of year 2003 (Reference 5). Delaware is anticipating that the final MCR guidance from EPA will provide detailed procedures on how to effectively conduct the MCR, in particular, to connect efforts of attaining the 1-hour standard in 2005 to efforts of implementing the 8-hour rule beyond 2005.

(2) To put Delaware on the same time-line with other states.

According to EPA, many states affected by the NOx SIP Call have rescheduled their MCR due date after May 31, 2004 (Reference 4). These states include those in the Ozone Transport Region (OTR). The new MCR schedule proposed herein will enable Delaware to work cooperatively with these states, and to conduct the MCR as a regional effort to better addressing attainment of the 1-hour ozone standard.

3. Contact Information

The agency with direct responsibility for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section (AQM), under the direction of Ali Mirzakhali, Program Administrator. The working responsibility for this document falls within the Planning and Community Protection (PCP) Branch of AQM, under the

management of Raymond H. Malenfant, Program Manager II, and Ron Amirikian, Planning Supervisor. The following staff member of PCP is responsible for the preparation of this document:

Frank Gao, Ph.D., P.E., Environmental Engineer
Principal Author and Project Leader

Comments and/or questions regarding this document should be addressed to F. Gao at (302)323-4542, e-mail Frank.Gao@state.de.us, or R. Amirikian at (302)739-4791, e-mail Ronald.Amirikian@state.de.us, Air Quality Management Section, DAWM-DNREC, 156 South State Street, Dover, DE 19901.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code,
Section 903(e)(2)(a) (7 Del.C. §903(e)(2)(a))

Register Notice
SAN# 2003-23

1. Title Of The Regulations:

Tidal Finfish Regulation 3503 Striped Bass Recreational Fishing Season; Methods of Take: Creel Limit; Possession Limit (Formerly Tidal Finfish Regulation 6), and Tidal Finfish Regulation 3504 - Striped Bass Possession Size Limit; Exceptions (Formerly Tidal Finfish Regulation 7).

2. Brief Synopsis Of The Subject, Substance And Issues:

To comply with the recreational size limits, daily creel or bag limits and seasons included in Amendment #6 to the Interstate Fishery Management Plan for Striped Bass as adopted by the Atlantic States Marine Fisheries Commission on February 24, 2003, Delaware must adopt regulations conservationally equivalent to the following:

Establish a new minimum size limit of 28 inches total length, and a two fish daily possession limit for recreationally caught striped bass and establish a new minimum size limit for striped bass caught for commercial purposes in the Atlantic Ocean and the Inland Bays of 28 inches. Within the Delaware River and Bay and the Nanticoke River and its tributaries, the commercial size limit shall remain 20 inches total length for the spring gill net fishery, but for any subsequent gill net fishery conducted in the fall of the year, the minimum size shall be 28 inches. Other wording changes will clarify existing regulations concerning the daily possession limit for recreationally-caught striped

bass.

3. Possible Terms Of The Agency Action:

Until changed

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 contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment 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 29, 2004. The record will remain open for written comments until 4:30 PM on February 2, 2004.

3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit. (Formerly Tidal Finfish Reg. 6)

(Penalty Section 7 Del.C. 936(b)(2))

1.0 It shall be lawful for any person to take and reduce to possession striped bass from the tidal waters of this State at any time except as otherwise set forth in this regulation or in Tidal Finfish Regulations 3502 and 3504.

2.0 It shall be unlawful for any recreational fisherman to take or attempt to take any striped bass from the tidal waters of this State with any fishing equipment other than a hook and line or a spear while said recreational fisherman using the spear is underwater. Recreational gill net permittees are not authorized to take and reduce to possession any striped bass in gill nets.

3.0 Unless otherwise authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession more than two (2) striped bass per day (defined as midnight to the next midnight thence ensuing) from the tidal waters of this State. Any striped bass taken from the tidal waters of this State that is not immediately returned, without unnecessary injury, to the same waters from which it was taken, is deemed taken and reduced to possession for purposes of this subsection.

4.0 Unless otherwise authorized, it shall be unlawful for any recreational fisherman to have in possession more than two (2) striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of lodging.

3504 Striped Bass Possession Size Limit; Exceptions. (Formerly Tidal Finfish Reg. 7)

(Penalty Section 7 Del.C. 936(b)(2))

1.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1) 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.~~ any striped bass that measures less than twenty-eight (28) inches in total length.

2.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1) or unless otherwise authorized, it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than ~~twenty (20)~~ twenty-eight (28) inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than twenty (20) inches in total length from the tidal waters of the Delaware River and Delaware Bay and their tributaries during the months of March and April or from the tidal waters of the Nanticoke River or its tributaries in the month of March.

3.0 Unless otherwise authorized, it shall be unlawful for any person to possess a striped bass that measures less than ~~24~~ 28 inches, total length, unless said striped bass is in one or more of the following categories:

3.1 It has affixed, a valid strap tag issued by the Department to a commercial ~~food~~ gill net fisherman and was legally taken and tagged by said commercial gill net fisherman from the tidal waters of the Delaware River and Delaware Bay during the months of March and April; or from the tidal waters of the Nanticoke River or its tributaries in the month of March; or

3.2 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

3.3 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

3.4 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

3.5 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.

4.0 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.

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

6.0 It shall be unlawful for any person to land any striped bass that measures less than twenty-eight (28) inches in total length at any time, except those striped bass caught in a commercial finfisherman gill net legally fished in the waters of Delaware River or Delaware Bay or their tributaries during the months of April and May or from a commercial gill net legally fished in the tidal waters of the Nanticoke River or its tributaries in the month of March, 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.

~~7.0 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.~~

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

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

~~See 4 DE Reg 1552 (3/1/01)~~

~~See 6 DE Reg 1512 (5/1/01)~~

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

OFFICE OF CHILD CARE LICENSING

Statutory Authority: 31 Delaware Code,
Sections 341-345 and 29 Delaware Code, Section
9003 (7) (31 Del.C. §§341-345, 29 Del.C.
§9003(7))

PUBLIC NOTICE

PLEASE TAKE NOTICE, pursuant to 31 Del.C. Chapter 3, Subchapter II, Subsections 341-345, and 29 Del.C. Chapter 90, Subsection 9003 (7), Delaware's Office of Child Care Licensing is proposing to revise the *Delacare: Requirements For Day Care Centers* that were previously adopted in 1988. A task force consisting primarily of early care and education and school-age care program directors along with Licensing Specialists and those whose interests could be affected by the rule changes reviewed the proposed revisions and reached consensus on each rule. These proposed revisions represents the task force's and the Office of Child Care Licensing's efforts to improve standards based on what we have learned through research and experience

since last revising this set of rules. Over the years, we have become increasingly aware of what children really need from early care and education and school-age care experiences to optimally develop, stay safe and healthy, and learn in order to be ready for and succeed in school.

Written comments on the rule changes will be accepted until March 5, 2004 and should be addressed to the **Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, DE 19805, Attention: Lynn Jezyk, Rule Development Manager**. Comments will also be heard at public hearings scheduled as follows:

Public Hearing Schedule

- Tuesday, February 17, 2004, beginning at 7:00PM, at Del Tech, Wilmington Campus, Conference Rooms A & B, Southeast Building, Orange Street.
- Wednesday, February 18, 2004, beginning at 7:00PM, at Del Tech, Stanton Campus, Conference Room A – 114/116, Main Building, 1st Floor
- Wednesday, February 25, 2004, beginning at 7:00PM, at Del Tech, Georgetown Campus, Lecture Hall, William A. Carter Partnership Center
- Thursday, February 26, 2004, beginning at 7:00PM, at Del Tech, Dover Campus, Downes Lecture Hall, Terry Building

(For information on cancellations of the Public Hearings due to inclement weather, please check the Office of Child Care Licensing website, <http://www.state.de.us/kids/occl.htm> or call the Office of Child Care Licensing in Wilmington, 892-5800 or in Dover, 739-5487 or listen to your local radio station.)

*** PLEASE NOTE: DUE TO THE LENGTH OF THE PROPOSED REGULATION (*DELACARE: REQUIREMENTS FOR DAY CARE CENTERS*) THE FULL-TEXT IS NOT BEING PRINTED. FULL-TEXT COPIES OF THE REGULATION ARE AVAILABLE FROM THE REGISTRAR OR MAY BE VIEWED ON THE REGISTER OF REGULATION WEBSITE**

ADOBE PDF VERSION

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed-stricken-through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS IN OPTOMETRY**

24 DE Admin. Code 2100

Statutory Authority: 24 Delaware Code,
Section 2104(a)(1) (24 **Del.C.** §2104(a)(1))

ORDER

Pursuant to 24 **Del.C.** §2104(a)(1) and 29 **Del.C.** §10118, the Delaware Board of Examiners in Optometry ("the Board") issues this Order adopting a proposed amendment to the Board's. Following notice and a public hearing held on December 4, 2003, the Board makes the following findings and conclusions:

Summary Of Evidence

1. The Board posted public notice of the proposed amendment in the November 1, 2003 Register of Regulations and for two consecutive weeks in two newspapers of general circulation. The Board proposed to amend Rule 3.1.2 of its Regulations to clarify that the Board may approve the start of an internship as of the date an applicant has in good faith submitted all licensure material and the Board is unable to review said materials due to an insufficient number of statutorily appointed members.

2. The Board held a public hearing on December 4, 2003. At the public hearing, the Board received no comments. The Board allowed for written comments from the public from November 1, 2003 through November 30, 2003, but received no comments.

Findings Of Fact And Conclusions

3. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendment to the Board's Rules. The Board received no written comments or testimony at the public hearing.

4. The Board finds that the proposed amendment to the Board Rules is necessary for the agency to achieve its statutory primary objective "to protect the general public, specifically those persons who are the direct recipients of services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered." 24 **Del.C.** §2100. The proposed Rule amendment would create a very narrow exception to the current internship rule, so that the Board could approve an internship application starting on the date of receipt of all application materials if the applicant has acted in good faith in submitting his or her materials and the Board is unable to meet due to the absence of a sufficient number of statutorily appointed members. This very limited exception would only apply in situations where the Board lacked a quorum due to an insufficient number of Board members currently appointed. This situation was present in

July-August, 2003. This limited exception would permit internship applicants to receive appropriate approval for the start date of their internship since, through no fault of their own, the Board was unable to meet. The Board finds that this proposed Rule is consistent with the Board's secondary objective to "maintain minimum standards of practitioner competency" as provided under 24 **Del.C.** §2100. The Board concludes that the proposed amendment to Rule 3.1.2 should be adopted in the proposed form.

5. The effective date of this Order shall be ten (10) days from the publication of this order in the Register of Regulations on January 1, 2004. A copy of the enacted Rule amendment is attached as Exhibit #1 to this Order.

IT IS SO ORDERED this ___ day of December, 2003

Carl Maschauer, O.D., President, Sussex County
Member

Sonja P. Biddle, O.D., Secretary, Kent County Member

Allan S. Tocker, O.D., New Castle County Member

Mark Metzelaar, Public Member, New Castle County

Nicole Anderson, Public Member, Kent County

3.0 Internship

3.1 An internship is a course of study in which applicants receive part of their clinical training in a private practice setting under the supervision of a licensed optometrist or ophthalmologist. An active, licensed Optometrist or Ophthalmologist may act as a supervisor. Any applicant's participation in such an internship program must be approved by the Board and is subject to the following terms and conditions:

3.1.1 A letter from the practitioner with whom the applicant will be interning stating the goals, duties and the number of hours he/she will be working. If the applicant is not doing his/her internship with a therapeutically certified optometrist or ophthalmologist, he/she must also complete an additional one hundred (100) hours of clinical internship with a therapeutically certified Optometrist, Medical doctor or Osteopathic physician.

3.1.2 Each applicant who will be participating in the internship program must provide the name and address of the supervisor and the dates of the internship for approval by the Board before the internship may begin provided that, in the event an applicant has made a good faith effort to submit all necessary licensure materials for approval of the internship, and in the event that the Board is unable to meet to review said licensure materials due to the absence of a sufficient number of statutorily appointed Board members, as occurred in July-August, 2003, the Board may approve said internship starting as of the date when the applicant has submitted all licensure materials.

3.1.3 A letter must be received by the Board

from the supervisor verifying the completion of the internship.

3.1.4 For purposes of this Section and 29 **Del.C.** §2110, the term "duration" shall be defined as "a period of no less than six (6) months and no greater than the period ending on the date of the next Board meeting following the end of the six (6) month period." No intern may practice on a temporary license beyond the duration of the internship.

3.2 Subject to the approval requirements stated above, a candidate's internship requirements may be satisfied while the candidate is a member of the Armed Forces if he/she:

3.2.1 Functions as a fully credentialed therapeutically certified optometric practitioner; and (for purposes of this Section equivalent to the Air Force regulations).

3.2.2 Performs his optometric duties on a full-time basis in a completely equipped eye clinic.

3.3 Full-time: minimum of 35 hours per week.

3.4 All supervisors must supervise the interns on a one-to-one basis whenever an applicant performs a task which constitutes the practice of optometry. No supervisor may be a supervisor for more than one intern, or student extern, at a time. Only one intern shall be permitted in any practice for any period of time.

3.5 All acts which constitute the practice of optometry under 24 **Del.C.** §2101(a) may be performed by the intern only under the following conditions:

3.5.1 The supervisor shall be on the premises and immediately available for supervision at all times;

3.5.2 All intern evaluations of any patient shall be reviewed by the supervisor prior to final determination of the patient's case before the patient leaves the premises; and

3.5.3 A supervisor shall at all times effectively supervise and direct the intern.

3.6 A violation of any of the conditions enumerated in this rule may be grounds for the Board to revoke their approval of an internship program. The Board may also revoke its approval of an internship program if it determines that either the supervising optometrist or the intern has engaged in any conduct described by 24 **Del.C.** §2113(a). Furthermore, any violation of the terms of this rule by a supervising optometrist who is a licensed optometrist shall be considered unprofessional conduct and a violation of 24 **Del.C.** §2113(a)(7).

See 2 DE Reg 85 (5/1/99)

*** PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE BOARD OF EXAMINERS IN OPTOMETRY REGULATIONS ARE AVAILABLE AT:**

<http://www.state.de.us/research/profreg/Frame.htm>

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF PHARMACY**

24 DE Admin. Code 2500

Statutory Authority: 24 Delaware Code,
Section 2509 (24 **Del.C.** §2509)

ORDER

Public hearings were held to receive comments on October 8, 2003 and December 8, 2003 at meetings of the State Board of Pharmacy. The second public hearing was scheduled after republication of proposed Rule 11.0 to correct technical and substantive errors in the draft submitted for publication in the **Register of Regulations** dated September 1, 2003. At the December meeting, the Board considered the proposed changes to Regulation 11.0.

**SUMMARY OF THE EVIDENCE AND
INFORMATION SUBMITTED**

1. *The written comment is summarized as follows:*

Rita Landgraf, Chairperson, State Council for Persons with Disabilities, sent a memorandum dated October 2, 2003. She recommended that Regulation 11.2.5 should not limit handling or administration of drugs in nursing homes to 'licensed' personnel. In addition, she thought the rules should provide a protocol for handling medications during resident outings.

Ms Landgraf submitted further comment dated November 21, 2003. In her view, the changes made by the Board in 11.2.5 were insufficient and could preclude patients from handling their own medications. She offered the following substitutes: (1) "No facility representatives except properly authorized personnel shall handle or administer medications" of (2) "No persons apart from the patient and properly authorized personnel shall handle or administer medications." A similar comment was received in a letter dated November 17, 2003 from Jamie Wolfe, Chairperson of the Delaware Developmental Disabilities Council.

2. *The following verbal comment was heard October 8, 2003:*

Kim Robbins, President, Delaware Pharmacists' Society (DPS) represented that DPS supports the changes. The existing regulation was antiquated and this change is responsive to the current practice in nursing homes.

Suzanne Raab-Long of the Delaware Health Care Association spoke in support of the proposal but noted that some provisions did not reflect what had been approved by the Board for publication including Regulations 11.2.6, 11.5.2, and 11.5.3.2.

**FINDINGS OF FACT WITH RESPECT TO THE
EVIDENCE AND INFORMATION SUBMITTED**

1. The term 'licensed' as it applies to a person handling drugs in a nursing home should be, and was, eliminated. It remained in the published version in error. The proposed regulation does not prevent a resident outpatient from handling his or her own medication.

2. The current regulation adequately addresses the circumstances that arise if a resident is on an outing. The regulation applicable to a filled prescription order is controlling.

TEXT AND CITATION

The text of the revised rules remains as published in Register of Regulations, Vol. 7, Issue 5, November 1, 2003 except that Rule 11.3.4 "There must be an accountability procedure at the facility for needles and syringes" is not stricken.

DECISION AND EFFECTIVE DATE

The Board hereby adopts the changes to Regulation 11.0 to be effective 10 days following publication of this order in the Register of Regulations.

SO ORDERED this 8th day of December, 2003.

STATE BOARD OF PHARMACY

John E. Murphy, R.Ph., President
Nancy Weldin, Public Member
Carolyn Calio, Public Member
Karen J. Dey
Daniel Hauser, Pharm. D.

11.0 Pharmaceutical Services in Nursing Homes

11.1 Definition: A nursing home is an institution licensed by the Division of Public Health ~~State Board of Health~~ that provides permanent facilities that include in-patient beds and medical services, including continuous nursing services, to provide treatment for patients who do not currently require continuous hospital services. Rest-Residential and Assisted Living beds in licensed nursing homes are exempt from this regulation. They are considered under Health Care Facilities.

11.2 General Requirements

11.2.1 Each ~~administrator~~ facility shall provide ~~within the facility,~~ a cabinet or medication carts for individual patient medications ~~prescriptions~~. These storage units shall be of sufficient size and located where easily accessible. They shall be locked when not in use and the key and/or code for ~~for the lock of~~ the storage unit shall be carried by or be accessible only to registered nurses, licensed

practical nurses, or pharmacists. Controlled substances storage shall be in compliance with State and Federal statutes and regulations.

11.2.2 ~~All bleaches, detergents, disinfectants, and external preparations so labeled shall be kept in a separate locked cabinet, compartment, or room apart from medicines, drugs or foods. Internal medications must be stored separately from external medications.~~

11.2.3 ~~Adequate refrigeration (36° to 46° Fahrenheit) must be used to store medications requiring refrigeration. Medications requiring refrigeration must be stored within the USP/NF refrigeration temperature range of 36 to 46 degrees Fahrenheit.~~

11.2.4 Medications which require room temperature storage must be maintained at either USP/NF ranges of 59 to 86 degrees Fahrenheit or the manufacturer's labeled range.

11.2.5 No persons except properly authorized licensed personnel shall handle or administer medications "caution legend drugs" from individual prescriptions.

11.2.6 Schedule II substances shall be secured under two locks in securely fixed boxes or drawers in the medication storage area, medication cart, ~~interim~~ or emergency use medication supplies. ~~These are to be kept separate from non-controlled medications. There shall be accountability procedures for all Schedule II substances present.~~

11.2.7 There shall be accountability procedures for all controlled substances present. There shall be readily retrievable records maintained showing the receipt and disposition of all controlled substances. These records must be maintained for 2 years.

11.3 ~~Stock Medication~~ Emergency Use Medications

11.3.1 ~~Non-legend medications:~~

11.3.1.1 ~~A minimal amount of non-legend drugs may be kept as stock supply.~~

11.3.1.2 ~~If accountabilities for individual patients are found to be inadequate upon inspection, then the stock non-legend medications may be subject to limitations.~~

11.3.2 ~~Legend medications—Emergency, IV, and Anaphylactic supplies~~

11.3.2.1 ~~Certain legend medications for emergency use may be stocked by the nursing home subject to Board approval.~~

11.3.2.2 ~~Emergency use medications are those which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients by delay resulting from obtaining such drugs from other sources.~~

11.3.2.3 ~~IV's and Vaccines must be submitted on an IV interim-a stock list~~

11.3.2.4 ~~Only one IV box may be maintained~~

~~at the facility, unless an exemption is granted by the Board. The number of Anaphylaxis or Emergency boxes must also be submitted for Board approval.~~

11.3.2.5 ~~If there is no specific accountability procedure at the facility for needles and syringes, then these must be submitted on an IV or emergency box list for approval. These are legend items in the State of Delaware.~~

~~11.3.3 Legend medications—Interim supply~~

~~The criteria for legend interim medications requiring Board approval are as follows:~~

11.3.3.1 ~~The interim supply may consist of medications selected from the following categories:~~

- 11.3.3.1.1 ~~antibiotics~~
- 11.3.3.1.2 ~~pain medications~~
- 11.3.3.1.3 ~~antidiarrheal~~
- 11.3.3.1.4 ~~cold/cough/antihistamines~~
- 11.3.3.1.5 ~~antiemetics~~
- 11.3.3.1.6 ~~antihypertensive~~
- 11.3.3.1.7 ~~anticonvulsants~~
- 11.3.3.1.8 ~~antidiabetic agents~~
- 11.3.3.1.9 ~~cardiovascular drugs~~
- 11.3.3.1.10 ~~respiratory/bronchodilators~~
- 11.3.3.1.11 ~~sedatives/hypnotics~~
- 11.3.3.1.12 ~~anticoagulants~~
- 11.3.3.1.13 ~~H2 antagonists~~

11.3.3.2 ~~The pharmacy, medical, and nursing staff committee may select a maximum quantity of 6 dosage units for items present in this supply.~~

11.3.3.3 ~~There can be no more than a total of 60 legend items present in this interim supply.~~

11.3.3.4 ~~Only one interim box may be maintained at the facility, unless an exemption is granted by the Board. A request for an additional box or supply must be submitted to the Executive Secretary of the Board for approval.~~

11.3.1 Emergency use medications are those which may be required to meet the immediate therapeutic needs of patients, as determined by the prescriber, and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients by delay resulting from obtaining such drugs from other sources.

11.3.2 It is the responsibility of the facility and provider pharmacy to determine the supply of emergency use medication that are to be stocked as well as documenting their locations within the facility. A list of current contents must be attached to the medication supply.

11.3.3 Accountability for emergency use medications.

11.3.3.1 The pharmacy provider must be contacted within 24 hours after medication is used from the supply and the pharmacy must restock the supply within a reasonable time to prevent harm to patients.

11.3.3.2 The provider pharmacy is responsible for the accuracy of all emergency use medications at the time

of the filling of the medication. This check must also include any medication that became available when the medication is accessed. Records documenting use of an emergency medication must be kept for a minimum of 2 years at the provider pharmacy and must be readily available for inspection by the Board.

11.3.3.3 Failure to comply with these procedures can result in the suspension or denial of the use of emergency use medications.

11.3.3.4 Violations of accountability procedures for emergency use medications may result in review proceedings before the Board.

11.3.4 There must be an accountability procedure at the facility for needles and syringes.

11.3.4 Approved lists for legend drug boxes.

11.3.4.1 ~~The most current approved signed list or lists for each box must be maintained in the pharmacy, attached to the box or boxes in the facility, and shall become part of the Policy and Procedures manual.~~

11.3.4.2 ~~When additions or deletions are made, then a complete revised list must be submitted for Board approval~~

11.3.5 Accountability for legend stock usage.

11.3.5.1 ~~The pharmacy provider must be contacted within 24 hours after medication is used from the supply. The pharmacist shall review the records of new or changed orders to assure appropriateness. These records must indicate the patient name, location, name of medication, strength, quantity removed, date, time and nurse's signature.~~

11.3.5.2 ~~Failure to comply with all aspects and intent of these procedures outlined can result in the revocation, suspension, or denial of the privilege of having controlled substances present in these supplies.~~

11.3.5.3 ~~Continuous violations of accountability procedures for the non-controlled legend medications may result in review proceedings before the Board of Pharmacy.~~

11.4 Return Medication Procedures.

11.4.1 All unused portions of any patient's discontinued prescription medication shall be immediately isolated. Non-controlled medication shall be destroyed or ~~and~~ returned to the pharmacist or provider pharmacy supplying pharmaceutical services within 72 hours with the appropriate notation of such returns for disposal disposition. The notation shall include the date, quantity, and name and strength of the medication.

11.4.2 Medications for hospitalized patients must be isolated, and may be held until the patient's return or permanent discharge.

~~11.4.2~~ 11.4.3 Destruction of discontinued controlled patient medication and discharged or deceased patient's controlled medication may be jointly performed by the consultant pharmacist or provider pharmacist with a

designated nurse witness if shall be jointly performed by two authorized licensed personnel within 72 hours of the discontinuation of the medication or discharge of the patient. A record of the destruction must be signed by both parties and kept at the facility for 2 years.

11.5 Labeling

11.5.1 Labels on controlled substances must show the actual refill date and amount of medication dispensed.

11.5.2 ~~If a unit dose system is used, then~~ The provider pharmacy must maintain prescription records required by State and Federal law in addition to a readily retrievable record of the actual refills, amount dispensed and accountability of the amounts used.

11.5.3 A pharmacy providing prescriptions for ~~inpatient~~ use in a nursing home may label the prescription, "to be administered according to current physician's orders." provided that:

11.5.3.1 ~~The MAR accurately reflects the prescriber's current orders.~~

11.5.3.2 ~~The pharmacy is informed of any change in directions within twenty-four (24) hours and promptly records the change on the patient's profile. Prescriptions for leave of absence or discharge must be labeled in compliance with 24 Del.C. §2536.~~

11.5.4 A change in a medication order that involves a direction change must be communicated to the pharmacy within 24 hours, and the labeling on medication currently in the facility may be handled in the following ways:

11.5.4.1 A licensed nurse or pharmacist may apply an accessory label to the medication which denotes that there has been a direction change.

11.5.4.2 A label(s) with new directions may be requested from the pharmacy and applied to the current medication supply by a licensed nurse or pharmacist.

11.6 Duties of Consultant Pharmacist (CP).

11.6.1 A consultant pharmacist (CP) to a nursing home in the State of Delaware must be licensed to practice pharmacy in the State of Delaware. The consultant pharmacist shall be responsible for the general supervision of the nursing home pharmaceutical services and the direct supervision of registered pharmacy interns, who may assist in chart reviews. Supervision of chart reviews by a pharmacy intern must be documented by the supervising pharmacist.

11.6.2 The consultant pharmacist shall provide the administrator of a nursing home with a statement indicating those minimum professional services that will be provided. This statement shall be incorporated into the nursing home Pharmacy Policy and Procedure Manual.

11.6.3 ~~When a pharmacist becomes the consultant to a nursing home, he or she~~ The consultant pharmacist must notify the Board in writing within ten days

of the starting date. starting as a consultant in the State. The Delaware State Board of Pharmacy shall be notified in writing within ten days by the consultant pharmacist of termination of said services.

11.6.3.1 If the consultant pharmacist has not served in that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming that position.

11.6.4 The consultant pharmacist shall be responsible for written policies and procedures which shall include, but not be limited to:

11.6.4.1 Procedures for administering the services outlined in the statement of proposed services.

11.6.4.2 Policies governing practitioner medication orders, medication errors, automatic stop orders, medications for patient discharge and leave of absence.

11.6.4.3 Policies and procedures necessary to insure the safe use, administration, control and accountability of all drugs through out the nursing home in compliance with State and Federal laws.

11.6.4.4 Policies and procedures outlining the destruction of wastage for all controlled medications.

11.6.4.5 Policies governing appropriate storage of medications, an effective drug recall procedure and labeling of all prescription drugs and biologicals in accordance with State and Federal requirements. For registered out-of-state providers an additional labeling requirement is having the toll-free telephone number on the prescription labels.

11.6.4.6 Policies and procedures governing patient drug regimen review, which shall include procedures for reporting irregularities, and documenting that such reviews have been performed. The provider pharmacy is to receive copies of all practitioners' orders to be reviewed with the information on the patient profiles.

11.6.4 The CP shall be responsible for the development of written policies and procedures which shall include, but not be limited to:

11.6.4.1 Procedures for administering the services outlined in the statement of proposed services.

11.6.4.2 Policies governing physician medication orders, medication errors, automatic stop orders, and medications for patient discharge and leave of absence. emergency; medication

11.6.4.3 Policies and procedures necessary to insure the safe use, administration, control and accountability of all drugs throughout the nursing home in compliance with Federal and State laws.

11.6.4.4 Policies and procedures outlining the return or destruction on site of wastage for all controlled substances.

11.6.4.5 Policies governing appropriate storage of medications, an effective drug recall procedure, and labeling of all prescription drugs and biologicals in

accordance with Federal and State requirements. For registered out of state providers an additional labeling requirement is having their toll free telephone number on the prescription labels.

11.6.4.6 Policies and procedures governing patient drug regimen reviews, which shall include procedures for reporting irregularities, and documenting that such reviews have been performed. The provider pharmacy is to receive copies of all physicians' orders to be reviewed with the information on the patient profiles.

11.6.5 If the nursing home has a pharmacy or quality related committee Pharmacy and Therapeutics Committee or Quality Assurance or Assessment Committee, the consultant pharmacist CP shall serve on that committee.

11.6.6 The consultant pharmacist or designated pharmacy staff shall make inspections of each nursing station and related drug storage areas at least monthly. A pharmacy support person may assist with inspection under the direct supervision of a pharmacist. Nursing station inspections must include, but are not limited to the following : (1) Documentation of medication storage area(s) (59 to 86 Fahrenheit) and refrigerator temperatures (36 to 46 degrees Fahrenheit), (2) documentation of security of all drugs (e.g. medication room cabinets, carts, Board approved drug boxes), (3) proper labeling, including any accessory or cautionary instructions, (4) proper expiration dates, (5) cleanliness, (6) accountability of all medication and (7) interim, emergency, IV, anaphylactic boxes or kits are properly maintained. A copy of these inspection reports must be maintained at the facility.

11.6.6.1 Nursing station inspections must include, but are not limited to, documentation of the following:

11.6.6.1.1 medication storage area(s) (59 to 86 degrees Fahrenheit) and refrigerator temperatures (36 to 46 degrees Fahrenheit);

11.6.6.1.2 security of all drugs;

11.6.6.1.3 proper labeling, including any accessory or cautionary instructions;

11.6.6.1.4 proper expiration dating;

11.6.6.1.5 cleanliness;

11.6.6.1.6 emergency use medication supplies are properly maintained.

11.6.6.2 A copy of these inspection reports must be maintained at the facility for two years.

11.6.7 The consultant pharmacist shall review the drug regimen of each patient monthly at the facility. Each patient's chart will be reviewed at the facility. Documentation of the review is accomplished in the following manner:

11.6.7.1 If the pharmacist determines that there are no irregularities in the patient's drug regimen, he/she must note in the patient's chart that he/she has reviewed the drug regimen, found no irregularities, and sign and date this

notation. This documentation must remain on the patients' charts for a minimum of 12 months.

11.6.7.2 If the pharmacist determines that there are irregularities, he/she must prepare a drug regimen review report ~~summary~~ which includes any pertinent information such as the patient's diagnosis(es), the drug regimen, any pertinent laboratory findings, dietary considerations, etc., and his/her recommendations for improving the drug therapy of the patient. This written recommendation shall be forwarded to the attending practitioner, with the original documentation maintained in the patient chart. The written summaries must be maintained in the facility. A copy must be sent to the Medical Director, attending physician, Administrator and the Director of Nursing.

11.6.7.3 Nursing unit inspections and a summary report of patient drug regimen reviews must be submitted to the Director of Nursing and the Administrator monthly.

11.6.8 The consultant pharmacist is responsible for the accountability of all medications. A random sample will be done monthly to identify overages or shortages of any medications. Documentation will be made of irregularities and will include date of audit, patient identification, a listing of overages or shortages, and an explanation if known. A plan for correction will be included in the documentation where appropriate. Documentation will be maintained for a period of 12 months at the facility.

11.6.9 ~~11.6.8~~ The consultant pharmacist CP shall be responsible for providing information to the nursing home staff, as may be appropriate or required, to ensure safety, understanding and compliance with policies and procedures pertaining to pharmacy-related activities and concerns.

11.6.10 ~~11.6.9~~ The consultant pharmacist CP shall assume all other responsibilities required of a consultant pharmacist CP as set forth in any State or Federal ~~or State~~ statutes or regulations as enacted or amended or may be enacted or amended.

~~Notwithstanding this Regulation, nothing in the Regulation shall render a practice unlawful which is required by Federal regulation.~~

*** PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE BOARD OF PHARMACY REGULATIONS ARE AVAILABLE AT:**

<http://www.state.de.us/research/profreg/Frame.htm>

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL LAND SURVEYORS**

24 DE Admin. Code 2700

Statutory Authority: 24 Delaware Code,
Section 2706 (24 Del.C. §2706)

ORDER

The Board of Professional Land Surveyors met in a public hearing on November 20, 2003 to consider public comment on the Board's Draft Regulations, published in the October 1, 2003 edition of the Delaware Register (7 Del. Reg. 385).

The only public participant at the hearing was Mr. Charles Addams, PLS who addressed the proposal to limit the geographic scope of the Mortgage Inspection Plans rules to New Castle County. He did not oppose the Board's Draft.

However, Mr. William W. Dailey, Jr., PLS wrote to the Board and opposed the adoption of the draft Regulation. He suggested that there should be no such distinctions made between the survey practices in New Castle County and the rest of the State.

Members of the Board discussed the Draft Regulation further, and voted to adopt it in the form set forth in 7 Del. Reg. 388, at Section 12.11.2.

This Regulation shall go into effect as provided in the applicable provisions of the Administrative Procedures Act, 29 Del.C. Chapter 100.

SO ORDERED THIS ___ DAY OF _____, 2001.

Approved as to form:

Frederick H. Schranck
Deputy Attorney General

12.0 Minimum Technical Standards for Licences

12.1 The Board is required under Sections 2701 and 2112(a)(9) to establish minimum technical standards for licensees. The purpose of these standards is to establish minimum technical criteria to govern the performance of surveys when more stringent specifications are not required by other agencies or by contract. Further, the purpose is to protect the inhabitants of this state and generally to promote the public welfare. The Board also established minimum standards for Mortgage Inspection Plans (MIPs), and other types of work, frequently performed by licensees in portions of the state.

12.2 Procedure and Standards. Whenever a surveyor conducts a boundary survey or an improvement location survey of properties, a plat showing the results shall be prepared and a copy furnished to the client unless deemed unnecessary by the client. The plat shall conform to the following requirements and shall include the following information:

12.2.1 The plat shall be drawn on any reasonably stable and durable drawing paper, vellum or film of reproducible quality. No plat or map shall have dimensions of less than 8 ½ x 11 inches.

12.2.2 The plat shall show the written scale, area and classifications of the survey. These classifications (suburban, urban, rural, and marshland) are based upon both the purposes for which the property is being used at the time the survey is performed and any proposed developments, which are disclosed by the client, in writing. This classification must be based on the criteria in Section 12.4 and the survey must meet the minimum specifications set forth in Attachment A. The scale shall be sufficient to show detail for the appropriate classification.

12.2.3 The horizontal direction of all boundary lines shall be shown in relationship to grid north, magnetic, or in lieu thereof, to true north or to such other established line or lines to which the survey is referenced. The horizontal direction of the boundary lines shall be by direct angles or bearings. A prominent north arrow shall be drawn on every sheet. The description of the bearing reference system shall be stated on the plat.

12.2.4 All monuments, natural and artificial (man-made), found or set, used in the survey, shall be shown and described on the survey plat. The monuments shall be noted as found or set. All monuments set shall be ferrous metal, or contain ferrous metal, not less than ½ inch in diameter and not less than 18 inches in length, except however, a corner which falls upon solid rock, concrete, or other like materials shall be marked in a permanent manner and clearly identified on the plat. Monuments shall be set at all corners of all surveys as required by these standards, with the exception of meanders such as meanders of streams, tidelands, wetlands, lakes, swamps and prescriptive road rights-of-way. Witness monuments shall be set or referenced whenever a corner monument cannot be set or is likely to be disturbed. Such witness monument shall be set as close as practical to the true corner. If only one (1) witness monument is set, it must be set on the actual boundary line or prolongation thereof. Otherwise, at least two (2) witness monuments shall be set and so noted on the plat of the survey. Monuments shall be identified, where possible, with a durable marker bearing the surveyor's registration number and/or name.

12.2.5 The plat of a metes and boundary survey must clearly describe the commencing point and label the point of beginning for the survey.

12.2.6 Notable discrepancies between the survey and the recorded description, and the source of information used in making the survey, shall be indicated. When an inconsistency is found, including a gap or overlap, excess or deficiency, erroneously located boundary lines or monuments, the nature of the inconsistency shall be indicated on the drawing.

12.2.7 In the judgment of the surveyor, the description and location of any physical evidence found along a boundary line, including but not limited to fences, walls, buildings or monuments, shall be shown on the drawing.

12.2.8 The horizontal length (distance) and direction (bearing) of each line as determined in an actual survey process shall be shown on the drawing.

12.2.9 At least three (3) elements (including radius, arc and chord bearing and distance) of all circular curves, shall be shown.

12.2.10 Information used by the surveyor in the property description shall be clearly shown on the plat, including but not limited to, the point of beginning, course bearing, distance, monuments, etc.

12.2.11 The lot and block or tract numbers or other designations, including those of adjoining lots, if the survey is within a recorded subdivision. If the property is not within a recorded subdivision, then the name and deed record of all adjoining owners shall be shown.

12.2.12 Recorded public and private rights-of-way or easements which are discovered during the title search performed by others and supplied to the surveyor or graphically shown on the recorded plat, which includes the property, or which are known or observed adjoining or crossing the land surveyed, shall be shown.

12.2.13 Location of all permanent improvements pertinent to the survey, referenced radially and perpendicular to the nearest boundary, shall be shown.

12.2.14 Visible or suspected encroachments onto or from adjoining property or abutting streets, with the extent of such encroachments, shall be shown.

12.2.15 A plat or survey shall bear the Company and individual name, address, and date of survey and original signature and board-approved seal of the licensed surveyor in responsible charge. This signature and seal is certification that the survey meets minimum requirements of the Standards for Land Surveyors as adopted by the Delaware Board.

12.2.16 The following information shown on the plat must be included in a written description, if one is provided:

- 12.2.16.1 The commencing point and point of beginning.
- 12.2.16.2 Sufficient caption to connect the plat and description.
- 12.2.16.3 Length and direction of all lines.
- 12.2.16.4 Curve information as described in paragraph 12.2.9.
- 12.2.16.5 Type of monuments noted as found or set.
- 12.2.16.6 The area of the parcel.
- 12.2.16.7 Adjoining owners, subdivision name, etc.

12.3 Standards for Horizontal Control.

12.3.1 Definitions for specific types of horizontal control surveys, along with standards and procedures, may be found in National Geodetic Survey (NGS) or successor publications. All geodetic surveys, including determination and publication of horizontal and vertical values utilizing Global Positioning Systems, Ground Control Systems or any other system which relates to the practice and profession of Land Surveying, shall be performed under the direct control and personal supervision of a licensed Professional Land Surveyor licensed in the State of Delaware.

12.3.2 Control Surveys that are used to determine boundary lines, including developing coordinates for existing boundary corners, shall meet the Standards contained herein.

12.3.3 Land Information Systems/Geographic Information Systems (LIS/GIS) maps should be built on a foundation of coordinates obtained by an accurate survey. Creation of LIS/GIS maps and services should include a Professional Land Surveyor licensed in the State of Delaware for coordination and input of their knowledge in these fields.

12.4 Classification of Surveys.

12.4.1 Urban Surveys - Surveys of land lying within or adjoining a city or town. This would also include the surveys of commercial and industrial properties, condominiums, townhouses, apartments and other high-density developments regardless of geographic location.

12.4.2 Suburban Surveys - Surveys of land lying outside urban areas. This land is used almost exclusively for single family residential use or residential subdivisions.

12.4.3 Rural Surveys - Surveys of land such as farms and other undeveloped land outside the suburban areas which may have a potential for future development.

12.4.4 Marshland Surveys - Surveys of land which normally lie in remote areas with difficult terrain and usually have limited potential for development and cannot be classified as urban, suburban or rural surveys. This includes, but is not limited to, surveys of farmlands and rural areas.

12.5 ALTA/ACSM Land Title Survey. The current published standard as amended from time to time.

12.6 Mortgage Inspection Plans (MIP)

12.6.1 Purpose. The purpose of an MIP is to locate, describe and represent the positions of buildings or other visible improvements, or both, affecting the property being inspected.

12.6.2 Product. The results of the MIP shall be stated on a plat showing the property inspected and the location of the buildings or other visible improvements affecting the inspected property.

12.7 The Approval by the Consumer and Disclosures.

12.7.1 The surveyor shall not begin work for

compensation pursuant to this regulation until the surveyor receives a signed approval form more particularly described below.

12.7.2 The approval form or its equivalent shall be sufficient if signed by one consumer, whether or not there are multiple consumers, or, if a consumer is not an individual, the consumer's duly authorized agent, with respect to the property for which services pursuant to this regulation are sought. The approval form shall at a minimum contain:

12.7.2.1 An approval by the signer of the requested services; and

12.7.2.2 An explanation of the differences between an MIP and a boundary survey which includes an improvement location drawing.

12.7.2.3 The following approval form or its equivalent shall suffice for the purpose of complying with this regulation: "Approval Form (on company letterhead, with name, address and telephone number)

In connection with the purchase or refinancing of the property located at _____, we have been requested to prepare an MIP.

Since an MIP is not a boundary survey and does not identify property boundary lines, State regulations require us to have your approval. Therefore, please sign and return the original of this form promptly, by fax or mail, so that there will be no delay in settlement.

If you wish, we can perform a boundary survey, which includes an Improvement Location Drawing (ILD). This survey will identify property boundary lines and will mark property boundary corners. An MIP will cost approximately \$_____. A boundary survey which includes an ILD will cost (approximately \$_____) (between \$_____ and \$_____).

Very truly yours,

Check appropriate lines:

_____ We approve the preparation of an MIP. We have read and understand that, in the absence of any problem revealed by or during the preparation of this drawing, it may be all that is required of the land surveyor.

_____ We request a boundary survey that will include an ILD, and will identify property boundary lines and mark property boundary corners.

_____(Signature)

_____(Signature)

12.7.3 Upon receipt of an approval form, which complies with this section, the surveyor shall perform the services approved by the consumer. If the consumer requests a boundary survey which includes an ILD, then the survey shall be consistent with the provisions set forth in The Minimum Model Standards adopted by the Board.

12.8 Minimum Procedures. If the consumer approves the preparation of an MIP, the surveyor shall perform at least the following procedures:

12.8.1 Examine the current deed and/or plat for the subject parcel and review the most current tax assessment map for inconsistencies with deed or plat.

12.8.2 Take sufficient on-site measurements to enable the surveyor to perform the tasks called for by this regulation with regard to the:

12.8.2.1 Locations of buildings and those other improvements pertinent to the MIP;

12.8.2.2 Locations of possible encroachments reasonably determined based on a visual inspection;

12.8.2.3 Easements; and

12.8.2.4 Rights-of-way.

12.8.3 If the consumer has approved an MIP, then the following elements shall be shown:

12.8.3.1 Significant buildings, structures and other improvements, and their relationship to the apparent property lines referenced radially and/or perpendicular to the nearest boundary, based on the field measurements taken by the surveyor, and any other evidence considered by the surveyor;

12.8.3.2 Statement with regard to the level of accuracy and accuracy of apparent setback distances; (REFER TO ATTACHMENT A)

12.8.3.3 Possible encroachments to the extent reasonably determined by a visual inspection of the property either way across property lines; and

12.8.3.4 Minimum setback lines, as shown on plats,

12.8.3.5 A minimum of two control points and their relationship to each other and the subject property.

12.8.3.6 Easements or rights-of-way as shown on plats or current deed of record for subject property.

12.8.4 If, in connection with the preparation of an MIP, a surveyor finds evidence to warrant, in the surveyor's professional opinion, the performance of a boundary survey, the surveyor shall so notify, in writing, the consumer or the consumer's representative.

12.8.5 If the consumer has approved the preparation of an MIP, then:

12.8.5.1 The MIP prepared by the surveyor shall prominently display, at a minimum, advice to the effect that:

12.8.5.1.1 The MIP is of benefit to a consumer only insofar as it is required by a lender, a title

insurance company or its agent in connection with the contemplated transfer, financing, or refinancing; and

12.8.5.1.2 The MIP is not to be relied upon for the establishment or location of fences, garages, buildings or other existing or future improvements.

12.9 Plats.

12.9.1 The original plat of an MIP shall be a reproducible drawing at a scale which clearly shows the results of the field work, computations, research and record information as compiled and checked.

12.9.2 The plat shall be prepared in accordance with the following procedures:

12.9.2.1 A reasonably stable and durable drawing paper, linen or film is considered a suitable material;

12.9.2.2 Plats may not be smaller than 8 ½ x 11 inches;

12.9.2.3 The plat shall show the following:

12.9.2.3.1 Caption or title and address or lot number of the property,

12.9.2.3.2 Scale,

12.9.2.3.3 Date,

12.9.2.3.4 Name and address of the firm or surveyor; and

12.9.2.3.5 Original signature and board-approved seal of the licensed surveyor in responsible charge,

12.9.2.3.6 Consumer's name,

12.9.2.3.7 Statement with regard to the level of accuracy and accuracy of apparent setback distances; (REFER TO ATTACHMENT A)

12.10 Maintenance of Records.

12.10.1 The surveyor shall make a reasonable effort to maintain records, including names or initials of all personnel, date of performance, reference to field data, such as book number, loose leaf pages and other relevant data.

12.11 Local Standards.

12.11.1 All work shall be performed according to the minimum standards for the community in which the service is provided, as long as said standards meet or exceed the standards herein. (1) Current local standards shall take precedence over the MIP as to the manner in which mortgage or deed-related surveys or plans are prepared and as to the manner of field work and staking related to these surveys or plans, if those standards require more detailed or more accurate work to meet those local standards.

12.11.2 Based on current information, the MIP shall be accepted as a minimum standard only in New Castle County. In Kent and Sussex counties, MIP's shall not be considered to meet the minimum local standards for the work required for mortgage or deed-related surveys or plans.

See 6 DE Reg. 271 (9/1/02)

* PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE BOARD OF PROFESSIONAL LAND SURVEYORS REGULATIONS ARE AVAILABLE AT:

<http://www.state.de.us/research/profreg/Frame.htm>

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code,
Section 209(a) (26 Del.C. §209(a))

<p>IN THE MATTER OF THE REGULATION GOVERNING TERMINATION OF RESIDENTIAL ELECTRIC OR NATURAL GAS SERVICE BY PUBLIC UTILITIES FOR NON- PAYMENT DURING EXTREME SEASONAL TEMPERATURE CONDITIONS (OPENED APRIL 15, 2003)</p>	<p>PSC REGULATION DOCKET NO. 53</p>
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ORDER NO. 6325

AND NOW, this 9th day of December, 2003;

WHEREAS, pursuant to 26 Del. C. § 209(a), and 29 Del. C. §§ 10111 *et seq.*, the Public Service Commission ("the Commission") has determined to adopt proposed "Regulations Governing Termination Of Residential Electric Or Natural Gas Service By Public Utilities For Non-Payment During Extreme Seasonal Temperature Conditions" ("Regulations"); and

WHEREAS, the following parties participated in this regulation docket: the Division of the Public Advocate, Conectiv Power Delivery, Delaware Electric Cooperative, Inc., Chesapeake Utilities Corporation, and the Commission Staff; and

WHEREAS, the Commission has determined to issue this Order reciting the Background, Summary Of The Evidence And Information Submitted, And Its Findings; and

WHEREAS, on or about March 7, 2003, the Division of the Public Advocate ("DPA") filed a Petition to Reopen PSC Regulation Docket No. 3 ("Petition"); and

WHEREAS, on September 4, 1979, the Commission initiated PSC Regulation Docket No. 3 to develop rules and regulations that would govern the termination of residential electric, natural gas, and heating oil services by regulated public utilities during the heating season; and

WHEREAS, after receiving comments from the

affected utilities, as well as from interested members of the consuming public, the Commission, by Order No. 1990 (Oct. 30, 1979), adopted regulations that specified the circumstances under which service terminations during the heating season could be effected for non-payment; and

WHEREAS, these Regulations were further modified by the Commission in Order No. 2143 (Oct. 28, 1980; and

WHEREAS, the DPA noted in its Petition that, among other things, the adopted Regulations provide that no service terminations for non-payment shall occur during the heating season "to a dwelling unit on a day when the 8:00 a.m. ambient air temperature measured at a location in the State of Delaware, selected by the utility, within fifty (50) miles of the subject dwelling unit, is twenty degrees Fahrenheit (20° F) or less on the morning of the date when said service . . . is scheduled for termination."; and

WHEREAS, the DPA contends in its Petition that the 20° F temperature floor set by the existing Regulations is rather extreme and would adversely affect the health and safety of the consuming public, particularly that segment of the population most likely to face a service termination, children, the aged, and the infirm; and

WHEREAS, the DPA asserts in its Petition that the DPA Staff has compiled data, which is supplemented with research performed by the Commission's own Staff, concerning the termination policies of 35 states during the heating season. An analysis of that data reveals the following:

- A majority of the state jurisdictions surveyed have restrictions against disconnecting electric and/or natural gas services during the winter months;
- A third of these states have specific temperature restrictions during the winter, and a majority of these prohibit terminations if the temperature is less than 32° F;
- About a third of the states in the study prohibit the disconnection of services to low-income or elderly customers during the winter.

WHEREAS, the DPA notes that Delaware lacks a uniform standard relating to the temperature floor at which regulated utilities may not terminate service during the winter; and

WHEREAS, in its Petition the DPA notes that the present Regulations do not speak to the severe and adverse impact that service terminations can also have during times of extreme temperatures in the Summer; and

WHEREAS, the DPA observes that, in 2001, it was able to negotiate with Conectiv Power Delivery ("Conectiv") to voluntarily adopt a policy of limiting service terminations of residential customers during periods of extreme heat in the Summer, but that this policy is one which Conectiv adopted voluntarily and such policy cannot be enforced by

the Commission nor imposed on any other electric utility; and

WHEREAS, the DPA, therefore, has requested that for the sake of uniformity, and for the general welfare of all consumers of regulated electric services, the Commission consider adopting the Conectiv "hot weather" policy as part of the termination Regulations originally adopted in this docket, to be applicable to all relevant utilities under the Commission's jurisdiction; and

WHEREAS, the Staff submitted a memorandum to the Commission dated March 11, 2003, in which it supported the reopening of this docket; and

WHEREAS, on April 15, 2003, the Commission issued Order No. 6148 reopening this regulation docket and recaptioned the docket as Regulation Docket No. 53; and

WHEREAS, pursuant to Order No. 6148, the Commission caused to be published a public notice soliciting comments concerning revisions to the Regulations; and

WHEREAS, the Commission Staff prepared a proposed set of "Regulations Governing Termination Of Residential Electric Or Natural Gas Service By Public Utilities For Non-Payment During Extreme Seasonal Temperature Conditions," conducted a public workshop on August 20, 2003, received and considered written comments from interested parties, and conducted a series of teleconferences in which the participants in this docket provided further comments on the Regulations; and

WHEREAS, on October 7, 2003, the Commission held a duly noticed public hearing to consider the revised Regulations prepared by the Staff, the comments and discussion at the workshop on August 20, 2003, and the written comments received from interested parties; and

WHEREAS, on October 7, 2003, the Commission issued Order No. 6282 promulgating the revised Regulations prepared by Staff; and

WHEREAS, the revised Regulations were transmitted to the Registrar of Regulations for publication in the **Delaware Register**; and

WHEREAS, the revised Regulations contained provisions designed to: 1) increase the threshold temperature level at which the termination of service is prohibited from the present level of 20 degrees Fahrenheit to 32 degrees Fahrenheit; 2) extend the scope of the regulations to encompass the termination of utility service used for cooling during the period from June 1 through September 30, in circumstances where the Heat Index (a combination of air temperature and humidity) will equal or exceed 105 degrees Fahrenheit; 3) add definitions for the terms "Cooling Season" and "Heat Index;" (4) delete any reference to heating oil service, because it is no longer regulated by the Commission under Delaware law; 5) enlarge the period of notice of termination which must be given to residential customers from five working days to fourteen calendar days; 6) revise the interest rate that may be charged to customers

on past due amounts being paid under installment agreements from 18 percent per year to the interest rate set forth in the utility's approved tariff, which revision is expected to reduce the interest rate charged to customers; 7) amend a provision in the existing regulations regarding the minimum duration of an installment agreement to repay an undisputed arrearage by providing that the restriction will not apply to subsequent installment agreements in the event the customer defaults on the initial agreement; 8) clarify the language in the regulations to require covered utilities to make a reasonable good faith attempt to make personal contact with the customer at the premises to be disconnected prior to termination; 9) specify that the revised regulations do not apply during the cooling season to customers of a natural gas utility, unless the natural gas utility provides natural gas service for space cooling to the customer's dwelling unit; 10) revise language in the existing regulations about providing customers who are unable to pay their utility bill with information about organization(s) that may provide the customers with assistance; 11) revise a provision of the existing regulations to deal with situations where a customer tenders cash to a utility employee who is not authorized to accept cash; 12) update provisions dealing with non-mandatory third party notice programs that may be adopted by utilities; and 13) revise provisions related to the termination of service to multiple occupancy dwelling units served through a master meter, including the posting of notice at each affected building; and

WHEREAS, pursuant to Commission Order No. 6282, public notice was published in *The News Journal* and *Delaware State News* newspapers seeking additional public comment to be filed with the Commission on or before November 30, 2003, and stating that the Commission would conduct a public hearing on the revised Regulations on December 9, 2003; and

WHEREAS, no additional written comments have been received from the public or interested parties; and

WHEREAS, the participants in this docket have jointly proposed an amendment to Section 3.1 of the revised Regulations to require covered utilities to make at least one documented attempt to contact the customer by telephone prior to actual termination of service; and

WHEREAS, no additional amendments have been proposed to the revised Regulations.

Now, therefore, **IT IS SO ORDERED:**

1. Pursuant to 29 **Del.C.** §209(a), the Commission finds and determines that the adoption of the proposed Regulations, including the aforesaid amendment to Section 3.1, is just and reasonable, and in the public interest, and will foster the furnishing of safe and adequate and proper service to customers.

2. The Secretary of the Commission shall transmit to

the Registrar of Regulations for publication in the *Delaware Register* on January 1, 2004, the proposed Regulations attached hereto as Exhibit "A." The Commission hereby adopts and approves the proposed Regulations, attached hereto as Exhibit "A," as the Regulations that will govern the Termination Of Residential Electric Or Natural Gas Service By Public Utilities For Non-Payment During Extreme Seasonal Temperature Conditions. The Regulations shall become effective on January 12, 2004.

3. The Commission retains jurisdiction in this matter, including the authority to make such further Orders as may be just or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
 Joshua M. Twilley, Vice Chair
 Joann T. Conaway, Commissioner
 Donald J. Puglisi, Commissioner
 Jaymes B. Lester, Commissioner

ATTEST: Karen J. Nickerson, Secretary

EXHIBIT "A"

THE DELAWARE PUBLIC SERVICE COMMISSION

**REGULATION GOVERNING TERMINATION OF
 RESIDENTIAL ELECTRIC OR NATURAL GAS
 SERVICE BY PUBLIC UTILITIES FOR NON-
 PAYMENT DURING EXTREME SEASONAL
 TEMPERATURE CONDITIONS**

PSC REGULATION DOCKET NO. 53

(Opened: April 15, 2003 (PSC Order No. 6148))

I. GENERAL

1.1 Authority

These regulations are adopted pursuant to the authority granted to the Public Service Commission under 26 **Del.C.** § 209(a) and 29 **Del.C.** §101.

1.2 Application and Purpose

These regulations establish uniform procedures which must be followed prior to termination of service for non-payment during the heating or cooling season and apply to all covered utilities. The purpose of these regulations is to protect public health, safety, and property by taking reasonable steps to insure that an individual has the opportunity to act to avoid termination of certain utility services for non-payment during the heating or cooling season without imposing substantial additional cost on other utility customers. Notwithstanding anything stated in these regulations to the contrary, the provisions of these regulations do not apply during the cooling season to a

customer of a natural gas utility, unless the natural gas utility provides natural gas service for space cooling to the customer's dwelling unit.

II. DEFINITIONS

"Cooling Season" – means that portion of the calendar year extending from June 1 through September 30.

"Covered Utility" - means any utility regulated by the Public Service Commission of Delaware that supplies electric or natural gas service to a dwelling unit.

"Dwelling Unit" - means one or more rooms arranged for the use of one or more individuals as a single housekeeping unit, with cooking, living, sanitary, and sleeping facilities.

"Heat Index" – a measure utilized by the National Weather Service of the apparent temperature (how hot it feels) when relative humidity is added to the actual air temperature.

"Heating Season" - means that portion of the calendar year extending from November 15 to March 31.

"Personal Contact" - means a face-to-face meeting between the customer or responsible occupant of the premises served and an employee of the covered utility who is authorized to receive payment and issue a receipt or make other arrangements for payment.

"Written Notice" - means notice in writing, mailed by First Class mail to the person who is being given notice, using the current billing address as shown on the records of the utility.

III. PROHIBITIONS

3.1. Written and Verbal Notice

A. Notwithstanding any tariff provision or contract provision to the contrary, no covered utility shall terminate service to a dwelling unit during the heating or cooling season for non-payment of a past due bill or bills, unless at least fourteen (14) calendar days prior to such termination, written notice is given to the customer. The notice shall state the fact of impending termination, the date on or after which such termination will occur, and the steps which may be taken to avoid such termination. In addition, **[during the heating season,]** the covered utility shall make at least two (2) documented attempts on separate days to contact the customer by telephone prior to actual termination of service. One such attempt shall be after 6:00 P.M. **[During the cooling season, the covered utility shall make at least one (1) documented attempt to contact the customer by telephone prior to actual termination of service.]**

B. During the heating season only, in those situations where the billing address is different from the location at which the service is being provided, the advance written notice required by § 3.1.A must also be given to the occupant of the premises being served.

3.2 Content of Notice

The written and verbal notice required by §3.1 shall, at a minimum, include notification of the following:

A. The date on or after which termination of service will occur unless some satisfactory arrangement is made for the payment of the undisputed delinquent bill or bills, which date shall be no less than fourteen (14) calendar days from the mailing of written notice.

B. That if there is a good faith dispute concerning the unpaid bill or bills, termination of service will not take place pending determination of the dispute, provided the utility is notified of the existence of the dispute prior to actual termination. In this regard, the utility must also give the name or names of the persons or office authorized to receive notification of the existence of the dispute and empowered to resolve such disputes, together with the telephone number and address at which such persons or office can be contacted and notified of the existence of a dispute. No covered utility shall be required to delay termination of service pending resolution of a disputed bill or bills where the undisputed portion of the bill or bills would otherwise justify termination of service or where the customer does not agree to pay current undisputed bills as they become due and to eliminate undisputed arrearages by installment payments. Service will not be reconnected after termination for non-payment on the grounds that a good faith dispute exists unless and until arrangements satisfactory to the covered utility have been made for payment in the event the dispute is resolved in favor of the utility.

C. That if the customer is unable to pay the full amount of the undisputed bill or bills, termination of service may be avoided by entering into an initial installment agreement with the utility whereby the customer will agree to pay current bills as they become due and eliminate, by monthly installment payments, the undisputed arrearage over a period of not less than that during which the unpaid bills were incurred with interest on the unpaid balance at the next billing date. If the customer violates the initial installment agreement, the limitation on the minimum duration of the initial installment agreement shall not apply to any subsequent installment agreement. The interest rate shall be set forth in the approved tariff of the covered utility. The name, address, and telephone number of the utility employees or office empowered to enter into installment arrangements on behalf of the covered utility must be provided to the customer.

D. That if the customer is unable to pay the undisputed bill or bills in full, or to enter into a satisfactory reasonable installment arrangement, there are charitable or governmental organizations or agencies that may be able to assist customers who are so situated and that the customer should immediately contact such organizations. The written notice required by § 3.1 shall contain either a list of those organizations who have notified the covered utility that they

may be able to assist customers, or the name and telephone number of an organization that the customer can contact to obtain such information.

E. That if any occupant of the dwelling unit is so ill that termination of the utility service would adversely affect health or recovery, which fact has been certified by a statement from any licensed Delaware physician or any accredited Christian Science practitioner, when such certification is received by the covered utility or its employee, termination of service is prohibited by Delaware Law (26 **Del.C.** § 117(d)).

3.3 Final Contact Prior to Termination

The employee of the utility who is to disconnect service shall make a reasonable good faith attempt to make personal contact at the premises to be disconnected. If personal contact is made, the employee shall:

A. Identify himself or herself to the customer or some responsible person then upon the premises and shall announce the purpose of his or her presence.

B. Identify and record the name of the person contacted.

C. Accept payment of all amounts tendered which are necessary to avert disconnection and issue a receipt for such payment. If the form of payment is unacceptable to the utility, the employee can make other payment arrangements with the customer.

D. Record and report to his or her supervisor any statements disputing the accuracy of the utility's findings concerning the cause for termination of service.

E. Record and report to his or her supervisor statements or other information concerning the existence of any condition on the premises which would result in a medical emergency if service were terminated.

F. Receive written certification from a duly licensed Delaware physician or accredited Christian Science practitioner that a named occupant of the dwelling unit is so ill that termination of service will adversely affect the occupant's health or recovery. Upon receipt of such certification, the utility shall not disconnect service.

IV. THIRD PARTY NOTICE

4.1 Non-Mandatory Third Party Notice

All covered utilities shall inform all of their customers of the availability of any third party notification program offered by the utility, whereby the customer can designate, in writing, a third person to receive notice of past due bills and written notice of termination of service. The third party so designated must indicate, in writing, willingness to receive such notice and shall not be held, in any way, liable to the utility by reason of acceptance of third party status.

4.2 Termination Notice Without Third Party Notice Program

No covered utility without a third party notice

program, shall terminate service to a dwelling unit during the heating or cooling season without first having given the written notice required by § 3.1 and, in addition, having made actual contact on a face-to-face basis with an occupant over the age of 15 years of such dwelling unit, giving the minimum notice set forth in § 3.3.

4.3 Information Concerning Third Party Notice

If a covered utility adopts such a program, the utility shall take appropriate steps to see that all customers are aware of the existence of the third party notice program.

V. TERMINATION OF SERVICE TO MULTIPLE OCCUPANCY DWELLING UNITS SERVED THROUGH A MASTER METER

5.1 Prohibition

Notwithstanding any tariff provision or contract provision to the contrary, no covered utility shall terminate service during the heating or cooling season to any apartment complex, trailer park, or other grouping of individual residential dwelling units to which service is provided directly or indirectly through a master meter without individual meters, unless such utility has provided the notice required in §§ 5.2 and 5.3.

5.2 Notice to Owner

A written notice pursuant to § 5.1 shall be sent by First Class mail not less than fourteen (14) calendar days prior to the scheduled date of termination for non-payment to the owner of the premises affected or in lieu thereof, to the person, firm, or corporation to whom or which the last preceding bill has been rendered or from whom or which the covered utility has received payment. The content of such notice shall, at minimum, include the notification required by § 3.2.

5.3 Notice to Occupants

The covered utility shall, at least ten (10) calendar days prior to termination for non-payment, provide notice to the occupants, which notice shall state the intended date of termination of service, the amount due for such service, and the procedure by which any tenant or public agency may make or guarantee such payment, and thereby avoid termination of service.

Such notice to occupants shall either be mailed by first class mail to the "occupant" of each dwelling unit in the building complex to which service is proposed to be terminated or posted in a conspicuous place or places at each building subject to termination, including common areas accessible to the utility.

5.4 Notice to State Agencies

Not less than fourteen (14) calendar days prior to termination of service to a multiple occupancy dwelling unit, the covered utility shall provide written notice of its intention to so terminate to the Public Service Commission of the State of Delaware, and to the Division of the Public Advocate.

VI. PROHIBITION ON TERMINATION DURING EXTREME SEASONAL TEMPERATURE CONDITIONS

6.1 Conditions of Termination

A. Heating Season

Under no circumstances may a covered utility terminate service for non-payment to a dwelling unit on a day when the National Weather Service reports that the 8:00 A.M. temperature measured at a location in the State of Delaware that is within fifty (50) miles of the subject dwelling unit is thirty-two degrees Fahrenheit (32×F) or below on the morning of the date when said service is scheduled for termination.

B. Cooling Season

Under no circumstances may a covered utility terminate service for non-payment to a dwelling unit on a day when the 8:00 A.M. National Weather Service forecast contains a special weather statement or other information predicting that the Heat Index measured at a location in the State of Delaware that is within fifty (50) miles of the subject dwelling unit may equal or exceed one-hundred five degrees Fahrenheit (105×F) on the date when said service is scheduled for termination.

6.2 Deferred Termination

Where termination of service, otherwise authorized, has been deferred by virtue of § 6.1, notice of such fact shall be left at the subject dwelling unit on the date on which termination was to be effected, notifying the occupant that unless proper payment arrangements are made, service will be terminated thereafter on a day when § 6.1 does not apply. If the termination of service involves an apartment complex, trailer park, or other grouping of individual residential dwelling units to which service is provided directly or indirectly through a master meter without individual meters, the notice required by this section shall be deemed sufficient if the notice is given in accordance with § 5.3.

VII. PENALTY AND BURDEN OF PROOF

7.1 Penalty

Any covered utility determined, after hearing, to have terminated service for non-payment to a dwelling unit or multiple occupancy dwelling unit in violation of these regulations, may be fined an amount equal to twice the amount of arrearage for which service was terminated, or such lesser amount as deemed appropriate after full consideration of the circumstances. The fine which may be imposed shall not exceed the sum of \$1,000 for each day during which the termination is in violation of these regulations.

7.2 Burden of Proof

The burden of proof of compliance with these regulations shall be upon the covered utility at any proceeding instituted by formal written complaint to or upon motion of the Public Service Commission of Delaware. The

Commission specifically reserves the right to randomly select termination cases and require the covered utility to appear before the Commission at a duly notice hearing and establish compliance with these regulations.

DEPARTMENT OF EDUCATION**14 DE Admin. Code 220**Statutory Authority: 14 Delaware Code,
Section 220 (14 **Del.C.** §220)**REGULATORY IMPLEMENTING ORDER**
230 Promotion**I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to re-adopt regulation 230 Promotion. The regulation requires that local school districts have promotion policies in place for grades K through grade 12. The local policies must also incorporate the promotion requirements as defined in the *Delaware Code* and in regulation 925 Children with Disabilities.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on October 20, 2003 in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to re-adopt this regulation as it is necessary to have a regulation mandating that school districts have a promotion policy and that the policy include requirements in the **Delaware Code** including the "Wagner Rule".

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to re-adopt the regulation. Therefore, pursuant to 14 **Del.C.** §122, the regulation attached hereto as *Exhibit "B"* is hereby re-adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 230 in the **Regulations of the Department of Education**.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 18, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the **Delaware Register of Regulations**.

IT IS SO ORDERED the 18th day of December 2003.**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 18th day of December, 2003**STATE BOARD OF EDUCATION**Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith**230 Promotion**

1.0 Each local school district shall have a promotion policy for kindergarten through grade 12.

1.1 Local school districts must follow the requirements for promotion as defined in 14 **Del.C.** §153, titled Matriculation and Academic Promotion Requirements and Regulation 925, Children with Disabilities.

1.2 The promotion policies for grades 1-8 must also, at a minimum, include the following:

1.2.1 Students in grades 1-8 must receive instruction in English Language Arts or its equivalent, mathematics, social studies and science each year as defined in the Delaware Content Standards.

1.2.2 Students in grades 1-8 must pass 50% of their instructional program each year (excluding physical education) to be promoted to the next grade level. One of the subject areas that must be passed is English Language Arts or its equivalent. English Language Arts or its equivalent includes English as a Second Language (ESL), and bilingual classes that are designed to develop the English language proficiency of students who have been identified as LEP. Classes in English Language Arts, mathematics, science and social studies include those which employ alternative instructional methodologies designed to meet the needs of LEP students in the content areas.

See 2 DE Reg. 1248 (1/1/99)

REGULATORY IMPLEMENTING ORDER
275 Charter Schools

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 275 Charter Schools. A change was made in 4.5.3 on the requirements of the charter school applicant to provide for the health and safety of students, employees and guests. An addition was made as 8.1.1 that now addresses the enrollment preferences for founding members of the charter school. Changes to 10.3 were made to clarify the circumstances that are necessary for the renewal of school charters and the words Relative Caregiver were capitalized in the definitions in 2.0. This regulation was advertised in the August 2003 and re-advertised in the November 2003 **Register of Regulations**. The amended sections are the same in this version but the wording has been changed in sections 4.5.3 and 10.3.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on October 20, 2003, in the form hereto attached as *Exhibit "A"*. Positive comments were received from the State Council for Persons with Disabilities concerning the adjustments made to the amendments. The Governors Advisory Council for Exceptional Citizens asked if public schools are required to provide coverage for "guests" as stated in section 4.5.3 of the Charter Regulation. Section 4.5.3 implements the requirement that a charter school application show that the "procedures the school plans to follow to assure the health and safety of students, employees and guests of the school while they are on school property are adequate..." 14 **Del.C.**§515(12). The Department notes that charter schools are public schools. The Education Title of the **Delaware Code** does not require public schools to provide nursing services to guests, though it is possible that nurses might respond to guests in emergency situations.

A second question from the Advisory Council inquired whether the "plan" as an alternative to a nurse on duty provides for day-to-day nursing services? Any plan that serves as an alternative to a full time nurse must be adequate and must also be comparable to services that would be offered by a full time nurse.

II. Findings of Facts

The Secretary finds that it is appropriate to amend this regulation in order to provide for the health and safety of students, employees and guests, clarify the circumstances that are necessary for the renewal of school charters and clarify the enrollment preferences for founding members.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del. C.** Chapter 5, the regulation attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del. C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** §275 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.** Chapter 5 on December 18, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the **Delaware Register of Regulations**.

IT IS SO ORDERED the 18th day of December 2003.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 18th day of December, 2003

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
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Dr. Claibourne D. Smith

275 Charter Schools

1.0 Purpose and Effect

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

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

1.3 These regulations affect students who attend Charter Schools, the parents and other care givers of these

students, the directors, staff and administrators of the Charter Schools, and the students, staff, administrators and boards of the reorganized school districts of the State.

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

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

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

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

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

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

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

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

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

Department: The Delaware Department of Education

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

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

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

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

Performance Review: Reserved

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

Secretary: The Secretary of the Delaware Department of Education.

State Board: The Delaware State Board of Education.

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

3.0 Application Process

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

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

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

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

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

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

3.6.1 All questions on the application form are answered.

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

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

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

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

3.10 In deciding whether to approve or disapprove

any application for an original charter, a major modification of a charter or the Renewal of a charter, the Secretary and State Board shall base the decision on the record. The record shall consist of the application and any documents filed therewith in support of the application, the preliminary and final report of the Accountability Committee, any response or other evidence, oral or otherwise, provided by the Applicant to the Accountability Committee prior to the issuance of its final report, any comments received at any public hearing conducted pursuant to the provisions of the Charter School Law, including comments made at any such hearing by the applicant in response to the Accountability Committee's final report and any written or electronic comments received at or before any such public hearing. No other evidence shall be considered. Written and electronic comments must be received by the Education Associate for Charter Schools no later than the beginning of the public hearing to be included in the record.

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

4.0 Standards and Criteria for Granting Charter

4.1 Applicant Qualifications

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

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

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

4.1.1.3 Personnel management.

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

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

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

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

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

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

4.1.3.2 The Applicant's business is restricted to the opening and operation of: Charter Schools, before school programs, after school programs and educationally

related programs offered outside the traditional school year.

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

4.2 Student Performance

4.2.1 Minimum Requirements

4.2.1.1 The Applicant must agree and certify that it will comply with the requirements of the State Public Education Assessment and Accountability System pursuant to 14 Del. C. §§ 151, 152, 153, 154, and 157 and Department rules and regulations implementing Accountability, to specifically include the Delaware Student Testing Program.

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

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

4.2.2 Special Student Populations

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

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

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

supplant the Charter School's obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the DSTP.

4.3 Educational Program

4.3.1 The application must demonstrate that the school's proposed program, curriculum and instructional strategies are aligned to State content standards, meet all grade appropriate State program requirements, and in the case of any proposed Charter High School, includes driver education. The educational program shall include the provision of extra instructional time for at risk students, summer school and other services required to be provided by school districts pursuant to the provisions of 14 Del.C. §153. Nothing in this subsection shall prevent an Applicant from proposing high school graduation requirements in addition to the state graduation requirements.

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

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

4.3.2.2 Prior successful implementation of the program; and

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

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

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

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

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

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

4.4 Economic Viability.

4.4.1 The application must demonstrate that the school is economically viable and shall include satisfactory documentation of the sources and amounts of all proposed revenues and expenditures during the school's first three years of school operation after opening for instructional

purposes. There must be a budgetary reserve for contingencies of not less than 2.0% of the total annual amount of proposed revenues. In addition, the application shall document the sources and amounts of all proposed revenues and expenditures during the start-up period prior to the opening of the school.

4.4.2 The Department may require that the Applicant submit data demonstrating sufficient demand for Charter School enrollment if another Charter School is in the same geographic area as the Applicant's proposed school. Such data may include, but is not limited to, enrollment waiting lists maintained by other Charter Schools in the same geographic area and demonstrated parent interest in the Applicant's proposed school.

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

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

4.4.5 Reserved

4.5 Attendance, Discipline, Student Rights and Safety

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

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

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

school year shall be provided with a copy of the "Student Rights and Responsibilities Manual" at the time of enrollment.

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

4.5.2.1 Chapter 27 of Title 14 of the **Delaware Code** and applicable Department regulations regarding school attendance, including a plan to distribute attendance policies to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the attendance policy at the time of enrollment.

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

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

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

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

~~4.5.3 The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. However, the services of at least one (1) full time nurse must be provided for each facility in which students regularly attend classes.~~

4.5.3 The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. Except as otherwise required in this regulation, the Applicant must either agree and certify that the services of at least one (1) full time nurse will be provided for each facility in which students regularly attend classes, or demonstrate that it has an adequate and comparable plan for providing for the health and safety of its students. Any such plan must include the Charter School's policies and procedures for routine student health screenings, for administering medications to students (including any proposed self-administration), for monitoring chronic student medical conditions and for responding to student health emergencies. Any applicant which receives funding equivalent to the funding provided to school districts for one or more school nurses shall provide its students the full-time services of a corresponding number of registered nurses.

5.0 Nature of Charter

5.1 When granted, a charter is an authorization for the

Charter Holder to open and operate a Charter School in accordance with the terms of the charter, including the terms of any conditions placed on the charter by the Department with the approval of the State Board.

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

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

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

6.0 Funding

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

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

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

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

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

7.0 Reserved

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

8.0 Enrollment Preferences, Solicitations and Debts

8.1 Enrollment Preferences

~~8.1.1 Reserved~~ An Applicant to establish a new Charter School shall indicate in its application whether children of the Charter School's founders will be given an enrollment preference. If a founders' preference will be given, the application shall include the standard adopted by the Founding Board of Directors to determine the founders. The standard used to determine the founders shall be

consistent with the requirements of Section 506(b)(4) of the Charter School Law. If the application is approved, the Charter Holder shall provide the Department with the identity of its founders no later than March 1 immediately preceding the First Instructional Day.

8.2 Solicitations.

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

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

8.3 Debts

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

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

9.0 Reserved

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

10.0 Renewals

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

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

~~10.3 Charters shall be renewed only if the school receives a satisfactory Performance Review. Renewals will be deferred until any then pending formal review process is completed.~~

10.3 Charters shall be renewed only if the school receives a satisfactory Performance Review.

11.0 Public Hearings

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

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

REGULATORY IMPLEMENTING ORDER

1102 Standards for School Bus Chassis and Bodies For Buses Placed in Production on or after March 1, 2002 With Specified Changes For Buses Placed in Production on or after March 1, 2003 and on or after January 1, 2004 (Terminology and School Bus Types are Those Described in the National School Transportation Specifications and Procedures (NSTSP), May 2000)

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 1102 Standards for School Bus Chassis and Bodies For Buses Placed in Production on or after March 1, 2002 With Specified Changes For Buses Placed in Production on or after March 1, 2003 and on or after January 1, 2004 (Terminology and School Bus Types are Those Described in the National School Transportation Specifications and Procedures (NSTSP), May 2000). The amendments are necessary in order to add new standards for buses built after January 2004 and update the document for current equipment terminology, production capabilities and additional safety features.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on October 20, 2003, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governors Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. In response to concerns about the lift weight, Delaware standards for school buses follow the standards from the 2000 National School Transportation Specifications & Procedures. The Department of Education brought the discrepancy concerning lift capacity weight to the attention of the Chairman of the National Conference on School Transportation Steering Committee. This discrepancy will be considered at the next steering committee meeting. In response to the concern regarding vehicle ramps, Delaware school buses do not use vehicle ramps. If the installation of a vehicle ramp became necessary, the Department of Education would need the flexibility of having the ramp made on a case by case basis to design it for the specific purpose.

II. Findings of Facts

The Secretary finds that it is appropriate to amend this regulation in order to add the new standards for school buses built after January 2004.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that

it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del. C.** Chapter 29, the regulation attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del. C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** §1102 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.** Chapter 29 on December 18, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the **Delaware Register of Regulations**.

IT IS SO ORDERED the 18th day of December 2003

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 18th day of December 2003

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
 Jean W. Allen, Vice President
 Richard M. Farmer, Jr.
 Mary B. Graham, Esquire
 Valarie Pepper
 Dennis J. Savage
 Dr. Claibourne D. Smith

1.0 Bus Chassis Standards

1.1 Air Cleaner

1.1.1 A dry element type air cleaner shall be provided.

1.1.2 All diesel engine air filters shall include a latch-type restriction indicator that retains the maximum restriction developed during operation of the engine. The indicator should include a reset control so the indicator can be returned to zero when desired.

1.2 Axles: The front and rear axle and suspension systems shall have a Gross Axle Weight Rating (GVWR) at ground commensurate with the respective front and rear weight loads that will be imposed by the bus.

1.2.1 For bus chassis and bodies produced after March 1, 2003, all buses with a capacity of 66 passengers or greater shall have a 9,000 pound front axle minimum.

1.3 Brakes, General

1.3.1 The chassis brake system shall conform to the provisions of Federal Motor Vehicle Safety Standards (FMVSS) 105, 106 and 121 as applicable.

1.3.2 The anti-lock brake system (ABS), provided in accordance with FMVSS 105 and 121, shall provide wheel speed sensors for each front wheel and for each wheel on at least one rear axle. The system shall provide anti-lock braking performance for each wheel equipped with sensors. (Four Channel System).

1.3.3 All brake systems shall be designed to permit visual inspection of brake lining wear without removal of any chassis component(s).

1.3.4 The brake lines, booster-assist lines, and control cables shall be protected from excessive heat, vibration, and corrosion and installed in a manner which prevents chafing.

1.3.5 The parking brake system for either air or hydraulic service brake systems may be of a power assisted design. The power parking brake actuator should be a push-pull device located on the instrument panel within a seated reach of a 5th percentile female driver. As an option, the parking brake may be set by placing the automatic transmission shift control mechanism in the "park" position.

1.3.6 The power operated parking brake system may be interlocked to the engine key switch. Once the parking brake has been set and the ignition switch turned to the "off" position, the parking brake cannot be released until the key switch is turned back to the "on" position.

1.4 Brakes, Hydraulic: Buses using a hydraulic-assist brake shall be equipped with audible and visible warning signals that provide a continuous warning to the driver of a loss of fluid flow from the primary source and of a failure of the back-up pump system.

1.5 Brakes, Air

1.5.1 The air pressure supply system shall include a desiccant-type air dryer installed according to the manufacturers' recommendations. The air pressure storage tank system may incorporate an automatic drain valve.

1.5.2 The chassis manufacturer shall provide an accessory outlet for air operated systems installed by the body manufacturer. This outlet shall include a pressure protection valve.

1.5.3 For air brake systems, an air pressure gauge shall be provided in the instrument panel capable of complying with CDL pre-trip inspection requirements.

1.5.4 All air brake-equipped buses may be equipped with a service brake interlock. The parking brake cannot be released until the brake pedal is depressed

1.5.5 Air brake systems may include a system for anti-compounding of the service brakes and parking brakes.

1.5.6 Air brakes shall have both a visible and audible warning device whenever the air pressure falls below

the level where warnings are required under FMVSS 121.

1.6 Bumper Front

1.6.1 School buses shall be equipped with a heavy duty front bumper. The front bumper shall be furnished by the chassis manufacturer for all school bus types unless there is a specific agreement between the chassis manufacturer and body manufacturer.

1.6.2 The front bumper shall be of pressed steel channel or equivalent material (except Type A buses having a GVWR of 14,500 pounds or less which may be Original Equipment Manufacturer supplied) at least 3/16" thick and not less than 8" wide (high). It shall extend beyond forward-most part of the body, grille, hood, and fenders and shall extend to outer edges of the fenders at the bumper's top line.

1.6.3 The front bumper, except breakaway bumper ends, shall be of sufficient strength to permit pushing a vehicle of equal gross vehicle weight without permanent distortion to the bumper, chassis, or body.

1.6.4 The bumper shall be designed or reinforced so that it will not deform when the bus is lifted by a chain that is passed under the bumper (or through the bumper if holes are provided for this purpose) and attached to both tow eyes. For the purpose of meeting this standard, the bus shall be empty and positioned on a level, hard surface and both tow eyes shall share the load equally.

1.7 Certification: The chassis manufacturer, upon request of the Delaware Department of Education, shall certify that its product meets the state's minimum standards on items not covered by the FMVSS certification requirements of 49 CFR, Part 567.

1.8 Clutch

1.8.1 Clutch torque capacity shall be equal to or greater than the engine torque output.

1.8.2 A starter interlock shall be installed to prevent actuation of the starter if the clutch pedal is not depressed.

1.9 Color

1.9.1 The chassis, including wheels and front bumper, shall be black. Body cowl, hood, and fenders shall be in National School Bus Yellow (NSBY). The flat top surface of the hood may be painted with non-reflective NSBY. (See appendix B, 2000 National School Transportation Specifications and Procedures).

1.9.2 Demountable rims, if used, may be, silver, gray or black as received from the wheel manufacturer.

1.9.3 Wheel covers shall not be permitted.

1.9.4 Mud flaps if used shall be completely black.

1.9.4.1 For bus chassis and bodies produced after January 1, 2004, the buses shall be equipped with mud flaps. They shall be black except they may have manufacturer's logo or name in white or yellow.

1.10 Daytime Running Lamps: Head lamps shall be provided with a switch to automatically operate the lamps

when the vehicle is placed in gear or the parking brake is released. If this switch is designed to provide reduced illumination under normal operating conditions, a means whereby the head lamps can be engaged at full power shall be provided.

1.11 Drive Shaft: The drive shaft shall be protected by a metal guard or guards around the circumference of the drive shaft to reduce the possibility of its whipping through the floor or dropping to the ground, if broken.

1.12 Electrical System

1.12.1 Battery

1.12.1.1 The storage batteries shall have minimum cold cranking capacity rating (cold cranking amps) equal to the cranking current required for 30 seconds at 0 degrees Fahrenheit and a minimum reserve capacity rating of 120 minutes at 25 amps. Higher capacities may be required, depending upon optional equipment and local environmental conditions.

1.12.1.2 Since all batteries are to be secured in a sliding tray in the body, chassis manufacturers shall mount the battery temporarily on the chassis frame, except that van conversion or cutaway front-section chassis may be secured in accordance with manufacturer's standard configuration. In these cases, the final location of the battery and the appropriate cable lengths shall be agreed upon mutually by the chassis and body manufacturer. However, in all cases the battery cable provided with the chassis shall have sufficient length to allow some slack.

1.12.2 Alternator

1.12.2.1 All Type A-2 buses and Type B buses with a GVWR of 15,000 lbs. or less shall have a minimum 60 ampere alternator

1.12.2.2 Types A-2 and Type B buses over 15,000 lbs. GVWR and all Type C and Type D buses shall be equipped with a heavy-duty truck or bus-type alternator meeting SAE J 180, having a minimum output rating of 100 amperes or higher which produce a minimum current output of 50 percent of the rating at engine idle speed.

1.12.2.3 Buses equipped with an electrically powered wheelchair lift shall have a minimum 130 ampere alternator

1.12.2.4 A belt alternator drive shall be capable of handling the rated capacity of the alternator with no detrimental effect on any other driven components. (See School Bus Manufacturers Technical Council (SBMTC), "School Bus Technical Reference," for estimating required alternator capacity.)

1.12.2.5 A direct-drive alternator is permissible in lieu of a belt driven alternator.

1.12.3 Wiring

1.12.3.1 All wiring shall conform to current applicable recommended practices of the Society of Automotive Engineers (SAE).

1.12.3.1.1 All wiring shall use color

and at least one other method of identification. The other method shall be either a number code or name code, and each chassis shall be delivered with a wiring diagram that illustrates the wiring of the chassis.

1.12.3.1.2 Body accessories shall be wired through the ignition switch and the clearance lights through a separate switch wired through the ~~body solenoid~~ body-controlled electronic control module.

1.12.3.2 The chassis manufacturer shall install a readily accessible terminal strip or plug on the body side of the cowl, or in an accessible location in the engine compartment of vehicles designed without a cowl. The strip or plug shall contain the following terminals for the body connections:

- 1.12.3.2.1 Main 100 amp body circuit;
- 1.12.3.2.2 Tail lamps;
- 1.12.3.2.3 Right turn signal;
- 1.12.3.2.4 Left turn signal;
- 1.12.3.2.5 Stop lamps;
- 1.12.3.2.6 Back-up lamps; and
- 1.12.3.2.7 Instrument panel lights

(rheostat controlled by headlamp switch)

1.12.4 Circuits

1.12.4.1 An appropriate identifying diagram (color plus a name or number code) for all chassis electrical circuits shall be provided to the body manufacturer for distribution to the end user.

1.12.4.1.1 The headlight system must be wired separately from the ~~body-controlled solenoid~~ body-controlled electronic control module.

1.13 Engine: All engines shall have an engine block heater.

1.14 Engine Fire Extinguisher: The chassis manufacturer may provide an automatic fire extinguisher system in the engine compartment.

1.15 Exhaust System

1.15.1 The exhaust pipe, muffler and tailpipe shall be outside the bus body compartment and attached to the chassis so as not to damage any other chassis component.

1.15.2 The tailpipe shall be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16-gauge steel tubing of equal diameter.

1.15.3 Chassis manufacturers shall furnish an exhaust system with tailpipe of sufficient length to exit the rear of the bus or at the left side of the bus body no more than 18" forward of the front edge of the rear wheel house opening. If designed to exit at the rear of the bus, the tailpipe shall extend at least five inches beyond the end of the chassis frame. If designed to exit to the side of the bus, the tailpipe shall extend at least 48.5 inches (51.5 inches if the body is to be 102 inches wide) outboard from the chassis centerline.

1.15.3.1 On Types C and D vehicles, the tailpipe shall not exit beneath a fuel fill or emergency door exit.

1.15.3.2 Types A and B chassis may be furnished with the manufacturer's standard tailpipe configuration.

1.15.3.3 Chassis manufacturers may furnish a tailpipe that exits through the rear bumper.

1.15.4 The exhaust system on a chassis shall be adequately insulated from the fuel system.

1.15.5 The muffler shall be constructed of corrosion-resistant material.

1.15.6 The exhaust system on the chassis may be routed to the left of the right frame rail to allow for the installation of a power lift unit on the right side of the vehicle.

1.15.7 The tailpipe may be flush with, but shall not extend out more than two inches beyond, the perimeter of the body for side-exit pipe or the bumper for rear-exit pipe.

1.15.8 The tailpipe shall exit to the left of the emergency exit door in the rear of the vehicle or to the left side of the bus in front or behind the rear drive axle. The tailpipe exit location on all Types A-1 or B-1 buses may be according to the manufacturer's standard. The tailpipe shall not exit beneath any fuel filler location or beneath any emergency door.

1.15.8.1 For bus chassis and bodies produced after January 1, 2004, the tailpipe shall exit to the left or right of the emergency exit door in the rear of the vehicle. The tailpipe exit location on all Types A-1 or B01 buses may be according to the manufacturers standard. The tailpipe shall not exit beneath any fuel filler location or beneath any emergency door.

1.16 Fenders, Front-Type C Vehicles

1.16.1 Total spread of outer edges of front fenders, measured at fender line, shall exceed total spread of front tires when front wheels are in a straight-ahead position.

1.16.2 Front fenders shall be properly braced and shall not require attachment to any part of the body.

1.17 Frame

1.17.1 The frame (or equivalent) shall be of such design and strength characteristics as to correspond at least to standard practices for trucks of the same general load characteristics, which are used for highway service.

1.17.2 Any secondary manufacturer that modifies the original chassis frame shall guarantee the performance of workmanship and materials resulting from such modification.

1.17.3 Frames shall not be modified for the purpose of extending the wheel base.

1.17.4 Holes in top or bottom flanges or side units of the frame, and welding to the frame, shall not be permitted except as provided or accepted by chassis manufacturer.

1.17.5 Frame lengths shall be established in accordance with the design criteria for the complete vehicle.

1.18 Fuel Tank

1.18.1 The fuel tank (or tanks) provided by the chassis manufacturer shall have a minimum 60-gallon capacity for school buses with a capacity of 36 passengers and above. School buses less than a capacity of 36 shall have a manufacturer's standard fuel tank. The tank shall be filled and vented to the outside of the body and the fuel filler shall be placed in a location where accidental fuel spillage will not drip or drain on any part of the exhaust system.

1.18.2 Fuel lines shall be mounted to the chassis frame in such a manner that the frame provides the maximum possible protections from damage.

1.18.3 The fuel system shall comply with FMVSS 301.

1.18.4 Fuel tank(s) may be mounted between the chassis frame rails or outboard of the frame rails on either the left or right side of the vehicle.

1.18.5 The actual draw capacity of each fuel tank shall be a minimum of 83% of the tank capacity.

1.18.6 Installation of alternative fuel systems, including fuel tanks and piping from tank to the engine, shall comply with all applicable fire codes in effect on the date of manufacture of the bus.

1.18.7 Installation of LPG tanks shall comply with National Fire Protection Association (NFPA) 58.

1.18.8 Fuel gauges must be calibrated for size of tank used. If more than one tank is used, there must be a gauge for each tank.

1.19 Governor: When the engine is remotely located from the driver, the governor shall be set to limit engine speed to maximum revolutions per minute as recommended by the engine manufacturer, and a tachometer shall be installed so the engine speed may be known to the driver while seated in a normal driving position.

1.20 Heating System, Provision For: The chassis engine shall have plugged openings for the purpose of supplying hot water for the bus heating system. The openings shall be suitable for attaching 3/4-inch pipe thread/hose connectors. The engine shall be capable of supplying coolant at a temperature of at least 170 degrees Fahrenheit at the engine cooling thermostat opening temperature. The coolant flow rate shall be 50 pounds per minute at the return end of 30 feet of one-inch inside diameter automotive hot water heater hose. (See SBMTC-001.)

1.21 Horn: The bus shall be equipped with dual electrical horns capable of producing a complex sounds in bands of audio frequencies between 250 and 2,000 cycles per second and tested in accordance with SAE J-377.

1.21.1 For bus chassis and bodies produced after January 1, 2004, the bus shall be equipped with a horn(s) capable of producing a complex sound in bands of audio frequencies between 250 and 2,000 cycles per second and tested in accordance with SAE J-377. Type A buses may be equipped according to the manufacturer's standard.

1.22 Instruments and Instrument Panel

1.22.1 The chassis shall be equipped with the instruments and gauges listed below. (Telltale warning lamps in lieu of gauges are not acceptable, except as noted):

1.22.1.1 Speedometer;

1.22.1.2 Odometer, which will give, accrued mileage (to seven digits), including tenths of miles;

1.22.1.3 Voltmeter: An ammeter with graduated charge and discharge indications is permitted in lieu of a voltmeter; however, when used, the ammeter wiring must be compatible with the current flow of the system;

1.22.1.4 Oil pressure gauge;

1.22.1.5 Water temperature gauge;

1.22.1.6 Fuel gauge;

1.22.1.7 Upper beam headlight indicator;

~~1.22.1.8 Brake indicator gauge (vacuum or air): A telltale warning lamp indicator in lieu of a gauge is permitted on a vehicle equipped with hydraulic over-hydraulic brake system;~~

~~1.22.1.9~~ 1.22.1.8 Turn signal indicator; and

~~1.22.1.10~~ 1.22.1.9 Glow-plug indicator light where appropriate

1.22.2 All instruments shall be easily accessible for maintenance and repair.

1.22.3 The instruments and gauges shall be mounted on the instrument panel so that each is clearly visible to the driver while seated in a normal driving position.

1.22.4 The instrument panel shall have lamps of sufficient candlepower to illuminate all instruments, gauges and shift selector indicator for the automatic transmission.

1.22.5 Multi-function gauge (MFG)

1.22.5.1 The driver must be able to manually select any displayable function of the gauge on a MFG whenever desired.

1.22.5.2 Whenever an out-of-limits condition that would be displayed on one or more functions of a MFG occurs, the MFG controller should automatically display this condition on the instrument cluster. This should be in the form of an illuminated telltale warning lamp as well as having the MFG automatically display the out-of-limits indications. Should two or more functions displayed on the MFG go out of limits simultaneously, then the MFG should sequence automatically between those functions continuously until the condition(s) are corrected.

1.22.5.3 The use of a MFG does not relieve the need for audible warning devices, where required.

1.23 Oil Filter: An oil filter with a replaceable element shall be provided and connected by flexible oil lines if it is not a built-in or an engine-mounted design. The oil filter shall have a capacity of at least one (1) quart.

1.24 Openings: All openings in the floorboard or firewall between chassis and passenger compartment (e.g. for gearshift selector and parking brake lever) shall be

sealed.

1.25 Passenger Load

1.25.1 The actual gross vehicle weight (GVW) is the sum of the chassis weight, plus the body weight, plus the driver's weight, plus total seated pupil weight. (For purposes of calculation, the driver's weight is 150 pounds and the pupil weight is 120 pounds per pupil.)

1.25.2 Actual GVW shall not exceed the chassis manufacturer's GVWR for the chassis, nor shall the actual weight carried on any axle exceed the chassis manufacturer's Gross Axle Weight Rating (GAWR).

1.25.3 The manufacturer's GVWR for a particular school bus shall be furnished by manufacturers in duplicate (unless more copies are requested) to the Delaware Department of Education. The Department of Education shall, in turn, transmit such ratings to the Department of Public Safety, Division of Motor Vehicles.

1.26 Power and Grade Ability:

1.26.1 GVWR shall not exceed 185 pounds per published net horsepower of the engine at the manufacturer's recommended maximum number of revolutions per minute.

1.26.2 For school buses with less than 36 passenger capacity, the minimum power plant shall be 160 hp. engine or equal.

1.26.3 For school buses with a capacity of 36 passengers or greater, the engine will produce at least 170 hp measured at an RPM not to exceed 2,600 and generate at least 420 foot pounds of torque.

1.26.3.1 For bus chassis and bodies produced after March 1, 2003, all buses with a capacity of 36 passengers or greater, shall have an engine that produces at least 190 hp.

1.27 Retarder System: A retarder system, if used, shall maintain the speed of a fully loaded school bus at 19.0 m.p.h. on a 7% grade for 3.6 miles.

1.28 Road Speed Control: The bus shall be equipped with a vehicle speed limiter to accurately control vehicle maximum speed to 65 miles per hour.

1.29 Shock Absorbers: The bus shall be equipped with double-action shock absorbers compatible with manufacturer's rated axle capacity at each wheel location.

1.30 Steering Gear

1.30.1 The steering gear shall be approved by the chassis manufacturer and designed to ensure safe and accurate performance when the vehicle is operated with maximum load and at maximum speed.

1.30.2 If external adjustments are required, steering mechanism shall be accessible to make adjustments.

1.30.3 No changes shall be made in the steering apparatus, which are not approved by the chassis manufacturer.

1.30.4 There shall be a clearance of at least 2 inches between the steering wheel and cowl, instrument panel, windshield, or any other surface.

1.30.5 Power steering is required and shall be of the integral type with integral valves.

1.30.6 The steering system shall be designed to provide a means for lubrication of all wear-points, which are not permanently lubricated.

1.31 Suspension Systems

1.31.1 The capacity of springs or suspension assemblies shall be commensurate with the chassis manufacturer's GVWR.

1.31.2 Rear leaf springs shall be of a progressive rate or multi-stage design. Front leaf springs shall have a stationary eye at one end and shall be protected by a wrapped leaf, in addition to the main leaf.

1.32 Throttle: The force required to operate the throttle shall not exceed 16 pounds throughout the full range of accelerator pedal travel.

1.33 Tires and Rims

1.33.1 Rims of the proper size and tires of the proper size and load rating commensurate with chassis manufacturer's gross vehicle weight rating shall be provided. All wheel rims shall be the same size to allow for ~~interchangeability~~ interchangeability. The use of multi-piece rims and/or tube-type tires shall not be permitted.

1.33.2 Dual rear tires shall be provided on Type A-2, Type B, Type C, and Type D school buses.

1.33.3 All tires on a vehicle shall be tubeless radials and be of the same size, and the load range of the tires shall meet or exceed the GVWR, as required by FMVSS 120.

1.33.4 If the vehicle is equipped with a spare tire and rim assembly, it shall be the same size as those mounted on the vehicle.

1.33.5 If a tire carrier is required, it shall be suitably mounted in an accessible location outside the passenger compartment.

1.34 Tow Eyes or Hooks: Tow eyes or hooks shall be furnished and attached so they do not project beyond the front bumper. Tow eyes or hooks attached to the frame chassis shall be furnished by the chassis manufacturer. This installation shall be in accordance with the chassis manufacturer's specifications. (Note: Type A buses are exempt from this requirement.)

1.35 Transmission

1.35.1 Automatic transmissions (AT-545 or approved equal) shall have no fewer than three forward speeds and one reverse speed. Mechanical shift selectors shall provide a detent between each gear position when the gear selector quadrant and shift selector are not steering-column mounted.

1.35.2 In manual transmissions, second gear and higher shall be synchronized, except when incompatible with engine power. A minimum of three forward speeds and one reverse speed shall be provided.

1.35.3 An electronic control, or similar device,

may be installed to ensure that automatic transmissions cannot accidentally be moved out of the "neutral" or "park" gear position while the driver is not seated in the driver's seat.

1.36 Turning Radius

1.36.1 A chassis with a wheelbase of 264 inches or less shall have a right and left turning radius of not more than 42 1/2 feet, curb-to-curb measurement.

1.36.2 A chassis with a wheelbase of 265 inches or more shall have a right and left turning radius of not more than 44 1/2 feet, curb-to-curb measurement.

1.37 Undercoating: The chassis manufacturers, or their agents, shall coat the undersides of steel or metallic-constructed front fenders with a rust-proofing compound, for which the compound manufacturer has issued notarized certification of compliance to chassis builder that the compound meets or exceeds all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520B, using modified tests.

See 6 DE Reg. 1351 (4/1/03)

2.0 Bus Body Standards

2.1 Aisle

2.1.1 All emergency doors shall be accessible by a 12" minimum aisle. The aisle shall be unobstructed at all times by any type of barrier, seat, wheelchair or tiedown.

2.1.2 A 2" white line shall separate the driver compartment from the passenger compartment.

2.1.3 The seat backs shall be slanted sufficiently to give aisle clearance of 15" at tops of seat backs.

2.2 Back-Up Warning Alarm: An automatic audible alarm shall be installed behind the rear axle and shall comply with the published Backup Alarm Standards (SAE J994B), providing a minimum of 112 dBA.

2.3 Battery

2.3.1 The battery is to be furnished by the chassis manufacturer.

2.3.2 When the battery is mounted as described in the "Bus Chassis Standards", the body manufacturer shall securely attach the battery on a slide-out or swing-out tray in a closed, vented compartment in the body skirt, so that the battery is accessible for convenient servicing from the outside. The battery compartment door or cover shall be hinged at the front or top, and secured by an adequate and conveniently operated latch or other type fastener. The battery compartment is not required on Type A-1 buses.

2.3.3 Buses may be equipped with a battery shut-off switch. The switch is to be placed in a location not readily accessible to the driver or passengers.

2.4 Bumper (Front)

2.4.1 On a Type D school bus, if the chassis manufacturer does not provide a bumper, it shall be provided by the body manufacturer. The bumper will conform to the standards described in the "Bus Chassis Standards".

2.5 Bumper (Rear)

2.5.1 The bumper shall be pressed steel channel at least 3/16" thick or equivalent strength material (except for Type A buses). Type A-1 buses bumper shall be a minimum of 8" wide (high) and Type A-2, B, C, and D buses bumper shall be a minimum of 9 1/2" wide (high). The bumper shall be of sufficient strength to permit being pushed by another vehicle without permanent distortion.

2.5.2 The bumper shall be wrapped around the back corners of the bus. It shall extend forward at least 12", measured from the rear-most point of the body at the floor line, and shall be flush-mounted to body sides or protected with an end panel.

2.5.3 The bumper shall be attached to the chassis frame in such a manner that it may be easily removed. It shall be so braced as to withstand impact from the rear or the side. It shall be so attached as to discourage hitching of rides by an individual.

2.5.4 The bumper shall extend at least 1" beyond the rear-most part of the body surface measured at the floor line.

2.6 Ceiling: See Insulation and Interior, this section.

2.7 Certification: The body manufacturer shall, upon request, certify to the Delaware Department of Education, that its product meets state standards on items not covered by FMVSS certification requirements of 49 CFR, Part 567.

2.8 Chains (Tire): See Wheelhousing, this section.

2.9 Color

2.9.1 The school bus body shall be painted National School Bus Yellow (NSBY).

2.9.2 The body exterior paint trim, bumper, lamp hoods, emergency door arrow, and lettering shall be black. (See illustration in NSTSP, Appendix B)

~~2.9.2~~ 2.9.3 Optionally, the roof of the bus may be painted white down to ~~the top window lines~~ no lower than the top window lines except that the front and rear roof caps shall remain NSBY.

2.10 Communications: Buses shall be equipped with a radio (non-CB) or telephonic communication device. It will be added by the school district, school, or contractor.

2.11 Construction

2.11.1 Side Intrusion Test:

2.11.1.1 The bus body shall be constructed to withstand an intrusion force equal to the curb weight of the vehicle; but shall not exceed 20,000 pounds, whichever is less. Each vehicle shall be capable of meeting this requirement when tested in accordance with the procedures set forth below.

2.11.1.2 The complete body structure, or a representative seven-body section mock up with seats installed, shall be load-tested at a location 24 inches plus or minus two inches above the floor line, with a maximum 10-inch diameter cylinder, 48 inches long, mounted in a horizontal plane.

2.11.1.3 The cylinder shall be placed as close as practical to the mid-point of the tested structure, spanning two internal vertical structural members. The cylinder shall be statically loaded to the required force of curb weight or 20,000 pounds, whichever is less, in a horizontal plane with a load applied from the exterior toward the interior of the test structure. Once the minimum load has been applied, the penetration of the loading cylinder into the passenger compartment shall not exceed a maximum of ten inches from its original point of contact. There can be no separation of lapped panels or construction joints. Punctures, tears or breaks in the external panels are acceptable but are not permitted on any adjacent interior panel.

2.11.1.4 Body companies shall certify compliance with this intrusion requirement, including test results, if requested.

2.11.2 Construction shall be reasonably dust-proof and watertight.

2.12 Crossing Control Arm

2.12.1 Buses shall be equipped with a crossing control arm mounted on the right side of the front bumper. The arm when opened shall extend in a line parallel with the body side and positioned on a line with the right side wheels.

2.12.2 All components of the crossing control arm and all connections shall be weatherproofed.

2.12.3 The crossing control arm shall incorporate system connectors (electrical, vacuum, or air) at the gate and shall be easily removable to allow for towing of the bus.

2.12.4 The crossing control arm shall meet or exceed SAE Standard J1133.

2.12.5 The crossing control arm shall be constructed of noncorrosive or nonferrous material or treated in accordance with the body sheet metal standard (see "Metal Treatment").

2.12.6 There shall be no sharp edges or projections that could cause hazard or injury to students.

2.12.7 The crossing control arm shall extend minimum 70" (measured from the bumper at the arm assembly attachment point) when in the extended position.

2.12.8 The crossing control arms shall extend simultaneously with the stop arm(s) by means of the stop arm controls.

2.13 Defrosters

2.13.1 Defrosting and defogging equipment shall direct a sufficient flow of heated air onto the windshield, the window to the left of the driver, and the glass in the viewing area directly to the right of the driver to eliminate frost, fog and snow.

2.13.2 The defrosting system shall conform to SAE J381 and J382.

2.13.3 The defroster and defogging system shall be capable of furnishing heated, outside ambient air, except that the part of the system furnishing additional air to the windshield, entrance door and stepwell may be of the

recirculating air type.

2.13.4 Auxiliary fans are not considered defrosting or defogging systems and are described under "Ventilation."

2.13.5 Portable heaters shall not be used.

2.14 Doors

2.14.1 The service door shall be in the driver's control, designed to afford easy release and to provide a positive latching device on manual operating doors to prevent accidental opening. When a hand lever is used, no part shall come together that will shear or crush fingers. Manual door controls shall not require more than 25 pounds of force to operate at any point throughout the range of operation, as tested on a 10 percent grade both uphill and downhill.

2.14.2 The bus, opposite and within direct view of driver.

2.14.3 The service door shall have a minimum horizontal opening of 24" and a minimum vertical opening of 68". Type A-1 vehicles shall have a minimum opening area of 1,200 square inches.

2.14.4 Service door shall be a split-type, sedan-type, or jackknife type. (Split-type door includes any sectioned door that divides and opens inward or outward.) If one section of a split-type door opens inward and the other opens outward, the front section shall open outward. School buses with a capacity of 36 passengers or greater shall be equipped with an outward opening service door.

2.14.5 Lower, as well as upper, door panels shall be of approved safety glass. The bottom of each lower glass panel shall not be more than 10" from the top surface of bottom step. The top of each upper glass panel shall not be more than 3" from the top of the door. Type A vehicles shall have an upper panel (windows) of safety glass with an area of at least 350 square inches.

2.14.6 Vertical closing edges on split-type or folding-type entrance doors shall be equipped with flexible material to protect children's fingers. Type A-1 vehicles may be equipped with chassis manufacturer's standard entrance door.

2.14.7 There shall be no door to left of driver on Type B, C or D vehicles. All Type A vehicles may be equipped with chassis manufacturer's standard left-side door.

2.14.8 All doors shall be equipped with padding at the top edge of each door opening. Padding shall be at least 3" wide and 1" thick and extend the full width of the door opening.

2.14.9 If a power-assisted service door is used, the actuation switch shall be to the right of the steering wheel within reach of drivers in the 95th percentile of the male/female adult population).

2.14.10 On power-operated service doors, the emergency release valve, switch or device to release the service door must be placed above or to the immediate left or

right of the service door and clearly labeled.

2.14.11 For bus chassis and bodies produced after January 1, 2004, the power entrance door shall be capable of being operated by a single three (3) position sequential switch, located convenient and accessible to the right of the driver. The first position shall activate the red flashing lights and the stop arm with the door closed. The second position shall open the door. Returning the switch to the off position shall close the door and cancel the stop arm and lights. The amber lights shall be controlled by a manual button located on the control panel to the right or left of the driver. Controls shall be a sequential operation system.

2.15 Driver Compartment

2.15.1 The driver's seat supplied by the body company shall be a high back seat with a minimum seat back adjustable to 15 degrees, without requiring the use of tools, and a head restraint to accommodate a 95th percentile adult male, as defined in FMVSS 208. The driver's seat shall be secured with nuts, bolts and washers or flanged-head nuts.

2.15.2 Driver seat positioning and range of adjustments shall be designed to accommodate comfortable actuation of the foot control pedals by 95% of the male/female adult population.

2.15.3 Type A buses may utilize the standard driver's seat provided by the chassis manufacturer.

2.15.4 Driver Restraint System: A Type 2 lap/shoulder belt shall be provided for the driver. The assembly shall be equipped with an ~~automatic~~ locking retractor for the continuous belt system. On all buses except Type A equipped with a standard chassis manufacturer's driver seat, the lap portion of the belt system shall be guided or anchored to prevent the driver from sliding sideways under it. The lap/shoulder belt shall be designed to allow for easy adjustment in order to fit properly and to effectively protect drivers varying in size from 5th percentile adult female to 95th percentile adult male.

2.16 Emergency Exits

2.16.1 All installed emergency exits shall comply with the requirements of FMVSS 217.

2.16.2 Emergency door requirements

2.16.2.1 The upper portion of the emergency door shall be equipped with approved safety glazing, the exposed area of which shall be at least 400 square inches. The lower portion of the rear emergency doors on Types A-2, B, C, and D vehicles shall be equipped with a minimum of 350 square inches of approved safety glazing.

2.16.2.2 There shall be no steps leading to an emergency door.

2.16.2.3 The emergency door(s) shall be equipped with padding at the top edge of each door opening. Padding shall be at least 3" wide and 1" thick, and shall extend the full width of the door opening.

2.16.2.4 The side emergency door, if required, must meet the requirements as set forth in FMVSS 217,

regardless of its use with any other combination of emergency exits. There shall be a clear aisle leading to it i.e., flip seats shall not be used.

2.16.2.5 There shall be no obstruction higher than 1/4 inch across the bottom of any emergency door opening.

2.16.2.6 The rear emergency window shall have an assisted lifting device that will aid in lifting and holding the rear emergency window open.

2.16.3 Emergency exit requirements: Types A, B, C, and D vehicles shall be equipped with a total number of emergency exits as follows for the ~~indicated~~ equipped capacities of vehicles. Exits required by FMVSS 217 may be included to comprise the total number of exits specified.

0 to 42 Passenger = 1 emergency exit per side and 1 roof hatch.

43 to 78 Passenger = 2 emergency exits per side and 2 roof hatches.

79 to 90 Passenger = 3 emergency exits per side and 2 roof hatches.

2.16.4 Side emergency exit windows when installed may be vertically hinged on the forward side of the window. No side emergency exit window will be located above a stop arm.

2.16.5 In addition to the audible warning required on emergency doors by FMVSS 217, additional emergency exits shall also be equipped with an audible warning device.

2.17 Emergency Equipment

2.17.1 Fire Extinguisher

2.17.1.1 The bus shall be equipped with at least one UL-approved pressurized, dry chemical fire extinguisher. The extinguisher shall be mounted (and secured) in a bracket, located in the driver's compartment and readily accessible to the driver and passengers. A pressure gauge shall be mounted on the extinguisher and shall be easily read without moving the extinguisher from its mounted position.

2.17.1.2 The fire extinguisher shall have a total rating of 2A10BC or greater. The operating mechanism shall be sealed with a type of seal that will not interfere with the use of the fire extinguisher.

2.17.2 First-aid kit

2.17.2.1 The bus shall have a removable, moisture-proof and dust-proof first aid kit in an accessible place in the driver's compartment. It shall be properly mounted (and secured) and identified as a first aid kit. The location for the first aid kit shall be marked.

2.17.2.2 Minimum contents include:

Units	Qty. per unit
2	12 - 1" x 3" adhesive bandages
1	2 - 2" bandage compress
1	1 - 4" bandage compress
1	1 - non-sterile triangular bandages approximately 40" x 36" x 54" with 2 safety pins

1 1 -eye kit with 2 sterile eye pads and 1 oz. wash

1 3 - burn ointment, 1/8 oz.

1 5 - ammonia inhalants

1 5 - PVP antiseptic swabs

1 5 - insect sting swabs

2.17.3 Body fluid clean-up kit: Each bus shall have a removable and moisture- proof body fluid clean-up kit accessible to the driver. It shall be properly mounted and identified as a body fluid clean-up kit in the driver's compartment. Minimum contents of the body fluid clean-up kit shall include the following:

2.17.3.1 1- 16 oz. bottle of 70% rubbing alcohol or 10% solution of bleach

2.17.3.2 1- plastic trash bag with tie, minimum of 12" x 12"

2.17.3.3 2- pairs of medical examination gloves (non-latex)

2.17.3.4 10- paper towels, approximately 10 1/2" x 12 1/2"

2.17.4 Warning devices: Each school bus shall contain at least three (3) reflectorized triangle road warning devices mounted in an accessible place that meet requirements in FMVSS 125.

2.17.5 Any of the emergency equipment may be mounted in an enclosed compartment provided the compartment is labeled in not less than 1" letters, identifying each piece of equipment contained therein.

2.18 Floor

2.18.1 The floor in the under-seat area, including tops of wheel housings, driver's compartment and toe board, shall be covered with rubber floor covering or equivalent, having a minimum overall thickness of .125". The driver's area on all Type A buses may be manufacturer's standard flooring and floor covering.

2.18.2 The floor covering in the aisles shall be of aisle-type rubber or equivalent, wear-resistant and ribbed. Minimum overall thickness shall be .187" measured from tops of ribs.

2.18.3 The floor covering must be permanently bonded to the floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be a type recommended by the manufacturer of floor-covering material. All seams must be sealed with waterproof sealer.

2.18.4 On Types B, C and D buses, a flush-mounted, screw-down plate that is secured and sealed shall be provided to access the fuel tank sending unit.

2.19 Handrails: At least one handrail shall be installed. The handrail(s) shall assist passengers during entry or exit, and be designed to prevent entanglement, as evidenced by the passage of the National Highway Transportation Safety Administration (NHTSA) string and nut test as defined in the NSTSP.

2.20 Heater and Air Conditioning Systems

2.20.1 Heating System

2.20.1.1 The heater shall be a hot-water type.

2.20.1.2 Every bus with a capacity of 36 or more shall have 2 heaters at the front: 1 to the left of the driver, and 1 to the right of the driver near the entrance door, and 1 heater in the rear portion of the bus.

2.20.1.3 If only one heater is used, it shall be fresh-air or combination fresh-air and re-circulation type.

2.20.1.4 If more than one heater is used, additional heaters may be temperatures as specified re-circulating air type.

2.20.1.5 The heating system shall be capable of maintaining bus interior in SAE test procedure J2233.

2.20.1.6 All forced air heaters installed by body manufacturers shall bear a name plate that indicates the heater rating in accordance with SBMTC-001. The plate shall be affixed by the heater manufacturer and shall constitute certification that the heater performance is as shown on the plate.

2.20.1.7 Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or any sharp edges and shall not interfere with or restrict the operation of any engine function. Heater hoses shall conform to SAE J20c. Heater lines on the interior of bus shall be shielded to prevent scalding of the driver or passengers.

2.20.1.8 Each hot water system installed by a body manufacturer shall include one shut-off valve in the pressure line and one shut-off valve in the return line with both valves at the engine in an accessible location, except that on all Types A and B buses, the valves may be installed in another accessible location.

2.20.1.9 There shall be a water flow regulating valve installed in the pressure line for convenient operation by the driver while seated.

2.20.1.10 Accessible bleeder valves shall be installed in an appropriate place in the return lines of body company-installed heaters to remove air from the heater lines.

2.20.1.11 Access panels shall be provided to make heater motors, cores and fans readily accessible for service. An outside access panel may be provided for the driver's heater.

2.20. Air Conditioning

2.20.2.1 Performance Specifications

2.20.2.1.1 The installed air conditioning system shall cool the interior of the bus down to at least 80 degrees Fahrenheit, measured at a minimum of three points, located 4' above the floor at the longitudinal centerline of the bus. The three points shall be: (1) near the driver's location, (2) at the midpoint of the body, and (3) 2' forward of the emergency door, or, for type D rear-engine buses, 2' forward of the end of the aisle.

2.20.2.1.2 The test conditions under which the above performance must be achieved shall consist of: (1) placing the bus in a room (such as a paint booth) where ambient temperature can be maintained at 100 degrees Fahrenheit (2) heat soaking the bus at 100 degrees Fahrenheit with windows open for at least 1 hour and (3) closing windows, turning on the air conditioner with the engine running at the chassis manufacturer's recommended low idle speed, and cooling the interior of the bus to 80 degrees Fahrenheit or lower within a maximum of 30 minutes while maintaining 100 degrees Fahrenheit outside temperature.

2.20.2.1.3 Alternately, this test may be performed under actual summer conditions, which consist of temperatures above 85 degrees Fahrenheit, humidity above 50 percent with normal sun loading of the bus and the engine running at the engine manufacturer's recommended low idle speed. After a minimum of 1 hour of heat soaking, the system shall be turned on and must provide a minimum 20 degree temperature drop in the 30-minute time limit.

2.20.2.2 Other Requirements

2.20.2.2.1 Evaporator cases, lines and ducting (as equipped) shall be designed in such a manner that all condensation is effectively drained to the exterior of the bus below the floor level under all conditions of vehicle movement and without leakage on any interior portion of bus.

2.20.2.2.2 Any evaporator or ducting system shall be designed and installed so as to be free of injury-prone projections or sharp edges. Any ductwork shall be installed so that exposed edges face the front of the bus and do not present sharp edges.

2.20.2.2.3 Evaporator cases and/or ducting systems shall be equipped with diffusers that are adjustable.

2.20.2.2.4 On specially equipped school buses, the evaporator and ducting (if used) shall be placed high enough that they will not obstruct occupant securement shoulder strap upper attachment points. This clearance shall be provided along entire length of the passenger area on both sides of the bus interior to allow for potential retrofitting of new wheelchair positions and occupant securement devices throughout the bus.

2.20.2.2.5 The condensers shall be equipped with a sight glass (or at least one for each part of a split system) that is accessible and directly visible for checking the level of the refrigerant.

2.20.2.2.6 The compressor system shall be equipped with both a high pressure and a low pressure switch to prevent compressor operation when system temperatures are above or below recommended safe levels. Lubrication of moving compressor parts shall be accomplished automatically. An automatic (electric) clutch shall be provided on each compressor.

2.20.2.2.7 All system operating controls, including on-off switch (es), blower switch (es) and thermostat controls shall be accessible to the driver in a seated position.

2.20.2.2.8 Blowers shall be a minimum of two speeds.

2.20.2.2.9 Wiring shall be copper with color-coded insulation. The air conditioning system shall be equipped with at least one manually resettable circuit breaker per side to provide overload protection for the main power circuit feeding the evaporator blowers and condenser fans. System control circuits shall also have overload protection, but may be fused.

2.20.2.2.10 Refrigerant shall be R 134A.

2.20.2.2.11 All wiring, hoses, and lines shall be grommeted, routed, and supported so as to reduce wear. All flexible refrigerant hoses shall be double braided.

2.20.2.2.12 The body shall be equipped with insulation, including sidewalls, roof, firewall, rear, inside body bows and plywood (see "Insulation") or composite floor insulation to aid in heat dissipation and reflection.

2.20.2.2.13 All glass (windshield, service and emergency doors, side and rear windows) shall be equipped with maximum integral tinting allowed by federal or ANSI standards for the respective locations, except that windows rear of the driver's compartment shall have approximately 28 percent light transmission.

2.20.2.2.14 Type A buses equipped with air conditioning shall be furnished with an alternator with a minimum output rating of 120 amperes. Type B, C, and D buses equipped with air conditioning shall be furnished with an alternator with a minimum output rating of 160 amperes.

2.20.2.2.15 Roofs shall be painted white (see "Color").

2.21 Hinges: All exterior metal door hinges which do not have stainless steel, brass, or nonmetallic hinge pins or other designs that prevent corrosion shall be designed to allow lubrication to be channeled to the center 75 percent of each hinge loop without disassembly.

2.22 Identification

2.22.1 The body shall bear words "SCHOOL BUS" in black letters at least 8 inches high on both front and rear of body or on signs attached thereto. Lettering shall be placed as high as possible without impairment of its visibility. Letters shall conform to "Series B" of Standard Alphabets for Highway Signs. "SCHOOL BUS" lettering shall have a reflective background. All lettering on NSBY surfaces shall be black, and lettering on black surfaces shall be NSBY or white.

2.22.2 Bus identification number shall be displayed on the sides, on the rear, and on the front.

2.22.3 District or company name or owner of the bus shall be displayed;

2.22.4 Other lettering, numbering, or symbols which may be displayed on the exterior of the bus, shall be limited to:

2.22.4.1 The location of the battery(s) identified by the word "Battery" or "Batteries" on the battery compartment door in 2" lettering;

2.22.4.2 Symbols or letters not to exceed 64 square inches of total display near the service door, displaying information for identification by the students of the bus or route served;

2.22.4.3 Symbols identifying the bus as equipped for or transporting students with special needs (see Specially Equipped School Bus section);

2.22.4.4 Lettering of fuel type in 2" lettering adjacent to the fuel filler opening; and

2.22.4.5 Manufacturer, company name, dealer, or school logo may be displayed in the right side plate location on the rear of the bus.

2.23 Inside Height: Inside body height shall be 72" or more, measured metal to metal, at any point on longitudinal center line from front vertical bow to rear vertical bow. Inside body height of Type A-1 buses shall be 62" or more.

2.24 Insulation

2.24.1 If thermal insulation is specified, it shall be fire-resistant, UL approved, with minimum R-value of 5.5. Insulation shall be installed so as to prevent sagging.

2.24.2 If floor insulation is required, it shall be 5 ply nominal 5/8" thick plywood, and it shall equal or exceed properties of the exterior-type softwood plywood, C-D Grade, as specified in standard issued by U.S. Department of Commerce. When plywood is used, all exposed edges shall be sealed. Type A-1 buses may be equipped with nominal 1/2" thick plywood meeting the above requirements. Equivalent material may be used to replace plywood, provided it has an equal or greater insulation R value, deterioration, sound abatement and moisture resistance properties.

2.25 Interior

2.25.1 The interior of bus shall be free of all unnecessary projections, which include luggage racks and attendant hand rails, to minimize the potential for injury. This standard requires inner lining on ceilings and walls. If the ceiling is constructed to contain lap joints, the forward panel shall be lapped by rear panel and exposed edges shall be beaded, hemmed, flanged, or otherwise treated to minimize sharp edges. Buses may be equipped with a storage compartment for tools, tire chains, and/or tow chains. (See "Storage Compartment")

2.25.2 The driver's area forward of the foremost padded barriers will permit the mounting of required safety equipment and vehicle operation equipment.

2.25.3 Every school bus shall be constructed so that the noise level taken at the ear of the occupant nearest to

the primary vehicle noise source shall not exceed 85 dBA when tested according to the procedure found in the NSTSP, Appendix B. School buses with a capacity of 36 passengers or greater shall be equipped with a sound-proof body package that includes firewall and engine cover. The headliner over the driver's compartment to the front barriers shall be perforated to absorb sound.

2.25.4 Interior overhead storage compartments may be provided if they meet the following criteria:

2.25.4.1 Meet head protection requirements of FMVSS 222 where applicable;

2.25.4.2 Have a minimum rated capacity displayed for each compartment;

2.25.4.3 Be completely enclosed and equipped with latching doors which must be sufficient to withstand a force five times the maximum rated capacity of the compartment;

2.25.4.4 Have all corners and edges rounded with a minimum radius of 1" or padded equivalent to door header padding;

2.25.4.5 Be attached to the bus sufficiently to withstand a force equal to 20 times the maximum rated capacity of the compartment; and

2.24.4.6 Have no protrusions greater than 1/4 inch.

2.25.5 For bus chassis and bodies produced after March 1, 2003, the interiors shall have mar-proof side walls.

2.26 Lamps and Signals

2.26.1 Interior lamps shall be provided which adequately illuminate the aisle and the stepwell. The stepwell light shall be illuminated by a service door-operated switch, to illuminate only when headlights and clearance lights are on and the service door is open.

2.26.2 Body instrument panel lights shall be controlled by an independent rheostat switch.

2.26.3 School bus alternately flashing signal lamps:

2.26.3.1 The bus shall be equipped with two red lamps at the rear of vehicle and two red lamps at the front of the vehicle. Lamps may be the sealed beam or halogen type.

2.26.3.2 In addition to the four red lamps described above, four amber lamps shall be installed so that one amber lamp is located near each red signal lamp, at same level, but closer to the vertical centerline of bus. The system of red and amber signal lamps shall be wired so that amber lamps are energized manually, and red lamps are automatically energized (with amber lamps being automatically de-energized) when stop signal arm is extended or when bus service door is opened. An amber pilot light and a red pilot light shall be installed adjacent to the driver controls for the flashing signal lamp to indicate to the driver which lamp system is activated.

2.26.3.3 The area around lens of alternately

flashing signal lamps extending outward from the edge of the lamps 3" (+/- ¼") to the sides and top and minimum 1" to the bottom, shall be black in color on the body or roof area against which the signal lamp is seen (from distance of 500 feet along axis of vehicle). Visors or hoods, black in color, are required and shall have a minimum depth of 4". (See NSTSP, Appendix B)

2.26.3.3.1 For bus chassis and bodies produced after January 1, 2004, the visors or hoods, black in color, are only required on non-flush mounted lights and shall have a minimum depth of 4".

2.26.3.4 Red lamps shall flash at any time the stop signal arm is extended.

2.26.3.5 All flashers for alternately flashing red and amber signal lamps shall be enclosed in the body in a readily accessible location.

2.26.4 Turn signal and stop/tail lamps:

2.26.4.1 Bus body shall be equipped with amber rear turn signal lamps that are at least 7" in diameter. These signal lamps must be connected to the chassis hazard warning switch to cause simultaneous flashing of turn signal lamps when needed as vehicular traffic hazard warning. Turn signal lamps are to be placed as wide apart as practical and their centerline shall be a maximum of 12" below the rear window. Type A-1 conversion vehicle lamps must be at least 21 square inches in lens area and must be in the manufacturer's standard color.

2.26.4.1.1 For bus chassis and bodies produced after January 1, 2004, the bus body shall be equipped with amber rear turn signal lamps that are at least 7" in diameter, or if the shape is other than round, a minimum 38 square inches. These signal lamps must be connected to the chassis hazard warning switch to cause simultaneous flashing of turn signal lamps when needed as vehicular traffic hazard warning. Turn signal lamps are to be placed as wide apart as practical and their centerline shall be a maximum of 12" below the rear window. Type A-1 conversion vehicle lamps must be at least 21 square inches in lens area and must be in the manufacturer's standard color.

2.26.4.2 Buses shall be equipped with amber side-mounted turn signal lights. The turn signal lamp on the left side shall be mounted rearward of the stop signal arm and the turn signal lamp on the right side shall be mounted rearward of the service door. An additional side turn signal lamp may be mounted over the rear wheel opening on both sides.

2.26.4.2.1 For bus chassis and bodies produced after January 1, 2004, an additional amber side turn lamp shall be mounted between the rear wheel opening and the rear of the bus on both sides.

2.26.4.3 In addition to manufacturer's standard turn signals, Type C school buses shall also be equipped with front, Class A fender or hood-mounted turn signals.

2.26.4.4 Buses shall be equipped with four

combination red stop/tail lamps:

2.26.4.4.1 Two combination lamps with a minimum diameter of 7", or if a shape other than round, a minimum 38 square inches of illuminated area shall be mounted on the rear of the bus just inside the turn signal lamps.

2.26.4.4.2 Two combination lamps with a minimum diameter of 4", or if a shape other than round, a minimum 12 square inches of illuminated area shall be placed on the rear of the body between the beltline and the floor line. The rear license plate lamp may be combined with one lower tail lamp. Stop lamps shall be activated by the service brakes and shall emit a steady light when illuminated. Type A-1 buses with bodies supplied by chassis manufacturer may have manufacturer's standard stop and tail lamps.

~~2.26.4.5 All buses shall be equipped with a transistorized 16-light monitor that monitors the front and rear warning lamps of the school bus. The monitor shall be mounted in full view of the driver. If the full circuit current passes through the monitor, each circuit shall be protected by a fuse or circuit breaker against any short circuit or intermittent shorts.~~ All buses shall be equipped with a 16-light monitor. The monitor shall be mounted in full view of the driver. If the full circuit current passes through the monitor, each circuit shall be protected by a fuse, circuit breaker, or field effect transistor to protect against any short circuit or intermittent shorts.

2.26.4.6 Body markers shall be the armored type.

2.26.4.7 Backup lamps: The bus body shall be equipped with two white rear backup lamp signals that are at least 4" in diameter or, if a shape other than round, a minimum of 13 square inches of illuminated area, meeting FMVSS 108. If backup lamps are placed on the same horizontal line as the brake lamps and turn signal lamps, they shall be to the inside.

2.26.5 School buses may be equipped with fog lamps.

2.27 Metal Treatment

2.27.1 All metal used in construction of bus body shall be zinc-coated or aluminum-coated or treated by equivalent process before the bus is constructed. Included are such items as structural members, inside and outside panels, door panels and floor sills. Excluded are such items as door handles, grab handles, interior decorative parts and other interior plated parts.

2.27.2 All metal parts that will be painted, in addition to the above requirements, shall be chemically cleaned, etched, zinc-phosphate-coated and zinc-chromate- or epoxy primed, or the metal may be conditioned by equivalent process.

2.27.3 In providing for these requirements, particular attention shall be given to lapped surfaces, welded

connections of structural members, cut edges on punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas and surfaces subjected to abrasion during vehicle operation.

2.27.4 As evidence that above requirements have been met, samples of materials and sections used in the construction of the bus body shall not lose more than 10 percent of material by weight when subjected to a 1,000-hour salt spray test as provided for in latest revision of ASTM Standard B-117.

2.28 Mirrors

2.28.1 The interior mirror shall be either clear view laminated glass or clear view glass bonded to a backing which retains the glass in the event of breakage. The mirror shall have rounded corners and protected edges. All Type A buses shall have a minimum of a 6" x 16" mirror and Types B, C, and D buses shall have a minimum of a 6" x 30" mirror.

2.28.2 Each school bus shall be equipped with exterior mirrors meeting the requirements of FMVSS 111. Mirrors shall be easily adjustable, but shall be rigidly braced so as to reduce vibration.

2.28.3 Buses may be equipped with heated and/or remote control external mirrors.

2.28.3.1 For bus chassis and bodies produced after March 1, 2003, buses for 36 passengers or greater shall be equipped with heated and remote control exterior rear view mirrors.

2.28.3.2 For bus chassis and bodies produced after January 1, 2004, the buses, 36 passengers or greater, shall be equipped with heated cross-over mirrors.

2.29 Mounting

2.29.1 The chassis frame shall support rear body cross member. The bus body shall be attached to chassis frame at each main floor sill, except where chassis components interfere, in such manner as to prevent shifting or separation of the body from the chassis under severe operating conditions.

2.29.2 Insulators shall be installed at all contact points between the body and the chassis frame on Types A-2, B, C, and D buses, and shall be secured by a positive means to the chassis frame or body to prevent shifting, separation, or displacement of the isolators under severe operating conditions.

2.30 Overall Length: Overall length of bus shall not exceed 40 feet, excluding accessories.

2.31 Overall Width: Overall width of bus shall not exceed 96", excluding accessories. ~~The body, excluding mirrors, shall have a minimum width of 75 inches and a minimum height of 79 inches from road surface to top of roof.~~

2.32 Public Address System:

2.32.1 There shall be installed a public address amplifier specifically designed for vehicular applications

with a minimum power output of not less than 5 watts sine-wave power. Such system shall consist of an on-off switch, volume control, and an inside-outside speaker selector switch. Additionally, it shall have an outside speaker completely weather-proofed a minimum 7 watt power capability and two interior dynamic speakers with a minimum diameter of 4 inches. These speakers shall be located above the window line, to the rear of the driver, and shall not project more than 1/2 inch from the interlining of the bus. There shall be no sharp edges or corners that could cause injury to a passenger. The outside speaker shall be located on the front of the cowl under the hood or other suitable location under the hood.

2.32.2 Buses may be equipped with an AM/FM/ audio system.

2.32.3 No internal speakers, other than the driver's communication systems, may be installed within 4' of the driver's seat back in its rearmost upright position.

2.33 Reflective Material (see NSTSP, Appendix B)

2.33.1 The front and/or rear bumper may be marked diagonally 45 degrees down to centerline of pavement with 2" +/- 1/4" wide strips of non-contrasting reflective material.

2.33.2 The rear of bus body shall be marked with strips of reflective NSBY material to outline the perimeter of the back of the bus using material that conforms with the requirements of FMVSS 131, Table 1. The perimeter marking of rear emergency exits per FMVSS 217 and/or the use of reflective "SCHOOL BUS" signs partially accomplishes the objective of this requirement. To complete the perimeter marking of the back of the bus, strips of at least 1 3/4" reflective NSBY material shall be applied horizontally above the rear windows and above the rear bumper, extending from the rear emergency exit perimeter, marking outward to the left and right rear corners of the bus. Vertical strips shall be applied at the corners connecting these horizontal strips.

2.33.3 "School Bus" signs shall be marked with reflective NSBY material comprising background for lettering of the front and/or rear "School Bus" signs.

2.33.4 Sides of bus body shall be marked with at least 1 3/4"- reflective- NSBY material, extending the length of the bus body and located (vertically) between the floor line and the beltline.

2.34 Rub Rails

2.34.1 There shall be one rub rail located on each side of the bus at seat cushion level which extends from the rear side of the entrance door completely around the bus body (except the emergency door or any maintenance access door) to the point of curvature near the outside cowl on the left side.

2.34.2 There shall be one additional rub rail located on each side at, or no more than 10" above, the floor line. The rub rail shall cover the same longitudinal area as

the upper rub rail, except at the wheelhousings, and it shall extend only to the radii of the right and left rear corners.

2.34.3 Both rub rails shall be attached at each body post and all other upright structural members.

2.34.4 Each rub rail shall be 4" or more in width in their finished form, shall be of 16-gauge steel or suitable material of equivalent strength and shall be constructed in corrugated or ribbed fashion.

2.34.5 Both rub rails shall be applied outside the body or outside the body posts. (Pressed-in or snap-on rub rails do not satisfy this requirement.) For Type A-1 vehicles using the body provided by the chassis manufacturer, or for Types A-2, B, C and D buses using the rear luggage or the rear engine compartment, rub rails need not extend around the rear corners.

2.34.6 There shall be a rub rail (snow rail) or equivalent bracing located horizontally at the bottom edge of the body side skirts.

2.35 Seat and Restraining Barriers

2.35.1 Passenger Seating

2.35.1.1 All seats shall have a minimum cushion depth of 15" and must comply with all requirements of FMVSS 222. School bus design capacities shall be in accordance with 49 CFR, Part 571.3 and FMVSS 222.

2.35.1.2 All restraining barriers and passenger seats shall be constructed with materials that enable them to meet the criteria contained in the School Bus Seats Upholstery Fire Block Test. (See NSTSP, Appendix B)

2.35.1.3 School buses equipped with front barriers shall have modesty panels (full width) installed under the barriers the full length to the floor.

2.35.1.4 Each seat leg shall be secured to the floor by a minimum of two (2) bolts, washers, and nuts. Flange-head nuts may be used in lieu of nuts and washers, or seats may be track-mounted in conformance with FMVSS 222. If track seating is installed, the manufacturer shall supply minimum and maximum seat spacing dimensions applicable to the bus, which comply with FMVSS 222. This information shall be on a label permanently affixed to the bus.

2.35.1.5 All seat frames attached to the seat rail shall be fastened with two (2) bolts, washers and nuts or flange-head nuts.

2.35.1.6 All school buses (including Type A) shall be equipped with restraining barriers which conform to FMVSS 222.

2.35.1.7 There shall be a minimum of 8" clearance between the last seat and the rear interior of the bus.

2.35.2 Pre-School Age Seating: When installed, all passenger seats designed to accommodate a child or infant carrier seat shall comply with FMVSS 225. These seats shall be in compliance with NHTSA's "Guideline for Safe Transportation of Pre-school Age Children in School

Buses."

2.36 Steps

2.36.1 All school buses with a capacity of 36 passengers and above shall have a three-step stepwell.

2.36.2 The first step at service door shall be not less than 10" and not more than 14" from the ground when measured from the top surface of the step to the ground, based on standard chassis specifications, except that on Type D vehicles, the first step at the service door shall be 12" to 16" from the ground.

2.36.3 Step risers shall not exceed a height of 10". When plywood is used on a steel floor or step, the riser height may be increased by the thickness of the plywood.

2.36.4 Steps shall be enclosed to prevent accumulation of ice and snow.

2.36.5 Steps shall not protrude beyond the side body line.

2.37 Step Treads

2.37.1 All steps, including floor line platform area, shall be covered with 3/16" rubber floor covering or other materials equal in wear and abrasion resistance to top grade rubber.

2.37.2 The metal back of the tread shall be permanently bonded to the step tread material.

2.37.3 Steps, including the floor line platform area, shall have a 1 1/2" white nosing as an integral piece without any joint.

2.37.4 Step treads shall have the following characteristics:

2.37.4.1 Special compounding for good abrasion resistance and coefficient of friction of at least 0.6 for the step surface, and 0.8 for the step nosing;

2.37.4.2 Flexibility so that it can be bent around a 1/2" mandrel both at 130 degrees Fahrenheit and 20 degrees Fahrenheit without breaking, cracking, or crazing;

2.37.4.3 A durometer hardness 85 to 95.

2.38 Stirrup Steps: Unless the windshield and lamps are not easily accessible from the ground, there shall be at least one folding stirrup step or recessed foothold and suitably located handles on each side of the front of the body for easy accessibility for cleaning. Steps are permitted in or on the front bumper in lieu of the stirrup steps if the windshield and lamps are easily accessible for cleaning from that position.

2.39 Stop Signal Arm: The stop signal arm shall be reflectorized material and comply with the requirements of FMVSS 131.

2.40 Storage Compartment: A storage container for tools, tire chains, and/or tow chains may be located either inside or outside the passenger compartment. If inside, it shall have a cover capable of being securely latched and fastened to the floor, convenient to either the service or emergency door. (The seat cushion may not serve this purpose.)

2.41 Strobe Light

2.41.1 A white flashing strobe light shall be installed on the roof. It shall be located from 4 to 6 feet from the rear of the roof edge (except air conditioned buses with roof-top evaporators), within 1 foot of centerline, and behind all other roof equipment. The strobe shall extend above the roof between 4 ½ to 6 ¾ inches, and the light shall be 12 to 16 joules with a clear lens emitting light 360 degrees around its vertical axis.

2.41.2 The light shall be wired to activate when the amber alternately flashing signal lamps are activated, continuing through the full loading or unloading cycle, with an override switch to allow activation of the strobe light during inclement weather.

2.41.3 A pilot light shall be included to indicate when the light is in operation

2.42 Sun Shield

2.42.1 An interior adjustable transparent sun shield with a finished edge not less than 6" X 30" for Types B, C, and D vehicles, shall be installed in a position convenient for use by driver.

2.42.2 On all Type A buses the sun shield (visor) shall be installed according to the manufacturer's standard.

2.43 Traction Assisting Devices

2.43.1 Where required or used, sanders shall:

2.43.1.1 Be of hopper cartridge-valve type;

2.43.1.2 Have a metal hopper with all interior surfaces treated to prevent condensation of moisture;

2.43.1.3 Be of at least 100 pound (grit) capacity;

2.43.1.4 Have cover on the filler opening of hopper, which screws into place, thereby sealing the unit airtight;

2.43.1.5 Have discharge tubes extending to the front of each rear wheel under the fender;

2.43.1.6 Have no-clogging discharge tubes with slush-proof, non-freezing rubber nozzles;

2.43.1.7 Be operated by an electric switch with telltale pilot light mounted on the instrument panel;

2.43.1.8 Be exclusively driver controlled; and

2.43.1.9 Have a gauge to indicate that the hopper needs refilling when it reaches one-quarter full.

2.43.2 Automatic traction chains may be installed.

2.44 Undercoating

2.44.1 Entire underside of bus body, including floor sections, cross member and below-floor-line side panels, shall be coated with rust-proofing material for which the material manufacturer has issued a notarized certification of compliance to the bus body builder that materials meet or exceed all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520b using modified test procedures* for following requirements:

2.44.1.1 Salt spray resistance, pass test

modified to 5% salt and 1000 hours;

2.44.1.2 Abrasion resistance, pass; and

2.44.1.3 Fire resistance, pass.

*Test panels to be prepared in accordance with paragraph 4.6.12 of TT-C-520b with modified procedure requiring that the test be made on a 48-hour air-cured film at a thickness recommended by the material manufacturer.

2.44.2 The undercoating material shall be applied with suitable airless or conventional spray equipment to the recommended film thickness and shall show no evidence of voids in cured film.

2.45 Ventilation

2.45.1 Auxiliary fans (2) shall meet the following requirements.

2.45.1.1 Fans for left and right sides shall be placed in a location where they can be adjusted for maximum effectiveness and where they do not obstruct vision to any mirror, the roadway, or students outside the bus. Note: Type A buses may be equipped with one fan.

2.45.1.2 fans shall be of 6" diameter

2.45.1.3 fan blades shall be covered with a protective cage. Each fan shall be controlled by a separate switch.

2.45.2 The bus body shall be equipped with a suitably controlled ventilating system of sufficient capacity to maintain proper quantity of air under operating conditions without having to open windows except in extremely warm weather.

2.45.3 Static-type, non-closeable exhaust ventilation shall be installed ~~in a low pressure area of the roof toward the front of the bus.~~

2.45.4 Roof hatches designed to provide ventilation in all types of exterior conditions may be provided. They may be equipped with additional ventilating fans.

2.46 Wheelhousing

2.46.1 The wheelhousing opening shall allow for easy tire removal and service.

2.46.2 Wheel housings shall be attached to the floor sheets in such a manner so as to prevent any dust, water or fumes from entering the body. Wheel housings shall be constructed of at least 16-gauge steel.

2.46.3 The inside height of the wheel housings above the floor line shall not exceed 12".

2.46.4 The wheel housings shall provide clearance for installation and use of tire chains on single and dual (if so equipped) power-driving wheels.

2.46.5 No part of a raised wheelhousing shall extend into the emergency door opening.

2.47 Windows

2.47.1 Each side window, other than emergency exits designated to comply with FMVSS 217, shall provide an unobstructed opening of at least 9" high but not more than 13" high and at least 22" wide, obtained by lowering the

window. One side window on each side of the bus may be less than 22" wide.

2.47.2 Optional tinted and/or frost-free glazing may be installed in all doors, windows, and windshields consistent with federal, state, and local regulations. Windshields shall be tinted with maximum integral tinting allowed by federal or ANSI standards with a shaded band across the top.

2.48 Windshield Washers: A windshield washer system shall be provided.

2.49 Windshield Wipers

2.49.1 A two-speed or variable speed windshield wiping system shall be provided. An intermittent feature may be provided.

2.49.1.1 For bus chassis and bodies produced after March 1, 2003, a two- speed or variable speed windshield wiping system shall be provided and an intermittent feature shall be provided.

2.49.2 The wipers shall be operated by one or more air or electric motors of sufficient power to operate the wipers. If one motor is used, the wipers shall work in tandem to give full sweep of windshield.

2.50 Wiring

2.50.1 All wiring shall conform to current SAE standards.

2.50.2 Circuits:

2.50.2.1 Wiring shall be arranged in circuits, as required, with each circuit protected by a fuse, ~~or~~ circuit breaker or field effect transistor. A system of color and number coding shall be used and an appropriate identifying diagram shall be provided to the end user, along with the wiring diagram provided by the chassis manufacturer. The wiring diagrams shall be specific to the bus model supplied and shall include any changes to wiring made by the body manufacturer. Chassis wiring diagrams shall also be supplied to the end user. A system of color- and number-coding shall be used on buses. The following body interconnecting circuits shall be color-coded as noted:

FUNCTION	COLOR
Left Rear Directional Lamp	Yellow
Right Rear Directional Lamp	Dark Green
Stop Lamps	Red
Back-up Lamps	Blue
Tail Lamps	Brown
Ground	White
Ignition Feed, Primary Feed	Black

The color of cables shall correspond to SAE J 1128.

2.50.2.2 Wiring shall be arranged in at least six regular circuits as follows:

2.50.2.2.1 Head, tail, stop (brake) and instrument panel lamps;

2.50.2.2.2 Clearance lamps and stepwell lamps that shall be actuated when service door is open;

2.50.2.2.3 Dome lamps;

2.50.2.2.4 Ignition and emergency door

signal;

2.50.2.2.5 Turn signal lamps; and

2.50.2.2.6 Alternately flashing signal

lamps.

2.50.2.3 Any of the above combination circuits may be subdivided into additional independent circuits.

2.50.2.4 Heaters and defrosters shall be wired on an independent circuit.

2.50.2.5 Whenever possible, all other electrical functions (such as sanders and electric-type windshield wipers) shall be provided with independent and properly protected circuits.

2.50.2.6 Each body circuit shall be coded by number or letter on a diagram of circuits and shall be attached to the body in a readily accessible location.

2.50.3 The entire electrical system of the body shall be designed for the same voltage as the chassis on which the body is mounted.

2.50.4 All wiring shall have an amperage capacity exceeding the design load by at least 25%. All wiring splices are to be done at an accessible location and noted as splices on the wiring diagram.

2.50.5 A body wiring diagram, of a size which can be easily read shall be furnished with each bus body or affixed in an area convenient to the electrical accessory control panel.

2.50.6 The body power wire shall be attached to a special terminal on the chassis.

2.50.7 All wires passing through metal openings shall be protected by a grommet.

2.50.8 Wires not enclosed within body shall be fastened securely at intervals of not more than 18 inches. All joints shall be soldered or joined by equally effective connectors, which shall be water-resistant and corrosion-resistant.

See 6 DE Reg. 1351 (4/1/03)

3.0 Standards for Specially Equipped School Buses

3.1 General Requirements

3.1.1 School buses designed for transporting students with special transportation needs shall comply with these standards and with FMVSSs applicable to their GVWR category.

3.1.2 Any school bus to be used for the transportation of children who are confined to a wheelchair or other mobile positioning device, or who require life-support equipment that prohibits use of the regular service entrance, shall be equipped with a power lift, unless a ramp is needed for unusual circumstances related to passenger needs.

3.1.3 All lift buses shall have flat floors.

3.1.4 Padded barriers shall be installed to

protect wheelchair positions where seating does not interface as barrier.

3.1.5 Seats shall have the minimum spacing specified under FMVSS No. 222 School Bus Passenger Seating and Crash Protection (within 24 inches from the safety reference point) per NHTSA February 1999 Guideline for the Safe Transportation of Pre-School Age Children in School Buses.

3.1.6 All seats shall have seat belts installed (39" seats shall have 3 seat belts and 30" seats shall have 2 seatbelts).

3.2 Aisles: All school buses equipped with a power lift shall provide a minimum 30" aisle leading from any wheelchair/mobility aid position to at least one emergency exit. A wheelchair securement position shall never be located directly in front of a power lift door location. It is understood that, when provided, the lift service door is considered an emergency exit.

3.3 Glazing: Tinted glazing may be installed in all doors, windows and windshields consistent with federal, state and local regulations.

3.4 Identification: Buses with power lifts used for transporting individuals with disabilities shall display the International Symbol of Accessibility below the window line. Such emblems shall be white on blue background, shall not exceed 12 square inches in size, and shall be of a high-intensity reflectorized material meeting Federal Highway Administration (FHWA) FP-85 Standards.

3.5 Passenger Capacity Rating: In determining the passenger capacity of a school bus for purposes other than actual passenger load (e.g., vehicle classification or various billing/reimbursement models), any location in a school bus intended for securement of an occupied wheelchair/mobility aid during vehicle operations are regarded as four designated seating positions. Similarly, each lift area may be regarded as four designated seating positions.

3.6 Power Lifts and Ramps

3.6.1 The power lift (power up and gravity down with a manual backup system) shall be located on the right side of the bus body when not extended.

3.6.1.1 School buses with hydraulic brakes shall be equipped with a hydraulic brake interlock system meeting Americans with Disabilities Act (ADA) standards and ensure the lift can not operate unless the parking brake is set. The interlock shall be wired through the ignition switch.

3.6.1.2 A ramp device may be used in lieu of a mechanical lift if the ramp meets all the requirements of the Americans with Disabilities Act (ADA) as found in 36 CFR §1192.23 Vehicle ramp. (See NSTSP, Appendix D)

3.6.1.3 A ramp device which does not meet the specifications of ADA but does meet the specifications of paragraph 3.6.3 of this section may be installed and used, when, and only when, a power lift system is not adequate to load and unload students having special and unique needs. A

readily accessible ramp may be installed for emergency exit use. If stowed in the passenger compartment, the ramp must be properly secured and placed away from general passenger contact. It must not obstruct or restrict any aisle or exit while in its stowed or deployed position.

3.6.1.4 All vehicles covered by this specification shall provide a level- change mechanism or boarding device (e.g., lift or ramp) complying with paragraphs 3.6.2 or 3.6.3 of this section with sufficient clearances to permit a wheelchair or other mobility aid user to reach a securement location.

3.6.2 Vehicle lift

3.6.2.1 Design loads. The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Non-working parts, such as platform, frame, and attachment hardware that would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

3.6.2.2 Lift capacity: The lifting mechanism and platform shall be capable of lifting at least 800 pounds.

3.6.2.3 Controls: Controls shall be provided that enable the operator to activate the lift mechanism from either inside or outside the bus. The controls may be interlocked with the vehicle brakes, transmission or door, or they may provide other appropriate mechanisms or systems to ensure the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks or systems are engaged. The lift shall deploy to all levels (e.g., ground, curb, and intermediate positions) normally encountered in the operating environment. Where provided, each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

3.6.2.3.1 Exception: Where the lift is designed to deploy with its long dimension parallel to the vehicle axis which pivots into or out of the vehicle while occupied (i.e., "rotary lift"), the requirements of this paragraph, prohibiting the lift from being stowed while occupied, shall not apply if the stowed position is within the passenger compartment and the lift is intended to be stowed while occupied.

3.6.2.4 Emergency operation: The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency

method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator when operated according to manufacturer's instructions and shall not permit the platform to be stowed or folded when occupied, unless the lift is a rotary lift and is intended to be stowed while occupied. No manual emergency operation shall require more than 2 (two) minutes to lower an occupied wheelchair to ground level.

3.6.2.5 Power or equipment failure: Platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12" per second or their dropping of an occupant in the event of a single failure of any load-carrying component.

3.6.2.6 Platform barriers: The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the platform during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the vehicle until the platform is in its fully raised position. Each side of the lift platform that extends beyond the vehicle in its raised position shall have a barrier with a minimum height of 1 ½". Such barriers shall not interfere with maneuvering into or out of the aisle. The loading-edge barrier (outer barrier), which functions as a loading ramp when the lift is at ground level, shall be sufficient when raised or closed, or a supplementary system shall be provided, to prevent a power wheelchair or mobility aid from riding over or defeating it. The outer barrier of the lift shall automatically raise or close, or a supplementary system shall automatically engage, and remain raised, closed, or engaged at all times that the platform is more than 3" above the roadway or sidewalk and the platform is occupied. Alternatively, a barrier or system may be raised, lowered, opened, closed, engaged, or disengaged by the lift operator, provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed or the supplementary system is engaged.

3.6.2.7 Platform surface: The platform surface shall be free of any protrusions over ¼" high and shall be slip resistant. The platform shall have a minimum clear width of 32" at the platform to 30" above it, and a minimum clear length of 48" measured from 2" above the surface of the platform to 30" above the surface of the platform.

3.6.2.8 Platform gaps: Any openings between the platform surface and the raised barriers shall not exceed 5/8" in width. When the platform is at vehicle floor height with the inner barrier (if applicable) down or retracted, gaps between the forward lift platform edge and the vehicle floor shall not exceed ½ inch horizontally and 5/8 inch vertically. Platforms on semi-automatic lifts may have a hand hold not exceeding 1 ½" by 4 ½" located between the edge barriers.

3.6.2.9 Platform entrance ramp: The outboard

entrance ramp or loading-edge barrier used as a ramp and the transition plate from the inboard edge of the platform to the vehicle floor shall not exceed a slope of 1:8, measured on level ground, for a maximum rise of 3", and the transition from roadway or sidewalk to ramp may be vertical without edge treatment up to ¼". Thresholds between ¼" and ½" high shall be beveled with a slope no greater than 1:2.

3.6.2.10 Platform deflection: The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees (exclusive of vehicle roll or pitch) in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26" by 26" test pallet at the centroid of the platform.

3.6.2.11 Platform movement: No part of the platform shall move at a rate exceeding 6" per second while lowering and lifting an occupant, and shall not exceed 12" per second during deploying or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum platform horizontal and vertical acceleration when occupied shall be 0.3 g.

3.6.2.12 Boarding direction: The lift shall permit both inboard and outboard facing of wheelchair and mobility aid users.

3.6.2.13 Use by standees: Lifts shall accommodate persons using walkers, crutches, canes or braces, or who otherwise have difficulty using steps. The platform may be marked to indicate a preferred standing position.

3.6.2.14 Handrails: Platforms on lifts shall be equipped with handrails on two sides, which move in tandem with the lift, and which shall be graspable and provide support to standees throughout the entire lift operation. Handrails shall have a usable component at least 8" long with the lowest portion a minimum 30" above the platform and the highest portion a maximum 38" above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1 ¼" and 1 ½" or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than 1/8". Handrails shall be placed to provide a minimum 1 ½" knuckle clearance from the nearest adjacent surface. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

3.6.2.15 Circuit breaker: A resettable circuit breaker shall be installed between the power source and lift motor if electrical power is used. It shall be located as close to the power source as possible, but not within the passenger/driver compartment.

3.6.2.16 Excessive pressure: Lift design shall prevent excessive pressure that could damage the lift system when the platform is fully lowered or raised or that could

jack the vehicle.

3.6.2.17 Documentation: The following information shall be provided with each vehicle equipped with a lift:

3.6.2.17.1 A phone number where information can be obtained about installation, repair, and parts. (Detailed written instructions and a parts list shall be available upon request.)

3.6.2.17.2 Detailed instructions regarding use of the lift and readily visible when the lift door is open, including a diagram showing the proper placement and positioning of wheelchair/mobility aids on lift.

3.6.2.18 Training materials: The lift manufacturer shall make available training materials to ensure the proper use and maintenance of the lift. These may include instructional videos, classroom curriculum, system test results, or other related materials.

3.6.2.19 Identification and certification: Each lift shall be permanently and legibly marked or shall incorporate a non-removable label or tag that states that it conforms to all applicable requirements of the NSTSP. In addition, the lift manufacturer or an authorized representative, upon request of the original titled purchaser, shall provide a notarized Certificate of Conformance, either original or photocopied, which states that the lift system meets all the applicable requirements of the NSTSP.

3.6.3 Vehicle ramp

3.6.3.1 If a ramp is used, it shall be of sufficient strength and rigidity to support the special device, occupant, and attendant(s). It shall be equipped with a protective flange on each longitudinal side to keep special device on the ramp.

3.6.3.2 Floor of ramp shall be constructed of non-skid material.

3.6.3.3 Ramp shall be equipped with handles and be of weight and design to permit one person to put ramp in place and return it to its storage place.

3.6.3.4 Ramps used for emergency evacuation purposes may be installed in raised floor buses by manufacturers. They shall not be used as a substitute for a lift when a lift is capable of servicing the need.

3.7 Regular Service Entrance

3.7.1 On power-lift equipped vehicles, steps shall be the full width of the step well, excluding the thickness of doors in the open position.

3.7.2 A suitable device shall be provided at the front and rear of the stepwell to assist passengers during ingress or egress. This device shall allow for easy grasping or holding and shall have no openings or pinch points that might entangle clothing, accessories or limbs.

3.8 Restraining Devices

3.8.1 On power lift-equipped vehicles, seat frames may be equipped with attachments or devices to which belts, restraining harnesses or other devices may be

attached. Attachment framework or anchorage devices, if installed, shall conform to FMVSS 210.

3.8.2 Belt assemblies, if installed, shall conform to FMVSS 209.

3.8.3 Child restraint systems, which are used to facilitate the transportation of children who in other modes of transportation would be required to use a child, infant, or booster seat, shall conform to FMVSS 213.

3.9 Seating Arrangements: Flexibility in seat spacing to accommodate special devices shall be permitted to meet passenger requirements. All seating shall be forward-facing.

3.10 Securement and Restraint System for Wheelchair/ Mobility Aid and Occupant: For purposes of better understanding the various aspects and components of this section, the term securement or phrase securement system is used exclusively in reference to the device(s) which secures the wheelchair/mobility aid. The term restraint or phrase restraint system is used exclusively in reference to the device(s) used to restrain the occupant of the wheelchair/ mobility aid. The phrase securement and restraint system is used to refer to the total system which secures and restrains both the wheelchair/mobility aid and the occupant.

3.10.1 Securement and restraint system-general

3.10.1.1 The Wheelchair/Mobility Aid Securement and Occupant Restraint System shall be designed, installed and operated to accommodate passengers in a forward-facing orientation within the bus and shall comply with all applicable requirements of FMVSS 222. Gurney-type devices shall be secured parallel to the side of each bus.

3.10.1.2 The securement and restraint system, including the system track, floor plates, pockets or other anchorages shall be provided by the same manufacturer, or shall be certified to be compatible by manufacturers of all equipment/systems used.

3.10.1.3 When a wheelchair/mobility aid securement device and an occupant restraint share a common anchorage, including occupant restraint designs that attach the occupant restraint to the securement device or the wheelchair/mobility aid, the anchorage shall be capable of withstanding the loads of both the securement device and occupant restraint applied simultaneously, in accordance with FMVSS 222. (See 3.10.2 and 3.10.3 of this section.)

3.10.1.4 When a wheelchair/mobility aid securement device (webbing or strap assembly) is shared with an occupant restraint, the wheelchair/mobility aid securement device (webbing or strap assembly) shall be capable of withstanding a force twice the amount as specified in §4.4(a) of FMVSS 209. (See 3.10.2 and 3.10.3 of this section.)

3.10.1.5 The bus body floor and sidewall structures where the securement and restraint system anchorages are attached shall have equal or greater strength

than the load requirements of the system(s) being installed.

3.10.1.6 The occupant restraint system shall be designed to be attached to the bus body either directly or in combination with the wheelchair/mobility aid securement system, by a method which prohibits the transfer of weight or force from the wheelchair/mobility aid to the occupant in the event of an impact.

3.10.1.7 When an occupied wheelchair/mobility aid is secured in accordance with the manufacturer's instructions, the securement and restraint system shall limit the movement of the occupied wheelchair/mobility aid to no more than 2" in any direction under normal driving conditions.

3.10.1.8 The securement and restraint system shall incorporate an identification scheme that will allow for the easy identification of the various components and their functions. It shall consist of one of the following, or combination thereof:

3.10.1.8.1 The wheelchair/mobility aid securement (webbing or strap assemblies) and the occupant restraint belt assemblies shall be of contrasting color or color shade.

3.10.1.8.2 The wheelchair/mobility aid securement device (webbing or strap assemblies) and occupant restraint belt assemblies may be clearly marked to indicate the proper wheelchair orientation in the vehicle, and the name and location for each device or belt assembly, i.e., front, rear, lap belt, shoulder belt, etc.

3.10.1.9 All attachment or coupling devices designed to be connected or disconnected frequently shall be accessible and operable without the use of tools or other mechanical assistance.

3.10.1.10 All securement and restraint system hardware and components shall be free of sharp or jagged areas and shall be of a non-corrosive material or treated to resist corrosion in accordance with §4.3(a) of FMVSS 209.

3.10.1.11 The securement and restraint system shall be located and installed such that when an occupied wheelchair/mobility aid is secured, it does not block access to the lift door.

3.10.1.12 A device for storage of the securement and restraint system shall be provided. When the system is not in use, the storage device shall allow for clean storage of the system, shall keep the system securely contained within the passenger compartment, shall provide reasonable protection from vandalism and shall enable the system to be readily accessed for use.

3.10.1.13 The entire securement and restraint system, including the storage device, shall meet the flammability standards established in FMVSS 302.

3.10.1.14 Each securement device (webbing or strap assembly) and restraint belt assembly shall be permanently and legibly marked or shall incorporate a

non-removable label or tag that states that it conforms to all applicable FMVSS requirements, as well as, the NSTSP. In addition, the system manufacturer, or an authorized representative, upon request by the original titled purchaser, shall provide a notarized Certificate of Conformance, either original or photocopied, which states that the wheelchair/mobility aid securement and occupants' restraint system meets all of the requirements as specified in FMVSS 222 and the NSTSP.

3.10.1.15 The following information shall be provided with each vehicle equipped with a securement and restraint system:

3.10.1.15.1 A phone number where information can be obtained about installation, repair, and parts. (Detailed written instructions and a parts list shall be available upon request).

3.10.1.15.2 Detailed instructions regarding use, including a diagram showing the proper placement of the wheelchair/mobility aids and positioning of securement devices and occupant restraints, including correct belt angles.

3.10.1.16 The system manufacturer shall make available training materials to ensure the proper use and maintenance of the wheelchair/mobility aid securement and occupant restraint system. These may include instructional videos, classroom curriculum, system test results or other related materials.

3.10.2 Wheelchair/mobility aid securement system

3.10.2.1 Each location for the securement of a wheelchair/mobility aid shall consist of a minimum of four anchorage points. A minimum of two anchorage points shall be located in front of the wheelchair/mobility aid and a minimum of two anchorage points shall be located in the rear. The securement anchorages shall be attached to the floor of the vehicle and shall not interfere with passenger movement or present any hazardous condition.

3.10.2.2 Each securement system location shall have a minimum clear floor area of 30" by 48". Additional floor area may be required for some applications. Consultation between the user and the manufacturer is recommended to ensure adequate area is provided.

3.10.2.3 The securement system shall secure common wheelchair/mobility aids and shall be able to be attached easily by a person who has average dexterity and who is familiar with the system and wheelchair/mobility aid.

3.10.2.4 Capable of withstanding a minimum force of 3,000 pounds when applied as specified in FMVSS 222. When more than one securement device shares a common anchorage, the anchorage shall be capable of withstanding the force indicated above, multiplied by the number of securement devices sharing that anchorage.

3.10.2.5 Each securement device, if incorporating webbing or a strap assembly, shall comply

with the requirements for Type 1 lap belt systems, in accordance with §4.2, §4.3, and §4.4(a) of FMVSS 209.

3.10.2.6 The securement system shall secure the wheelchair/mobility aid in such a manner that the attachments or coupling hardware will not become detached when any wheelchair/mobility aid component deforms, when one or more tires deflate, and without intentional operation of a release mechanism (e.g., a spring clip on a securement hook).

3.10.2.7 Each securement device (webbing or strap assembly) shall be capable of withstanding a minimum force of 2,500 pounds when tested in accordance with FMVSS 209.

3.10.2.8 Each securement device (webbing or strap assembly) shall provide a means of adjustment, of manufacturer's design, to remove slack from the device or assembly.

3.10.3 Occupant Restraint System

3.10.3.1 A Type 2A lap/shoulder restraint system that meets all applicable requirements of FMVSS 209 and 210 shall provide for restraint of the occupant.

3.10.3.2 The occupant restraint system shall be made of materials which do not stain, soil or tear an occupant's clothing, and shall be resistant to water damage and fraying.

3.10.3.3 Each restraint system location shall have not less than one anchorage of manufacturer's design for the upper end of the upper torso restraint.

3.10.3.3.1 The anchorage for each occupant's upper torso restraint shall be capable of withstanding a minimum force of 1,500 pounds when applied as specified in FMVSS 222.

3.10.3.4 Each wheelchair/mobility aid location shall have not less than two floor anchorages for the occupant pelvic restraint and the connected upper torso restraint.

3.10.3.4.1 Each floor anchorage shall be capable of withstanding a minimum force of 3,000 pounds when applied as specified in FMVSS 222.

3.10.3.4.2 When more than one occupant restraint shares a common anchorage, the anchorage shall be capable of withstanding a minimum force of 3,000 pounds multiplied by the number of occupant restraints sharing the common anchorage in accordance with FMVSS 222.

3.10.3.5 Each floor and wall anchorage that secures the occupant restraint to the vehicle which is not permanently attached, shall be of a "positive latch" design and shall not allow for any accidental disconnection.

3.10.4 Dynamic Testing

3.10.4.1 The wheelchair/mobility aid securement and occupant restraint system shall be subjected to and successfully pass a dynamic sled test at a minimum impact speed/deceleration of 30 m.p.h./20g's.

3.10.4.2 The dynamic test shall be performed by experienced personnel using an impact simulator with proven ability to provide reliable, accurate test results that can be replicated.

3.10.4.3 The dynamic test shall be performed in accordance with the procedures set forth in Appendix A of SAE J2249 "Test for Frontal Impact Crash Worthiness."

3.10.4.4 The wheelchair/mobility aid used for testing purposes shall be a rigid, reusable surrogate wheelchair that complies with the requirements of Appendix D of SAE J2249 "Specification for Surrogate Wheelchair."

3.10.4.5 The dynamic test shall be performed using system assemblies, components and attaching hardware that are identical to the final installation in type, configuration and positioning. The body structure at the anchorage points may be simulated for the purpose of the sled test.

3.10.4.6 When tested, the wheelchair/mobility aid securement and occupant restraint system shall pass the criteria specified in Section 6.2 of SAE J2249 "Performance Requirements of Frontal Sled Impact Test." Following is an abridged summary of the criteria. (See NSTSP, Appendix D)

3.10.4.6.1 Retain the test dummy in the test wheelchair and on the test sled with the test wheelchair in an upright position.

3.10.4.6.2 Do not show any fragmentation or complete separation of any load carrying part.

3.10.4.6.3 Do not allow the horizontal excursions of the test dummy and the test wheelchair to exceed specified limits.

3.10.4.6.4 Prevent the test wheelchair from imposing forward loads on the test dummy.

3.10.4.6.5 Allow removal of the test dummy and the test wheelchair, subsequent to the test, without the use of tools.

3.11 Special Light: Doorways in which lifts are installed shall have for use during lift operation a special light providing a minimum of 2 foot-candles of illumination measured on the floor of the bus immediately adjacent to the lift and on the lift when deployed at the vehicle floor level.

3.12 Special Service Entrance

3.12.1 Power lift-equipped bodies shall have a special service entrance to accommodate the power lift.

Exception: If the lift is designed to operate within the regular service entrance, and is capable of stowing such that the regular service entrance is not blocked in any way, and that persons entering or exiting the bus are not impeded in any way, a special service entrance shall not be required.

3.12.2 The special service entrance and door shall be located on the right side of the bus and shall be designed so as not to obstruct the regular service entrance.

3.12.3 The opening may extend below the floor

through the bottom of the body skirt. If such an opening is used, reinforcements shall be installed at the front and rear of the floor opening to support the floor and give the same strength as other floor openings.

3.12.4 A drip molding shall be installed above the opening to effectively divert water from the entrance.

3.12.5 Door posts and headers at the entrance shall be reinforced sufficiently to provide support and strength equivalent to the areas of the side of the bus not used for special service entrance.

3.13 Special Service Entrance Doors

3.13.1 A single door shall be used for the special service entrance. They shall have rub rails.

3.13.2 There shall be a 57" door height opening.

3.13.3 A single door shall be hinged to the forward side of the entrance unless doing so would obstruct the regular service entrance. If the door is hinged to the rearward side of the doorway, the door shall utilize a safety mechanism which will prevent the door from swinging open should the primary door latch fail.

3.13.4 All doors shall have positive fastening devices to hold doors in the "open" position.

3.13.5 All doors shall be weather sealed.

3.13.6 Door materials, panels and structural strength shall be equivalent to the conventional service and emergency doors. Color, rub rail extensions, lettering and other exterior features shall match adjacent sections of the body.

3.13.7 Each door shall have windows set in rubber which are visually similar in size and location to adjacent non-door windows. Glazing shall be of same type and tinting (if applicable) as standard fixed glass in other body locations.

3.13.8 Door(s) shall be equipped with a device that will actuate an audible or flashing signal located in the driver's compartment when door(s) is not securely closed and ignition is in "on" position.

3.13.9 A switch shall be installed so that the lifting mechanism will not operate when the lift platform door(s) is closed.

3.13.10 Special service entrance doors shall be equipped with padding at the top edge of the door opening. Padding shall be at least 3" wide and 1" thick and extend the full width of the door opening.

See 5 DE Reg. 879 (10/1/01)

PROFESSIONAL STANDARDS BOARD

EDUCATION IMPACT ANALYSIS PURSUANT TO 14 DEL. C. SECTION 122(D)

ORDER REPEALING CERTIFICATION REGULATION 390

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to repeal regulation 390 Delaware Licensure for Teachers Holding National Board Certification for Professional Teaching Standards Certification from the **Regulations of the Department of Education**. The regulation listed concerns the requirements for the issuance and renewal of a license to teachers holding certification from the National Board for Professional Teaching Standards. As part of a continuing effort to reduce the number of regulations which govern virtually every aspect of State government, it is recommended that the above-referenced regulations be repealed. It is necessary to repeal this regulation as the subject is regulated by regulation 1512 Advanced License, which is in compliance with 14 **Del.C.** §1213 and §1214. Regulation 390 is, therefore, no longer necessary.

Notice of the proposed repeal of the regulation was published in the News Journal and Delaware State News on October 23, 2003, in the form hereto attached as Exhibit "A". The notice invited written comments. No written comment has been received.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to repeal the regulation as the subject is regulated by regulation 1512 Advanced License, which is in compliance with 14 **Del. C.** § 1213 and § 1214.

III. Decision To Repeal The Regulations

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude the identified regulation should be repealed. Therefore, pursuant to 14 **Del. C.** §1203 and § 1205(b), the regulation attached hereto as Exhibit "B" is hereby repealed.

IV. Text And Citation

The text of the regulation 390, attached hereto as Exhibit "B" is repealed, and said regulations shall be deleted from the **Regulations of the Department of Education**.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the **Delaware Register of Regulations**.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 4TH DAY OF DECEMBER, 2003

Harold Roberts, Chair	Carla Lawson
Sharon Brittingham	Mary Mirabeau
Heath Chasanov	John Pallace
Patricia Clements	Karen Schilling Ross
Edward Czerwinski	Carol Vukelich
Karen Gordon	Geraldine A. Williams
Barbara Grogg	
Bruce Harter	
Leslie Holden	

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 18th Day Of December, 2003.

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
 Jean W. Allen, Vice President
 Richard M. Farmer, Jr.
 Mary B. Graham, Esquire
 Valarie Pepper
 Dennis J. Savage
 Dr. Claibourne D. Smith

~~390 Delaware Licensure for Teachers Holding National Board Certification for Professional Teaching Standards Certification~~

~~1.0 An applicant who holds a current certificate from the National Board for Professional Teaching Standards (NBPTS) shall comply with the application process requirements of 4.0 of regulation 301 General Regulations for Certification of Professional Public School Personnel from the Regulations of the Department of Education. The pre-licensure requirements contained in 301, Sections 2.0, 3.0 and 4.0 of the General Regulations for Certification of Professional Public School Personnel are waived for such an applicant. The Department of Education will determine the appropriate state certificate(s) to be issued based upon the national certifications held by the applicant.~~

REGULATORY IMPLEMENTING ORDER REGULATION 1512 ISSUANCE AND RENEWAL OF ADVANCED LICENSE

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to adopt this regulation. This regulation clarifies requirements and addresses the notification to the Department of candidates for this license for the issuance and renewal of an advanced license. The amendment further clarifies requirements for teachers who do not renew their National Board for Professional Teaching Standards certification. This regulation shall apply to the issuance and renewal of an advanced license as established by 14 **Del.C.** §1213 and §1214.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on October 23, 2003, 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 Professional Standards Board and the State Board of Education find that it is necessary to amend this regulation because 14 **Del.C.** §1213 and §1214 direct the development by the Professional Standards Board, in consultation and collaboration with the Department of Education, and with the approval of the State Board of Education, of regulation of the issuance and renewal of an advanced license. Amendment of this regulation will enhance implementation of the provisions of 14 **Del. C.** §1213 and §1214.

III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is necessary to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of regulation 1512 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 effective date of this Order shall be ten (10) days from the date this Order is published in the **Delaware Register of Regulations**.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 4th DAY of December, 2003.

Harold Roberts, Chair	Leslie Holden
Sharon Brittingham	Carla Lawson
Heath Chasanov	Mary Mirabeau
Patricia Clements	John Pallace
Edward Czerwinski	Karen Schilling Ross
Karen Gordon	Carol Vukelich
Barbara Grogg	Geraldine A. Williams
Bruce Harter	

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 18TH DAY OF DECEMBER, 2003

STATE BOARD OF EDUCATION

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1512 Issuance And Renewal Of Advanced License

1.0 Content: This regulation shall apply to the issuance and renewal of an advanced license for educators, pursuant to 14 Del. C. § 1213 and § 1214.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Department” means the Delaware Department of Education.

“Educator” means an employee paid under 14 Del. C. § 1305.

“Exigent circumstances” means unanticipated circumstances or circumstances beyond the educator’s control, including, but not limited to, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator’s temporarily leaving active service.

“Maintenance of proficiency” means evidence of valid

renewal of National Board for Professional Teaching Standards certification.

“National Board Certified Teacher” means an educator who holds National Board for Professional Teaching Standards certification.

“National Board certification” means certification of an educator by the National Board for Professional Teaching Standards.

“Standards Board” means the Professional Standards Board established pursuant to 14 Del. C., § 104.

“State” means State of Delaware.

3.0 In accordance with 14 Del. C § 1213, the Department **[upon receipt of the list of successful candidates provided annually by the National Board for Professional Teaching Standards,]** shall issue ~~upon application,~~ an advanced license to an[y] educator who receives National Board for Professional Teaching Standards certification. ~~[Delaware educators upon receipt of a list of successful candidates provided annually by the National Board for Professional Teaching Standards.~~ An advanced license is valid for 10 years unless extended pursuant to 14 Del. C. §1216 or revoked for ~~[certification an educator who receives National Board for Professional Teaching]~~ cause, as defined in 14 Del. C. § 1218.

3.1 ~~An applicant for an advanced license shall submit the approved application form to the Department. Verification of receipt of National Board certification must be included with the application. Incomplete applications will not be processed. The Department shall issue, upon application, an advanced license to an educator licensed in another jurisdiction who provides verification of receipt of National Board certification.~~

[3.2 The Department shall not act on an application for licensure if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation’s resolution.

3.2.1“Immorality” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness.]

4.0 RESERVED (for equivalent program)

5.0 In accordance with 14 Del. C. § 1214, the Department shall renew an advanced license, valid for an additional 10 years, to an educator who has maintained proficiency through the National Board for Professional Teaching

Standards. Proficiency for National Board certification shall be deemed to have been maintained if the educator provides evidence of valid renewal of National Board for Professional Teaching Standards certification.

~~5.1 An applicant for renewal of an advanced license shall submit the approved application form to the Department. Verification of valid renewal of National Board for Professional Teaching Standards must be included with the application. Incomplete applications will not be processed. [The Department shall renew an advanced license upon receipt of a list of successful Delaware candidates for renewal provided annually by the National Board for Professional Teaching Standards.]~~

5.2 An applicant who elects not to renew with the National Board for Professional Teaching standards or who fails to meet the recertification requirements set forth by the National Board will be issued a continuing license.

6.0 The Department may extend an advanced license for a period not to exceed one year, exigent circumstances warranting the necessity of such extension.

7.0 An educator may take a leave of absence of up to three years with no effect upon the validity or expiration of the advanced license.

8.0 An applicant shall disclose his or her criminal conviction history upon application for an advanced license. Failure to disclose a criminal conviction history is grounds for denial or revocation of an advanced license and criminal prosecution as specified in 14 Del. Code, §1219.

DEPARTMENT OF FINANCE OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code,
Section 4805(a) (29 Del.C. §4805(a))

ORDER

Pursuant to 29 Del.C. §4805(a) and 29 Del.C. §10115, the Delaware Lottery Office issues this Order adopting proposed amendments to the Video Lottery Regulations. Following notice and a public hearing held on December 4, 2003, the Lottery makes the following findings and conclusions:

Summary Of Evidence

1. The Lottery posted public notice of the proposed amendments to the Video Lottery Regulations in the

November 1, 2003 Register of Regulations and for two consecutive weeks in two newspapers of general circulation. The Lottery proposed amendments to several Chapters of the Video Lottery Regulations as follows:

I. Amend Chapter 2.0 - Definitions as follows: i)delete the word "licensed" from the definition of "agent"/"licensed agent"/"licensed video lottery agent"; ii)delete the definition for "decal"; iii)amend the definition of "license" to include authorizations granted to key employees and video lottery operations employees; iv)add a definition for "MEAL"; v)amend the definition of "terminal"; vi)add a definition for "VLEU".

II. Amend Chapter 3.0 - Licensing of Agents; Business Plans as follows: i)substitute "VLEU" for "Delaware State Police" in Regulations 3.5 and 3.7; ii)amend Regulation 3.7 to add the words "video lottery operations employees"; iii)amend Regulation 3.10(2) to delete the words "state law enforcement" and substitute "VLEU"; iv)amend Regulation 3.10(3) to provide that ATMs must be within twenty-five feet of any video lottery machine; v)amend Regulation 3.11 to delete the words "or renewed"; vi)delete the word "licensee" from Regulation 3.13.

III. Amend Chapter 4.0 - Licensing of Technology Providers as follows: i) enact a new Regulation 4.2(11) to require licensed technology providers who propose to contract with the agency or a video lottery agent to provide the Lottery with a copy of the contract proposal; ii) amend Regulations 4.5, 4.6, and 4.9(3) to insert "Delaware State Police VLEU" for the words "State Police"; iii) amend Regulation 4.7 to add the phrase "video lottery operations employee; iv) amend Regulation 4.9 to delete the word "agent" and insert the word "agency"; v) enact a Regulation 4.13(1) that may require licensed technology providers to provide updated license application information.

IV. Amend Chapter 5.0 - Technology Provider: Contracts; Requirements; Duties as follows: i) delete the words "extended" and "or games" from Regulation 5.2.1(2); ii) amend Regulation 5.2.1(3) to add a requirement that technology providers maintain software and machines in good working order; iii) add the phrase "CDs, or other equivalent technology" to Regulation 5.2.1(5); iv) delete Regulation 5.4 regarding transportation of machines; v) amend Regulation 5.11 to require licensed technology providers maintain video lottery machine equipment at a Delaware storage facility or warehouse; vi)delete Regulation 5.11(14).

V. Amend Chapter 6.0-Agents: Duties as follows: i) amend Regulation 6.2 to clarify that agents must obtain Lottery approval prior to accessing video lottery machines; ii) amend Regulation 6.6 to clarify that the initial placement and movement of video lottery machines requires agency approval; iii) amend Regulation 6.7 to clarify that agents must prohibit play by persons who are barred by law or self-

barred from playing video lottery machines; iv) amend Regulation 6.9 to add the word "tokens"; v) amend Regulation 6.11 to provide that agents must ensure that contractors performing check cashing services exercise caution and good judgment; vi) amend Regulation 6.15 to clarify that video lottery games may only be conducted during established and approved hours; vi) amend Regulation 6.21 to delete "365 day" and inserting "one year", and adding a sentence that no person illegally on the premises or self-barred may redeem credits or prizes; vii) amend Regulation 6.22 to require that no agent may shut off power to machines without agency approval; viii) add the phrase "or the VLEU" after "Director" in Regulation 6.28; ix) amend Regulation 6.31 to require the agent maintain surveillance tapes according to an agency approved schedule and require the agency approve new closed circuit televisions and surveillance systems; x) amend Regulation 6.34 to enact new subsections (1)-(5) on the license requirements for agent to notify the agency of the hiring, transfer, and termination of employees.

VI. Amend Chapter 7.0-Game Requirements as follows: i) amend Regulation 7.3 to delete the words "extended", "or games", and "from time to time"; ii) amend Regulation 7.6 to provide that persons who are self-barred or illegally on the premises shall not claim a prize, and said policy must be prominently displayed; iii) amend Regulation 7.7 to add the phrase "video lottery machine credits" to the first sentence of the regulation, and add a new sentence providing that players may be required to present sufficient identification; iv) amend Regulation 7.8 to clarify that credit slips or prize claim forms must be redeemed within one year; v) amend Regulation 7.9 to renumber Regulation 7.9 as 7.9.1 and inserting "prize claim" in the first sentence, and enacting a new Regulation 7.9.2 to provide that no person may play credits belonging to another player; vi) amend Regulation 7.10 to provide the minimum requirements for credit slips and prize claim forms; vii) delete the last sentence in Regulation 7.11; viii) enact a new Regulation 7.16-Self-Excluded Players detailing the procedure for requests for player self-exclusion, the self-exclusion list, the duties of video lottery agent, and player's removal from the self-exclusion list; ix) enact a new Regulation 7.17-Promotional Tournaments detailing the procedure for promotional tournament machines and conducting of promotional tournaments.

VII. Amend Chapter 8.0 - Accounting and Distribution Procedures as follows: i) revise Regulation 8.2.5 to delete the phrase "Video Lottery Internal Control Procedures" and insert "Minimum Internal Control Standards".

VIII. Amend Chapter 9.0 - Maintenance of Video Lottery Machines as follows: i) revise Regulation 9.3 to delete the phrase "written maintenance log" or "maintenance log forms" and substitute the phrase "MEAL

book", and delete the phrase "indicate the mechanical meter readings" and "substitute "reason for entry".

IX. Amend Chapter 10.0 - Transportation, Registration, and Location of Video Lottery Machines as follows: i) amend Regulation 10.1 to require approval of the Director or designee of video lottery machine shipments, and to delete the phrase "license number" from 10.1(1)(3); ii) amend Regulation 10.2 to provide that the agency will maintain the information on the installed video lottery machines, to delete the phrases "license number" and "license number of the establishment", to require a technology provider notify the agency if a video lottery machine will not be placed in use, and require agency approval of any storage facility; iii) amend Regulation 10.3 to clarify that agents may not transport video lottery machines without agency approval, and to delete the phrase "license number", and to delete subsection 10.3(6); iv) amend Regulation 10.4 to clarify that agency approval must be obtained prior to shipping video lottery machines out of State, to delete the phrase "license number" from 10.4(1), and to delete 10.4(6); v) delete Regulation 10.5; vi) amend Regulation 10.6 to provide that the agency must approve and be present for the initial installation of any new video lottery machine; vii) enact a new Regulation 10.8 to provide the procedure for submission and approval of project request forms.

X. Amend Chapter 14.0 - Employee License Procedure as follows: reorder the chapter in its entirety to provide for an employee license procedure, enact a new Regulation 14.1.1-Rehires/Transfers, enact new Regulation 14.7.1-14.7.2 on the license requirements for employees, enact a new Regulation 14.10 on the requirement to prominently display a license, enact a new Regulation 14.11 on license renewal, enact a new Regulation 14.12 on termination/end of employment.

2. The Lottery held a public hearing on December 4, 2003 and received no public comments. The Lottery allowed for public comments from the public from November 1, 2003 through November 30, 2003. On November 26, 2003, the Lottery received a written submission from Sandra McKinley, Senior Regulatory Compliance Analyst of IGT. The letter from Ms. McKinley raised the following issues: i) whether under the proposed amendment to Chapter 14, the IGT Compliance Department would still be permitted to review employee applications; ii) whether under the proposed amendment to Video Lottery Regulation 14.4, a technology provider would be required to obtain criminal history information of license applicants and forward that information to the Lottery Director; and iii) whether Video Lottery Regulation 10.8.2 regarding Project Request Forms should be amended to clarify that it only applies to non-routine maintenance activities.

Findings Of Fact And Conclusions

3. The public was given notice and an opportunity to provide the Lottery with comments in writing and by testimony at the public hearing on the proposed amendments to the Video Lottery Regulations. The Lottery received one letter from IGT which raised minor questions about the scope of three of the proposed amendments.

4. The Lottery finds that the amendments to the Video Lottery Regulations should be adopted as proposed. First the Lottery finds that the issues addressed in the IGT submission do not raise further review or amendment of the Video Lottery Regulations. Regarding the proposed amendments to Chapter 14, Video Lottery Regulation 14.1(2) can be reasonably applied so that either a human resources representative or a designee can review and witness a completed license application form. With regard to Video Lottery Regulation 14.4, this Regulation does not enact requirement for licensed technology providers to obtain certified criminal history records. Under Video Lottery Regulation 14.3, the Video Lottery Enforcement Unit investigators will conduct the necessary license application investigation including review of criminal history information. Finally, the Lottery has previously issued an Administrative Order regarding Project Requests, which would become part of the proposed Video Lottery Regulation 10.8.2. The Lottery has not, in past practice, interpreted the Project Request requirements to apply to routine maintenance projects.

5. The amendments as proposed to the Video Lottery Regulations represent the result of a detailed study of the Lottery's Regulations, Statutes, and Administrative Orders. The proposed amendments are necessary under 29 **Del.C.** §4805(a), so that the Lottery may operate the video lottery to produce the maximum amount of net revenues consonant with the dignity of the State and the general welfare of the people of Delaware.

6. The effective date of this Order shall be ten (10) days from the publication of this Order in the **Register of Regulations** on January 1, 2004. This Order adopts the proposed amendments to the Video Lottery Regulations in their entirety as published in the Register of Regulations, Vol. 7, Issue 5, pp. 587-607 (November 1, 2003).

IT IS SO ORDERED this 15th day of December, 2003.
Don Johnson, Hearing Officer
Delaware Lottery Office

***Please note that no changes were made to the regulation as originally proposed and published in the November 2003 issue of the Register at page 587 (7 DE Reg. 587). Therefore, the final regulation is not being republished. Please refer to the November 2003 issue of the Register or contact the Office of the State Lottery.**

DEPARTMENT OF HEALTH AND
SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 4711 (16 **Del.C.** §4711)

ORDER**Nature Of The Proceedings:**

The Department of Health and Social Services (DHSS) initiated proceedings proposing to amend 16 **Delaware Code**, Chapter 47, Uniform Controlled Substances Act by rescheduling the pharmaceutically manufactured drug Gamma Hydroxy Butyrate (GHB) to a Schedule III controlled substance. The DHSS proceedings were initiated pursuant to 29 **Delaware Code**, Chapter 101 and authority as prescribed by 16 **Delaware Code**, Chapter 47, Section 4711. On November 1, 2003 (Volume 7, Issue 5), DHSS published in the Delaware Register of Regulations its notice proposing the GHB rescheduling, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed scheduling be delivered to DHSS by December 5, 2003, or be presented at a public hearing on December 4, 2003, after which time DHSS would review information, factual evidence and public comment to the proposed rescheduling of GHB.

Written and verbal comments were received during the official public comment period in support of rescheduling the pharmaceutically manufactured drug GHB to a schedule III controlled substance. One written comment was submitted by a physician who is a Diplomate of American Board of Sleep Medicine and works in a Regional Pulmonary and Sleep Medicine office located in Elkton, MD. The physician is licensed to practice in Delaware and treats patients with sleep disorders who live in Delaware in his Maryland office. His comments testified that, Xyrem, a medicinal form of GHB is very effective in treating cataplexy associated with narcolepsy. One verbal comment was offered by a representative of Orphan Medical at the public hearing that supported rescheduling the pharmaceutically manufactured drug GHB as a schedule III controlled substance.

Findings Of Fact:

In accordance with 16 **Delaware Code**, Section 4711(1), the Department finds that the Attorney General of the United States pursuant to 21 USC §811, rescheduled the pharmaceutically manufactured drug Gamma Hydroxy Butyrate within the Federal Controlled Substances Act effective February 18, 2000. Additionally, in accordance

with 16 **Delaware Code**, Section 4711(2) and Section 4717, the Department finds, based in part on scientific and medical evaluation information provided: (1) pharmaceutically manufactured GHB has a potential for abuse less than the substances listed in Schedules I and II; (2) pharmaceutically manufactured GHB has currently accepted medical use in treatment in the United States; and (3) abuse of pharmaceutically manufactured GHB may lead to moderate or low physical dependence or high psychological dependence. Supporting documentation is attached to the hearing officer's record.

Based on the above findings, the proposed rescheduling of the pharmaceutically manufactured drug Gamma Hydroxy Butyrate to a Schedule III controlled substance within the Delaware Uniform Controlled Substances Act, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the State of Delaware Uniform Controlled Substances Act be amended rescheduling the pharmaceutically manufactured drug Gamma Hydroxy Butyrate to a Schedule III controlled substance and shall become effective January 10, 2004, after publication of the final amendment in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary, 12/12/2003

FINAL 16 Del.C. STATUTE AMENDMENTS:

§4718. Schedule III.

(a) The controlled substances listed in this section are included in Schedule III.

(b) Unless specifically excepted or unless listed in another schedule, any compound, mixture or preparation containing limited quantities of any stimulant drugs or any salts, isomers or salts of isomers thereof and 1 or more active medicinal ingredients not having a stimulant effect on the central nervous system and in such combinations, quantity, proportion or concentration that reduce the potential abuse of the substances which have a stimulant effect on the central nervous system:

(c) Unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system.

1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

- 2) Chlorhexadol;
- 3) Lysergic acid;
- 4) Lysergic acid amide;
- 5) Methyprylon;

- 6) [Rescheduled];
- 7) Sulfondiethylmethane;
- 8) Sulfonethylmethane;
- 9) Sulfonmethane; and.

10) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug and Cosmetic Act.

(d) Nalorphine.

(e) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(8) Not more than 50 milligrams of morphine or any of its salts per 100 milliliters or per 100 grams with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Anabolic steroids and combinations:

- (1) Boldenone;
- (2) Chlorotestosterone (4-dihydrotestosterone);
- (3) Clostebol;
- (4) Dehydrochlormethyltestosterone;
- (5) Dihydrotestosterone (4-dihydrotestosterone);
- (6) Drostanolone;
- (7) Ethylestrenol;

- (8) Fluoxymesterone;
- (9) Formebolone (formebolone);
- (10) Mesterolone;
- (11) Methandienone;
- (12) Methandranone;
- (13) Methandriol;
- (14) Methandrostenolone;
- (15) Methenolone;
- (16) Methyltestosterone;
- (17) Mibolerone;
- (18) Nandrolone;
- (19) Norethandrolone;
- (20) Oxandrolone;
- (21) Oxymesterone;
- (22) Oxymetholone;
- (23) Stanolone;
- (24) Stanozolol;
- (25) Testolactone;
- (26) Testosterone;
- (27) Trenbolone; and
- (28) Any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

- (g) Clortermine.
- (h) Benzphetamine.
- (i) Chlorphentermine.
- (j) Phendametrazine.
- (k) Ketamine.

(l) The Secretary may except by rule any compound, mixture or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) from the application of all or any part of this chapter if the compound, mixture or preparation contains 1 or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(m) Any anabolic steroid, as listed in subsection (f), which is a combination of estrogen and anabolic steroid and which is expressly intended for administration to hormone-deficient women, shall be exempt from the provisions of this chapter. If any person prescribes, dispenses or distributes an anabolic steroid which is a combination of estrogen and anabolic steroid for use by persons who are not hormone-deficient women, such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this chapter. (16 Del. C. 1953, § 4718; 58 Del. Laws, c. 424, § 1; 67 Del. Laws, c. 201, § 1; 70 Del. Laws, c. 81, § 2; 71 Del. Laws, c. 50, § 1; 71 Del. Laws, c. 295, § 1.)

DIVISION OF SOCIAL SERVICES

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

NOTICE OF WITHDRAWAL OF PROPOSED REGULATION

MEDICAID/MEDICAL ASSISTANCE PROGRAMS Client Cost Sharing for Pharmaceutical Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, notice is hereby given that the proposed regulations published in Volume 7, Number 751, of the December 1, 2003 issue of the Delaware Register of Regulations has been withdrawn.

Summary of Withdrawal

On July 1, 2003, the Division of Social Services (DSS) published for public comment a proposal to amend its client cost-sharing regulations for pharmacy services. In response to that request, comments were submitted that resulted in changes being made to the original proposal, primarily to add clarifying language regarding collection of copayments. Because of the substantive nature of these additional changes and publication errors, DSS republished the proposal for public comment in the November 2003 and the December 2003 issues of the Delaware Register pursuant to 29 Del.C. §§10115 and 10118. DSS is withdrawing its proposed regulations published on December 1, 2003 at 7 DE Reg. 751 as of January 1, 2004.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL GEOLOGISTS**

PUBLIC NOTICE

The Board of Professional Geologists will hold a hearing pursuant to 24 **Del.C.** §3606(1) and 29 **Del.C.** ch. 101 on Friday, February 6, 2004 at 10:00 a.m. in the Board's Meeting Room, Cannon Building, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware. The Board is proposing to amend Regulation 6.8.3 of the Board Regulations to read:

Peer Review of (12 CEUs) or Peer Reviewed Geologic Publications (12 CEUs)

Persons may obtain a copy of the proposed amendment at the Board's address above and/or present their views in writing by mailing their views to the Board's Office at the above address. The Board will consider those written submittals received prior to the February 6 hearing as well as public testimony offered at the hearing.

**BOARD OF CLINICAL SOCIAL WORK
EXAMINERS**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** §3906(1), the Delaware Board of Clinical Social Work Examiners proposes to revise its rules and regulations. The proposed revisions clarify the definition of "Clinical Social Work" and the requirements for acceptable clinical social work experience and professional supervision for purposes of licensure.

A public hearing will be held on the proposed Rules and Regulations on Monday, March 15, 2004 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 Karin Stone 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 Karin Stone at the above address or by calling (302) 744-4534.

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**

PUBLIC NOTICE

The Delaware Harness Racing Commission issues the proposed rule amendments pursuant to 3 **Del.C.** §10005 and 29 **Del.C.** §10115. The Commission will accept written comments from January 1, 2004 through February 23, 2004. The Commission will hold a public hearing on the proposed rule amendments on February 25, 2004 at 10:15 a.m. at Dover Downs, Dover, DE. Written comments should be submitted to John Wayne, Administrator of Racing, 2320 S. DuPont Highway, Dover, DE 19901.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, January 15, 2003 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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

PUBLIC NOTICE

The Department of Health and Social Services, Division of Long Term Care Residents Protection, has prepared regulations setting forth requirements for training Paid Feeding Assistants in nursing facilities and assisted living facilities. The regulations provide for general requirements for Paid Feeding Assistant programs as well as specific curriculum requirements and competencies to be demonstrated by Paid Feeding Assistants.

These regulations supplement the federal final rule on Requirements for Paid Feeding Assistants in Long Term Care Facilities published by the Centers for Medicare and Medicaid in the Federal Register on September 26, 2003. Upon adoption of these regulations, both the federal and state regulations pertaining to Paid Feeding Assistants will become effective in Delaware.

Invitation For Public Comment

Public hearings will be held as follows:

Tuesday, February 3, 2004, 10:00 AM
 Department of Natural Resources and
 Environmental Control Auditorium
 89 Kings Highway
 Dover

Wednesday, February 4, 2004, 9:00 AM
 Room 301, Main Building
 Herman Holloway Campus
 1901 N. DuPont Highway
 New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed regulations and should be sent to the following address:

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

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

DIVISION OF SOCIAL SERVICES
Public Notice

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) as it relates to the Temporary Assistance for Needy Families (TANF) program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by January 31, 2004.

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

DIVISION OF SOCIAL SERVICES
Public Notice

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Temporary Assistance to Needy Families (TANF) State Plan as it relates to services to move families to work.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by January 31, 2004.

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

**DEPARTMENT OF LABOR
 OFFICE OF LABOR LAW ENFORCEMENT**
Public Notice

Pursuant to the Department of Labor's authority to promulgate regulations effecting Title 19, Chapter 11, under the Wage Payment and Collection Act at *19 Del. C. §§ 105, 114* and, in accordance with the procedures set forth in Title 29 Subchapter II, Agency Regulations at *29 Del. C. § 10115*, the public and interested parties are herein given NOTICE of the Department of Labor's intent to consider whether PAYROLL DEBIT CARDS as a form of wage payment depicts suitable arrangements for cashing checks or voluntary programs for credit to employees' bank accounts under the WAGE PAYMENT and COLLECTION ACT. Interested parties may submit written comments to the Department of Labor before January 26, 2004 at the address below or present views at public hearings which will be held on January 23, 2004 in New Castle County and on January 26, 2004 in Kent County at the locations below.

The Department of Labor has received inquiries from Delaware employers regarding the use of payroll debit cards for wage payment in lieu of checks or deposits to employee's bank accounts. The Wage Payment and Collection Act recognizes wage payment in the form of checks – conveniently cashed without cost to the employee or credit to employees' bank accounts. Employers suggest that

payroll debit cards benefit employees because the process provides a safe and convenient form of payment without offending the Act. The process offers employers a less expensive form of payment than written checks issued to employees and gives employees more flexibility in cashing the wage payment.

In order to consider the issue of whether payroll debit cards are an acceptable and beneficial form of wage payment under the Act, the Department of Labor invites the public, interested parties, employers and employees to provide their views in writing or by attending a public hearing. Interested parties may provide written comments by methods described below.

1. submit **written comments** to the Director of Industrial Affairs James G. Cagle, Jr. at the Department of Labor, **4425 North Market Street, Wilmington, Delaware 19802** before January 26, 2004; and/or

2. express their views at a public hearing which will be held on January 23, 2004 at the Department of Labor Annex, **19 Lea Boulevard, Wilmington Delaware 19802** at **9:00 a.m.**

3. express their views at a public hearing which will be held on January 26, 2004 at the Department of Health & Social Services Office, **18 N. Walnut Street, Milford, Delaware 19963** at **9:00 a.m.**

June 2003.

As a condition of approval of the Phase II Attainment Demonstration SIP of each state in the Philadelphia-Wilmington-Trenton non-attainment area, EPA required that a Mid-Course Review (MCR) be conducted. Pursuant to this EPA requirement, Delaware committed in its January 2000 SIP revision to perform a MCR by December 31, 2003. Following this, the U.S. Court of Appeals for D.C. Circuit delayed the implementation of the EPA NOx Transport SIP Call from 2003 to 2004. Because the NOx Transport SIP Call is a significant part of the overall 1-hour ozone attainment strategy, EPA allowed states to revise their MCR due date to a date after 5/31/2004.

The purpose of the action proposed herein is to amend the Phase II Attainment Demonstration to revise Delaware's MCR date to December 31, 2004.

Notice Of Public Comment:

A public hearing will be held on January 28, 2004 beginning at 6:00 PM in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, Delaware.

Prepared By:

Frank F. Gao, Project Leader, (302) 323-4542
December 8, 2003

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

PublicNotice

Title Of The Regulations:

Amendments To Delaware Phase II Attainment Demonstration For The Philadelphia-wilmington-trenton Ozone Non-attainment Area, Including A Revision of the Mid-Course Review Schedule.

Brief Synopsis Of The Subject, Substance And Issues:

The Clean Air Act Amendments of 1990 (CAAA) require Delaware to submit to the U.S. Environmental Protection Agency (EPA) a SIP revision to demonstrate its capability of attaining the 1-hour National Ambient Air Quality Standard (NAAQS) for the ground-level ozone in Kent and New Castle Counties in 2005. This SIP revision, termed the Phase II Attainment Demonstration, was initially submitted to the EPA in May 1998, and amended in October 1998, January 2000, December 2000, October 2001, and

**DIVISION OF FISH AND WILDLIFE
PUBLIC NOTICE**

Title Of The Regulations:

Tidal Finfish Regulation 3503 Striped Bass Recreational Fishing Season; Methods of Take: Creel Limit; Possession Limit (Formerly Tidal Finfish Regulation 6), and Tidal Finfish Regulation 3504 - Striped Bass Possession Size Limit; Exceptions (Formerly Tidal Finfish Regulation 7).

Brief Synopsis Of The Subject, Substance And Issues:

To comply with the recreational size limits, daily creel or bag limits and seasons included in Amendment #6 to the Interstate Fishery Management Plan for Striped Bass as adopted by the Atlantic States Marine Fisheries Commission on February 24, 2003, Delaware must adopt regulations conservationally equivalent to the following:

Establish a new minimum size limit of 28 inches total length, and a two fish daily possession limit for recreationally caught striped bass and establish a new minimum size limit for striped bass caught for commercial purposes in the Atlantic Ocean and the Inland Bays of 28 inches. Within the Delaware River and Bay and the Nanticoke River and its tributaries, the commercial size limit shall remain 20 inches total length for the spring gill net fishery, but for any subsequent gill

net fishery conducted in the fall of the year, the minimum size shall be 28 inches. Other wording changes will clarify existing regulations concerning the daily possession limit for recreationally-caught striped bass.

Notice Of Public Comment:

Individuals may present their opinions and evidence and/or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment 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 29, 2004. The record will remain open for written comments until 4:30 PM on February 2, 2004.

**DEPARTMENT OF SERVICES FOR
CHILDREN, YOUTH AND THEIR
FAMILIES**

**DIVISION OF FAMILY SERVICES
OFFICE OF CHILD CARE LICENSING**

PUBLIC NOTICE

PLEASE TAKE NOTICE, pursuant to 31 **Del.C.** Chapter 3, Subchapter II, Subsections 341-345, and 29 **Del.C.** Chapter 90, Subsection 9003 (7), Delaware's Office of Child Care Licensing is proposing to revise the *Delacare: Requirements For Day Care Centers* that were previously adopted in 1988. A task force consisting primarily of early care and education and school-age care program directors along with Licensing Specialists and those whose interests could be affected by the rule changes reviewed the proposed revisions and reached consensus on each rule. These proposed revisions represents the task force's and the Office of Child Care Licensing's efforts to improve standards based on what we have learned through research and experience since last revising this set of rules. Over the years, we have become increasingly aware of what children really need from early care and education and school-age care experiences to optimally develop, stay safe and healthy, and learn in order to be ready for and succeed in school.

Written comments on the rule changes will be accepted until March 5, 2004 and should be addressed to the **Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, DE 19805, Attention: Lynn Jezyk, Rule Development Manager**. Comments will also be heard at public hearings scheduled as follows:

Public Hearing Schedule

- Tuesday, February 17, 2004, beginning at 7:00PM, at Del Tech, Wilmington Campus, Conference Rooms A & B, Southeast Building, Orange Street.
- Wednesday, February 18, 2004, beginning at 7:00PM, at Del Tech, Stanton Campus, Conference Room A – 114/116, Main Building, 1st Floor
- Wednesday, February 25, 2004, beginning at 7:00PM, at Del Tech, Georgetown Campus, Lecture Hall, William A. Carter Partnership Center
- Thursday, February 26, 2004, beginning at 7:00PM, at Del Tech, Dover Campus, Downes Lecture Hall, Terry Building

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