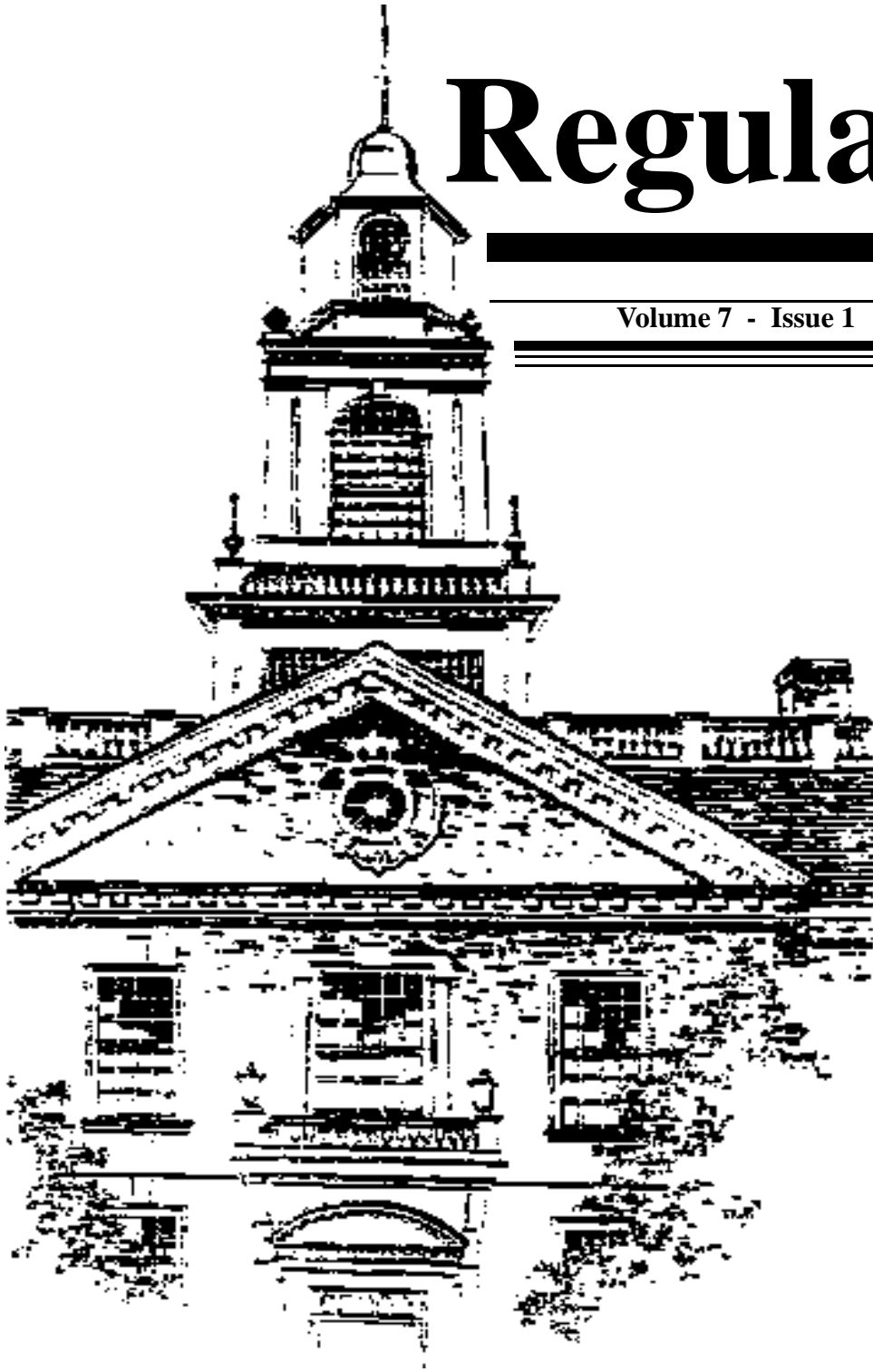

Delaware Register of Regulations



Issue Date: July 1, 2003

Volume 7 - Issue 1

Pages 1 - 111

IN THIS ISSUE:

Regulations:

Errata

Proposed

Final

Governor

Appointments

General Notices

Calendar of Events &

Hearing Notices



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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.

DIVISION OF RESEARCH STAFF:

Walter G. Feindt, Deputy Director; **Judi Abbott**, Secretary; **Sandra F. Clark**, Administrative Assistant; **Jeffrey W. Hague**, Registrar of Regulations; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Operations Support Specialist; **Alex W. Mull**, Assistant Registrar; **Deborah A. Porter**, Interim Supervisor; **Lisa Schieffert**, Research Analyst; **Victoria Schultes**, Administrative Assistant; **Ted Segletes**, Paralegal; **Don Sellers**, Printer; **Alice W. Stark**, Legislative Attorney; **Marvin L. Stayton**, Printer; **Rochelle Yerkes**, Senior Secretary.

TABLE OF CONTENTS

ERRATA

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	
DIVISION OF AIR AND WASTE MANAGEMENT	
Reg. No. 38, Emission Standards for Hazardous Air Pollutants for Source Categories, Subpart B.....	6

PROPOSED

DEPARTMENT OF ADMINISTRATIVE SERVICES	
DIVISION OF PROFESSIONAL REGULATION	
100 Board of Accountancy.....	7
DEPARTMENT OF EDUCATION	
215 Strategic Planning.....	10
610 Comprehensive School Discipline Program.....	10
878 Guidelines for the School Districts to Comply with the Gun Free Schools Act.....	12
PROFESSIONAL STANDARDS BOARD	
1504 Delaware Performance Appraisal System for Administrators.....	13
DEPARTMENT OF HEALTH & SOCIAL SERVICES	
DIVISION OF SOCIAL SERVICES	
Title XIX Medicaid State Plan, Attachment 4.18, Client Cost Sharing for Pharmaceutical Services	23
Title XIX Medicaid State Plan, Attachment 4.19-C, Standards for Payment of Reserved Beds During Absence from Long-Term Care Facilities.....	28
DSSM	
9007.1, Citizenship & Alien Status.....	29
9038, Verification Subsequent to Initial Certification.....	30
9063.3, Income Averaging.....	30
9085, Reporting Changes.....	30
15120.2, Financial Eligibility.....	32
15200, Transitional Medicaid/Initial Eligibility ...	32
HUMAN RELATIONS COMMISSION	
Rule 10, Voluntary Termination and Dismissal & Rule 27, Reconsideration.....	34

FINAL

DEPARTMENT OF ADMINISTRATIVE SERVICES	
DIVISION OF PROFESSIONAL REGULATION	
Board of Chiropractic.....	36
Board of Massage and Bodywork,.....	40
DEPARTMENT OF AGRICULTURE	
HARNESS RACING COMMISSION	
Rule 7.0, Rules of the Race, Sections 7.6.6.3 and 7.3.9.....	42
DEPARTMENT OF EDUCATION	
101 Delaware Student Testing Program.....	51
103 School Accountability for Academic Performance.....	57
104 Education Profiles for the Schools, Districts and the State.....	65
608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students Who Have been Victims of a Violent Felony.....	67
811 School Health Record Keeping Requirements, 815 Physical Examinations and Screening and 817 Administration of Medications and Treatments.....	68
PROFESSIONAL STANDARDS BOARD	
1593 Delaware Professional Teaching Standards.....	75
DEPARTMENT OF HEALTH & SOCIAL SERVICES	
DIVISION OF LONG TERM CARE RESIDENTS PROTECTION	
Adult Abuse Registry, Regulations Governing.....	82
DIVISION OF PUBLIC HEALTH	
Pre-Hospital Advanced Care Directive Regulations.....	85
Public Drinking Water Systems, Regulations Governing.....	94
DIVISION OF SOCIAL SERVICES	
Fair Hearing Practices & Procedures, DSSM 5100 Legal Base, 5304 Jurisdiction, 5312 Responses to Hearing Requests, 5402 Hearings on Decisions, 5403 Availability of Documents and Records, 5405 Fair Hearing Procedures.....	96

TABLE OF CONTENTS

DEPARTMENT OF INSURANCE

Reg. 1310, Standards for Prompt, Fair and
Equitable Settlement of Claims for Health
Care Services..... 100

GOVERNOR

Executive Order No. 44, Creating Principles for
Responsible Industry in Delaware..... 103
Executive Order No. 45, Amendment to Executive
Order 20 Regarding the State Employees'
Charitable Campaign..... 104
Appointments..... 105

CALENDAR OF EVENTS/HEARING

Board of Accountancy, Notice of Public Hearing 109
State Board of Education, Notice of Monthly
Meeting 109
Dept. of Health & Social Services, Div. of Social Services
Title XIX Medicaid State Plan, Attachment 4.18,
Notice of Public Comment Period..... 109
Title XIX Medicaid State Plan, Attachment 4.19-C
Notice of Public Comment Period..... 109
DSSM, Sections 9007.1, Citizenship & Alien
Status, 9063.3, Income Averaging,
9085, Reporting Changes, 9085.2, DSS
Responsibilities: Action on Changes,
Notice of Public Comment Period..... 110
15120.2, Financial Eligibility, 15200,
Transitional Medicaid/Initial Eligibility,
Notice of Public Comment Period..... 110
Human Relations Commission, Notice of Public
Hearing 110
Merit Employee Relations Board, Notice of Public
Hearing 111

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY SECTION**

Statutory Authority: 7 Delaware Code, Chapter 60
(7 Del.C. Ch. 60)

**Final Proposed Amendment to Subpart B
under SAN 2003-01**

**REGULATION NO. 38
EMISSION STANDARDS FOR HAZARDOUS
AIR POLLUTANTS FOR SOURCE CATEGORIES**

(f) Permit issuance and content.

(1) For each Part 2 application received according to paragraph (a) of this section, the Department shall reopen the source's Regulation 30 permit for cause according to the requirements of Regulation 30 and shall impose the requirements in paragraph (f)(3) of this section, as appropriate, through the Regulation 30 permit. If the Department has not yet issued a Regulation 30 permit, the Department shall revise the applicable Regulation 2 operating permit(s) using the procedures in paragraphs 12.4 through 12.6 of Regulation 2.

(2) For each Part 2 application received according to paragraph (b) or (c) of this section, the Department shall issue a Regulation 2 construction or operating permit using the procedures of paragraph 11.2(j) of Regulation 2, shall reopen the source's Regulation 30 permit for cause, shall revise the source's Regulation 30 permit as a significant permit revision or shall issue a Regulation 30 permit, as applicable, to impose the requirements in paragraph (f)(3) of this section, as appropriate.

(3) Permit requirements for affected 112(j) sources.

(i) Identification of the affected 112(j) source and the new affected 112(j) source.

(ii) An equivalent emission limitation established by the Department that reflects existing source MACT requirements, for the equipment and activities within the affected 112(j) source, based on the degree of emission reductions that can be achieved if the control technologies or work practices are installed, maintained and operated properly.

(iii) An equivalent emission limitation established by the Department that reflects new source MACT requirements for the equipment and activities within the affected 112(j) source, based on the degree of emission reductions that can be achieved if the control technologies or work practices are installed, maintained and

operated properly.

*** PLEASE NOTE: IN THE FOLLOWING PARAGRAPH THE NUMBER 3 WAS OMMITED, AS IS NOTED BY THE BRACKED BOLD NUMBERS IN PARAGRAPH (IV).**

AS THE REST OF THE FINAL REGULATION WAS NOT AFFECTED IT IS NOT BEING REPRODUCED HERE.

(iv) In lieu of paragraphs (f)[3](ii) and (f)[3](iii) of this section, any specific design, equipment, work practice or operational standard or combination thereof, when the Administrator or Department determines that hazardous air pollutants cannot be emitted through a conveyance designed and constructed to capture such pollutants, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(v) The appropriate provisions of subpart A of this regulation and the information specified in paragraphs (f)(3)(v)(A) through (C) of this section.

(A) Any additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure practicable enforceability of the MACT emission limitation.

(B) Compliance certifications, testing, monitoring, reporting and record keeping requirements that are consistent with requirements established according to Regulation 30.

(C) Compliance dates by which the owner or operator shall be in compliance with the MACT emission limitation and all other applicable terms and conditions of the permit.

(I) The owner or operator of an ~~major~~ affected 112(j) source subject to paragraphs (a), (b) or (c)(2) of this section shall comply with existing source MACT requirements by the date established in the source's Regulation 30 or Regulation 2 permit, as applicable. The compliance date shall not be later than 3 years after the issuance of the permit for that source, except where the Department issues a permit that grants an additional year to comply in accordance with section 112(i)(3)(B) of the Act or unless otherwise specified in section 112(i).

(II) The owner or operator of a new affected 112(j) source subject to paragraph (c)(1) of this section shall comply with new source MACT requirements immediately upon startup of the new affected 112(j) source.

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 ACCOUNTANCY**

24 DE Admin. Code 100
Statutory Authority: 24 Delaware Code
Section 105 (1), (24 Del.C. §105 (1))

PUBLIC NOTICE

The Board issues these proposed rules pursuant to 24 *Del.C.* §105(1) and 29 *Del.C.* §10115. The Board will accept written comments from July 1, 2003 through July 30, 2003. The Board will hold a public hearing on the proposed amendments on July 23, 2003 at 8:30 a.m. in the second floor conference room in the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467. Written comments should be submitted to Sheila Wolfe, Administrative Specialist, Division of Professional Regulation, at the same above-listed address.

The Board proposes to amend the Rule 5.2 to delete the provision that currently permits a person to take the CPA examination if the applicant expects to meet the Board's education requirements within 120 days of taking the examination. The Board proposes a new Rule 11.8, Computer Based Examinations to provide the rules governing the administration of the computer based examination for the Uniform CPA examination including the period within which an applicant may sit for the examination and the provisions for conditional credit for persons

previously taking the paper-and-pencil examination.

Michael F. McTaggart
Deputy Attorney General

5.0 Examination and Certificate Requirements

5.1 Each applicant for a certificate must provide the Board with the following:

5.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 **Del.C.** §107(a)(1).

5.1.2 Evidence in a form satisfactory to the Board that the applicant has successfully passed the Uniform Certified Public Accountant Examination or its successor examination.

5.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

5.1.4 Evidence in a form satisfactory to the Board that the applicant holds a Master's Degree, a Baccalaureate Degree or an Associate Degree, with a concentration in accounting.

5.1.4.1 The applicant also must, upon request, submit proof that the college or university granting the degree was, at the time of the applicant's graduation, accredited by the Middle States Association of Colleges and Secondary Schools or by another comparable regional accrediting association. A degree granted by a college or university not so accredited at the time of applicant's graduation will not be accepted. Graduates of non-United States (U.S.) degree programs will be required to have their

credentials evaluated by a credential evaluation service acceptable to the Board, to determine equivalency to U.S. regional accreditation.

5.1.4.2 The concentration in accounting must be completed at an accredited college or university and consist of at least 21 semester hours of accounting, auditing, and federal taxation, either as part of applicant's Associate, Baccalaureate or Master's Degree program or subsequent to the completion of the program. Each applicant must have completed courses in accounting (including introductory, intermediate, advanced, and cost accounting), auditing, and federal taxation as components of the 21 hour concentration in accounting. Courses must have been completed in all three areas (i.e. accounting, auditing, and federal taxation). Courses in other business subjects, such as banking, business law, computer science, economics, finance, insurance, management and marketing will not be accepted as accounting courses for this purpose.

5.1.4.3 Except for applicants applying under Section 5.2 of these Rules and Regulations, the educational qualification required by this subsection contemplates satisfactory completion of all required courses of study by the final date for accepting applications for the examination at which the applicant intends to sit.

5.2 Applicants requesting to sit for the the Uniform Certified Public Accountant Examination or its successor examination must demonstrate that they meet the good character and education requirements of Sections 5.1.1 and 5.1.4 of these Rules and Regulations. ~~An applicant who expects to meet the education requirements of Section 5.1.4 within 120 days following the examination is eligible to take the examination provided he or she:~~

~~5.2.1 meets the character requirements of Section 5.1.1; and~~

~~5.2.2 provides evidence satisfactory to the Board that he or she is expected to complete the education requirements within 120 days of the examination.~~

11.0 Additional Provisions Concerning Examinations

11.1 All examinations required under 24 Del.C. Ch. 1 and these Rules and Regulations shall be graded by the applicable grading service of the organization offering the examination.

11.2 Applications to sit for the May or November Uniform Certified Public Accountant examination ("CPA examination") shall be submitted in completed form to the Board's designated agent by the dates determined by the Board's designated agent.

11.3 The CPA examination shall be in the subjects of accounting and reporting, financial accounting and reporting, auditing, and business law, and in such other or additional subjects that may be covered in successor examinations as may be required to qualify for a certificate.

11.4 Rules for Examination.

11.4.1 Examinations shall be in writing.

11.4.2 Applicants are permitted to use pencil and eraser. Calculators provided at the exam site are the only mechanical devices allowed.

11.4.3 At any examination, an applicant must prepare and submit to the Board papers on all required subjects for which he or she does not have current credit for certification or permit, whichever is applicable.

11.4.4 An applicant who commits an act of dishonesty or otherwise engages in any other form of misconduct, will be expelled from the examination room and may be denied the right to sit for future examinations.

11.4.5 Applicants will be informed in writing of the results achieved in each examination.

11.5 Passing Grade on the Uniform CPA Examination

11.5.1 An applicant for a certificate who receives a grade of 75 or higher in all four subjects at one examination shall be deemed to have passed the Uniform Certified Public Accountant Examination.

11.5.2 An applicant who is taking only the Accounting and Reporting (ARE) and Financial Accounting and Reporting (FARE) sections of the CPA examination in order to apply for a permit to practice public accounting, who receives a grade of 75 or higher in both required subjects, shall be deemed to have passed the applicable parts of the CPA examination.

11.6 Conditional Status for Subjects passed in this State

11.6.1 An applicant who sits for all required parts of either examination and who receives a grade of 75 or higher in one or more, but less than all subjects passed may attain conditional status under the following circumstances:

11.6.1.1 To attain conditional status, the applicant must obtain a grade of 75 or higher in two subjects and obtain a grade of at least 50 in all subjects not passed. This minimum grade requirement is waived if three subjects are passed at a single examination.

11.6.1.2 To add to conditional status, the applicant must obtain a grade of at least 50 in all subjects not passed. Although a grade of less than 50 prevents the applicant from adding to his or her conditional status, it alone does not remove or cancel conditional status previously attained.

11.6.1.3 To pass the examination via conditional status, an applicant must pass the remaining subjects within 5 consecutive examinations following the attainment of conditional status. The conditional period may be extended at the discretion of the Board, if an applicant is unable to sit for a given examination because of health, military service or other circumstances generally beyond the applicant's control.

11.6.1.4 An applicant who fails to pass all subjects required during the 5 consecutive examinations

following the attainment of conditional status, shall forfeit all credits and shall, upon application as a new applicant, be examined again in all subjects.

11.7 Transfer of Credit for Subjects Passed in Another Jurisdiction

11.7.1 An applicant who has passed one or more subjects of either examination in another jurisdiction will be permitted to transfer to this jurisdiction credit for the parts so passed under the following conditions, and provided the requirements of Section 11.6 of these Rules and Regulations have been met:

11.7.1.1 At the time he or she sat for the examination in the other jurisdiction, he or she met all the requirements of the statute and regulations to sit for the examination in Delaware; and

11.7.1.2 At the time he or she makes application to sit for the examination in Delaware, he or she meets all the requirements of the Delaware statute and regulations; and

11.7.1.3 Credit for any subject of the examination which is transferred from some other jurisdiction to Delaware will be treated as if that credit had been earned in Delaware on the same date such credit was earned in the other jurisdiction, and all time requirements of Delaware conditional status will be applied to it.

11.7.2 The Board will require satisfactory evidence from the transferring jurisdiction as to the validity of the credit.

11.7.3 If an applicant has passed all subjects of either examination in one or more other jurisdictions, but does not possess a certificate or permit from one of the jurisdictions in which a subject was passed, transfer of credit will only be permitted if a satisfactory explanation of such lack of a certificate or permit is furnished to the Board in writing. The Board may require a written explanation of why no certificate or permit was issued from the jurisdiction in which the final subject was successfully completed.

11.8 Computer-Based Examination

11.8.1 Effective with the implementation of the computer-based examination, a candidate may take the required test sections individually and in any order. Except as provided in sections 11.8.2 and 11.8.3 of these rules, credit for any test section(s) passed shall be valid for eighteen months from the actual date the candidate took the test section, without having to attain a minimum score on any failed test section(s) and without regard to whether the candidate has taken other test sections. The candidate shall also be subject to the following:

11.8.1.1 Candidates must pass all four test sections of the Uniform CPA Examination within a rolling eighteen-month period, that begins on the date that the first test section is passed.

11.8.1.2 Candidates cannot retake a failed test section(s) in the same examination window. An

examination window refers to a three-month period in which candidates have an opportunity to take the examination (comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the item bank is refreshed). Thus, candidates will be able to test two out of three months within an examination window.

11.8.1.3 In the event all four test sections of the examination are not passed within the rolling eighteen month period, credit for any test section(s) passed outside the eighteen-month period will expire and that test section(s) must be retaken.

11.8.2 Effective with the implementation of the computer-based examination, candidates having earned conditional credits on the paper-and-pencil examination will retain conditional credits for the corresponding test sections of the computer-based examination as follows:

<u>Paper-and-Pencil Examination</u>	<u>Computer-Based Examination</u>
<u>Auditing</u>	<u>Auditing and Attestation</u>
<u>Financial Accounting and Reporting (FARE)</u>	<u>Financial Accounting and Reporting (FARE)</u>
<u>Accounting and Reporting (ARE)</u>	<u>Regulation</u>
<u>Business Law and Professional Responsibilities (LPR)</u>	<u>Business Environment and Concepts</u>

Such candidates will be allowed until October 31, 2005, or eighteen months from the administration of the last paper-and-pencil examination, whichever is longer, to complete any of the remaining test sections of the examination before the credits earned under the paper-and-pencil examination expire and the candidate loses credit.

11.8.3 The Board may extend the term of conditional credit validity in cases of substantial hardship as determined by the Board in its discretion.

11.8.4 A candidate shall be deemed to have passed the examination once the candidate holds, at the same time, valid credit for passing each of the four test sections of the examination. For purposes of this Regulation, credit for passing a test section of the computer-based examination is valid from the actual date of the testing event for that test section, regardless of the date the candidate actually received notice of the passing grade.

*** PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE BOARD OF ACCOUNTANCY REGULATIONS ARE AVAILABLE AT:**

<http://www.state.de.us/research/profreg/Frame.htm>

DEPARTMENT OF EDUCATION

14 DE Admin. Code 103

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

PUBLIC NOTICE

The Secretary of Education intends to repeal regulation 215 Strategic Planning. The regulation directs the local school districts to maintain a strategic planning process. The local school districts have the authority to administer and supervise their schools under the *Delaware Code* in Chapter 10 which includes establishing policies on strategic planning. In addition, the districts are required by numerous state and federal laws to produce planning documents. The Department of Education does not need to regulate the planning processes of the local school districts.

215 Strategic Planning

~~1.0 Each school district shall maintain a multi-year strategic planning process to serve as the foundation for all other required plans and grant applications and for the purpose of assuring and monitoring continuous program improvement and student achievement.~~

See 2 DE Reg. 961 (12/1/98)

**Education Impact Analysis Pursuant To
 14 DEL. C. Section 122(d)**
**610 Treatment of Severe Discipline Problems
 Component**
A. TYPE OF REGULATORY ACTION REQUIRED

Re-authorization of Existing Regulation

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

The Secretary of Education intends to re-adopt regulation 610 Treatment of Severe Discipline Problems Component (14 Del. C. Section 1604 of Chapter 16 Comprehensive School Discipline Improvement Program August 1998). The regulation is due for action as per the regulation review cycle and although adjustments need to be made to the regulation the regulation is being recommended for re-adoption until the needed research is completed and the adjustments can be made.

C. IMPACT CRITERIA

1. Will the re-adopted regulation help improve student achievement as measured against state achievement

standards? The re-adopted regulation will continue to define the circumstances for alternative placement options for students in danger of expulsion from the regular school program.

2. Will the re-adopted regulation help ensure that all students receive an equitable education? The re-adopted regulation ensures that all students receive the same information concerning alternative placements.

3. Will the re-adopted regulation help to ensure that all students' health and safety are adequately protected? The re-adopted regulation addresses alternative placements not health and safety specifically.

4. Will the re-adopted regulation help to ensure that all students' legal rights are respected? The re-adopted regulation assists in clarifying the legal rights of students who are in danger of being expelled.

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

6. Will the re-adopted regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The re-adopted 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 will remain in the same entity.

8. Will the re-adopted 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 re-adopted 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 re-adopted regulation? There is no less burdensome method.

10. What is the cost to the State and to the local school boards of compliance with the re-adopted regulation? The cost to the state and local school boards will remain the same.

**610 Treatment of Severe Discipline Problems
Component**

1.0 Population to be Served: Except as otherwise provided herein, all students who are expelled by a local school district or are in danger of being expelled shall be placed in the alternative program unless the student is expelled for an offense equivalent to a violation of one of the following: 11 Del.C. §613 (Assault in the First Degree); or 11 Del.C. §1457 (Possession of a Weapon in a Safe School and Recreation Zone); or 11 Del.C. §802 (Arson in the Second Degree); or 11 Del.C. §803 (Arson in the First Degree); or 11 Del.C. §771 (Unlawful Sexual Penetration in the Second Degree); or 11 Del.C. §772 (Unlawful Sexual Penetration in the First Degree); or 11 Del.C. §773 (Unlawful Sexual Intercourse in the Third Degree); or 11 Del.C. §774 (Unlawful Sexual Intercourse in the Second Degree); or 11 Del.C. §775 (Unlawful Sexual Intercourse in the First Degree); or 16 Del.C. §4753A (Trafficking Marijuana, Cocaine, Illegal Drugs or Methamphetamine).

2.0 Non-referral of Students: In any case in which an expelled student is not referred to an alternative program, the decision of the local school district to expel shall state with specificity the reason for non-referral and the evidence in support thereof.

3.0 Informing the Legal Guardian: Districts shall inform the legal guardian of students for whom expulsion is being considered or who are expelled of the alternative education options that are then currently available to the students. These options shall include but not be limited to the alternative program, GED programs, James H. Groves High School and others.

4.0 Age/Grade Level to be Served: Eligible students shall be primarily those who are enrolled in grades 6 through 12, however students in lower grades may also be served through these funds.

5.0 Placement in Alternative Programs: Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for each student. The Placement Team, in concert with the Alternative Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both the student and his/her family. The ISP shall include a tentative re-entry/transition plan. The Alternative Placement Team shall be composed of a representative of the Alternative Program staff; a district level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; student's custodial adult; guidance counselor and/or school social worker;

representatives from DSCYF such as Youth Rehabilitation Service or other worker with whom the family is involved as appropriate. Other school, alternative program, or agency personnel may be invited as needed and determined by the Placement Team. Students who are being placed in the Alternative Program as a transition from DSCYF facilities will have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult. If students from either a school district or DSCYF facility are students with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the IEP Team may be the same.

6.0 September 30 Enrollment Count: A student enrolled in an Alternative Program may be counted in the regular school enrollment count. If enrolled the previous year in a special education program in the reporting school, the student may continue to be reported for the same level of special education service as was received the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may be reported as enrolled in the next vocational course in the program series.

7.0 Alternative Program Setting: The Alternative Program setting shall be apart from the regular school setting, however, a part of a school building may be used for these programs so long as the students do not interact with the regular school population or use any school facility at the same time as the regular school population. Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Settings shall meet safety regulations for student occupancy as outlined in Delaware Code.

8.0 Alternative Program Design: The Alternative Program shall include an educational program designed to maintain and improve skills at least in core academic areas such as English/language arts, mathematics, science, and social studies that will allow students to re-enter the regular school program with a reasonable chance and expectation for success. Every effort shall be made to provide courses comparable to the regular school setting for each student. Opportunities for academic acceleration will also be provided. The academic program should focus on applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Credit for work accomplished in the Alternative Program setting shall be automatically transferred to the regular school. Included in the academic core studies should be study skills, test taking strategies, and academic confidence building. Counseling and other services shall be delivered on-site for students.

9.0 Staffing: Instructional staff shall include at least two certified teachers in the major academic subject areas who can provide the lead for academic instruction and at least two instructional/service aides. Priority should be given to hiring staff who are qualified to teach special education.

10.0 Students With Disabilities: Notwithstanding any of the provisions to the contrary, students with disabilities shall be served pursuant to the provisions of Regulation 925, Children with Disabilities.

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

EDUCATION IMPACT ANALYSIS PURSUANT TO 14 Del.C. Section 122(d)

878 School District Compliance with the Gun Free School Act

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 878 School District Compliance with the Gun Free School Act. The title has been changed by removing the words "School District" to reflect that charter schools must also comply with this regulation. The number has been changed to 603 placing the regulation in the Discipline section (600) of the *Regulations of the Department of Education* rather than in the Health and Safety section (800) since the focus of the regulation is the penalties for gun possession.

The amended version of the regulation still requires school districts to have a Gun Free Schools policy implementing the *Gun Free Schools Act* (20 USC Section 4141) but the policy now also includes charter schools. The amended regulation continues to contain reporting requirements but the specific content of those requirements has been updated to reflect the language of the No Child Left Behind Act of 2001.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses safety issues not academic achievement.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses safety issues related to the implementation of the Gun Free Schools Act.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses students' legal rights as part of the implementation of the Gun Free Schools Act.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation reflects the requirements of the Federal statute's reporting procedures.

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

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 Federal statute requires that the regulation be adopted.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be some addition cost to the local school boards due to increased reporting requirements but the federal statute requires the reporting.

~~878 School District Compliance With Gun Free Schools Act~~

~~The Gun Free Schools Act was enacted on March 31, 1994, as part of the Goals 2000: Educate America Act. The Gun Free Schools Act amends the current Elementary and Secondary Education Act of 1965 (20 USC 2701 et seq) ESEA.~~

~~1.0 Each school district requesting assistance under the Elementary and Secondary Education Act shall, according to the Federal Statute:~~

~~1.1 Have a written policy requiring the expulsion from school of not less than one year of any student who brings a weapon (see Section 921 of Title 18, US Code) to a school under the jurisdiction of the district. Modification to the expulsion requirement may be made on a case-by-case basis.~~

~~1.2 Submit by June 1 (annually) to the Department of Education an assurance that the required policy is in effect. This requirement can be met by submitting a copy of the District Code of Conduct with the requested policy included.~~

~~1.3 Submit to the Department of Education:~~

~~1.3.1 Description of the circumstances of each and every expulsion imposed under the policy through the reporting requirements for 16 Del.C. §4112, Reporting School Crimes.~~

~~1.3.2 Annual report of all expulsions imposed under this policy through the annual suspension and expulsion reporting system.~~

~~2.0 Each school district requesting assistance under the ESEA shall develop and submit to the Department of Education (beginning in December, 1994), for review and approval, a written policy which includes the following at a minimum:~~

~~2.1 The use of the following definition in the district policy: The term weapon as used in the Gun-Free Act means a firearm as defined in Section 921 of Title 18, United States Code.~~

~~2.2 Expulsion from school of not less than one year for any student who brings a weapon (firearm) to a school under the jurisdiction of the district.~~

~~2.3 An outline of the modification process that may be used on a case-by-case basis.~~

~~2.4 A statement that the policy shall apply to all students; except for students with disabilities, the federal law will be followed and a determination will be made prior to any discipline or change of placement in connection with the policy as to whether or not the violation of the firearm policy was due to the student's handicapping condition.~~

~~2.5 A system of notification of each student and his/her parent/guardian/ custodial adult at the beginning of the school year, and whenever a student enters or re-enters the school during the school year of the policy.~~

~~See 1 DE Reg. 1976 (6/1/98)~~

603 Compliance with the Gun-Free Schools Act

1.0 Each school district and charter school requesting assistance under the Elementary and Secondary Education Act (ESEA) shall have a written policy implementing the Gun Free Schools Act (20 USC §4141) and 11 Del.C. §1457(j) or its successor statute. At a minimum, the policy must contain the following elements:

1.1 A student who is determined to have brought a firearm to school, or to have possessed a firearm at school, shall be expelled for not less than one year.

1.2 Modification to the expulsion requirement may be made on a case-by-case basis. Any modification to the expulsion requirement must be made in writing.

1.3 The definition of "firearm" shall be the same as the

meaning given to the term in 18 USC §921(a).

2.0 Each school district and charter school requesting assistance under the ESEA shall submit the following to the Department by June 1 each year, in such form as the Department requires:

2.1 An assurance that its policies comply with this regulation and with 11 Del.C. §1457(j) or its successor statute.

2.2 Descriptions of the expulsions imposed under 11 Del.C. §1457(j) or its successor statute and under the policy implemented in accord with this regulation.

3.0 Nothing in this regulation shall alter a district or charter school's duties pursuant to the Individuals with Disabilities Education Act.

PROFESSIONAL STANDARDS BOARD

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

1504 Delaware Performance Appraisal System for Administrators

A. TYPE OF REGULATORY ACTION REQUESTED

New Regulation

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 adopt the following regulation:

1504 Delaware Performance Appraisal System for Administrators

It is necessary to adopt this regulation in order to comply with changes in statute regarding the evaluation of the performance of educators. The Delaware Performance Appraisal System (DPAS II) is a system for the evaluation of educators. The system which has been developed is research-based, and is aligned with the Delaware Administrator Standards (ISSLC Standards). The system serves the dual purposes of quality assurance and professional growth, and contains a component dedicated to student improvement. The Delaware Performance Appraisal System reinforces those aspects of the system which apply to all educators, while acknowledging the differences which exist among groups of educators. It is necessary that the existing Department regulation 115 School-Level Administrator Appraisal Process remain in effect during the pilot period of the DPAS II system, as educators in all

districts except those participating in a pilot of DPAS II will continue to be evaluated under the existing regulations.

Comments received in response to an invitation for public comment have been considered and changes have been made in the proposed regulation. Included in the changes are the restructuring of the challenge process limiting challenges to summative evaluations only, elimination of reference to the certification of DPAS II evaluators, and elimination of the provisions addressing a pilot. In addition, the rubrics for Domain 1 of the Delaware Performance Appraisal System for Administrators.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation will help improve student achievement as measured against state achievement standards by evaluating educator performance and promoting professional growth of educators. The student improvement domain is directly related to student achievement as measured against state achievement standards.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation deals with educator evaluation, not student equity. However, ensuring that all educators are evaluated using a rigorous system which focuses on both performance and professional growth of educators helps to ensure that students receive an equitable education.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses educator evaluation, not students' health and safety.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses educator evaluation, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subjects to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subjects to be regulated 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 new regulation be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The new regulation will be consistent with, and not an impediment to, the implementation of other state educational policies, 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 new regulation? *14 Del. C.* requires that we promulgate this regulation.

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

1504 Delaware Performance Appraisal System for Administrators

1.0 The Delaware Performance Appraisal System (DPAS II) for Administrators is a system for evaluating the performance of administrators and for promoting professional growth of administrators. In accordance with 14 Del. C. § 1270, this regulation shall be applied to all administrators who are employed by a Delaware public school, including charter schools, who hold a license under the provisions of Chapter 12 of Title 14 of the Delaware Code.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Achievement gap” means the difference in performance between the overall performance of the reference group of students (i.e., Caucasians or non low-income students) and target groups of students (i.e., Hispanic, African-American, low-income, etc.)

“Administrator” means an educator who is licensed and certified as an administrator and is employed in an instructional role in a school district or charter school.

“Assistance Plan” means an improvement plan which identifies deficiencies in an administrator’s performance and defines activities required to improve the deficiencies to a basic or proficient level for novice administrators, and to proficient level for experienced administrators.

“Basic” means performance characteristic of novice administrators. The practice is inconsistent or uneven. The administrator knows what to do, but cannot consistently act upon this knowledge.

“Basic performance in a domain” means the administrator appears to understand the concepts underlying

the standards, and attempts to implement their elements, but implementation is sporadic, intermittent, or otherwise not entirely successful.

“Basic performance on a summative evaluation” means the administrator receives at least four basic ratings and no unsatisfactory rating among the four domains under the summative evaluation.

“Conclusions” means any final determination of an administrator’s overall performance as distinguished, proficient, basic or unsatisfactory.

“Component” as used herein, means one of the sections of a domain, as distinguished from “component” as it is used in 14 Del. C., § 1270, where it means a major section of the DPAS II system.

“Delaware Administrator Standards” means standards for education administrators approved by the State Board, as per 14 Del. Admin. Code 1594, Delaware Administrator Standards.

“Chronic failure by parents to abide by the Parents’ Declaration of Responsibilities” means multiple failures by parents to respond to communications from teachers or other school officials and/or failure to attend conferences as requested.

“Delaware Performance Appraisal System II” (DPAS II) means the educator evaluation system developed and implemented pursuant to 14 Del. C., § 1270.

“Department” means the Delaware Department of Education.

“Distinguished” means performance characteristic of master administrators.

“Distinguished performance in a domain” means that the administrator is a master administrator and makes a contribution to field, both in and outside of their school or district.

“Distinguished performance on a summative evaluation” means the administrator receives four distinguished ratings, among the four domains of the summative evaluation.

“Distribution in student achievement” means the distribution of scores among all students, including those scores disaggregated by income level, gender, race, special education status, and limited English proficiency

“DSTP” means the Delaware Student Testing Program, and includes DSTP I (reading, writing, and mathematics in grades 3, 5, 8, and 10 and science and social studies in grades 4, 6, 8, and 11), and DSTP II (reading, writing, and mathematics in grades 2, 4, 6, 7, and 9) and work sampling at grades K and 1).

“Domain” means one of the sections of the Delaware Performance Appraisal System II and, as used herein, means the same as component in 14 Del. § 1270 (9c).

“Educator” means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers, specialists, and administrators,

and as otherwise defined by the Standards Board and State Board but does not include substitute teachers.

“Evaluator” means an individual or a team who has the credentials to appraise educator performance, as set forth in the rules and regulations promulgated under 14 Del. C., § 1271.

“Experienced administrator” means an administrator who holds a continuing or advanced license and has more than three years of experience in the role in which the administrator is employed.

“Frameworks for School Leaders” means a framework of professional practice for educators as set forth in *A Framework for School Leaders: Linking the Interstate School Leaders Licensure Consortium’s “Standards for School Leaders” to Practice* (ETS, 2001).

“ISLLC” means Interstate School Leaders Licensure Consortium.

“Mitigating factors” means factors set forth in 14 Del. C. § 1270(c) which must be taken into consideration in measuring student improvement and which include student absence, student mobility, student chronic noncompliance with school rules, chronic failure by parents to abide by the Parents’ Declaration of Responsibilities and other factors that may affect an administrator’s evaluation.

“Multiple measures” means student performance on district administered tests pursuant to 14 Del. C. 253(3)(1); student performance assessments, such as end-of-unit or end-of-course assessments, student classroom work products; and classroom grades supported by evidence of student work that demonstrates a student’s performance.

“Novice administrator” means an administrator with less than three years of experience in the role or new to Delaware.

“Other factors that may adversely affect an administrator’s evaluation” include, but are not limited to, environmental disruptions over which the administrator has no control, an external event, such as the death or serious injury of a student, which impacts the school or district, as may be jointly agreed upon by the administrator and the evaluator.

“Overall performance rating” means a summative rating of an administrator’s performance on DPAS II.

“Pattern of ineffective administration” means a summative evaluation rating of “unsatisfactory”, “basic, or a combination of basic and unsatisfactory performance on a summative evaluation for a period of two consecutive years.

“Professional development activities” means activities designed to enhance knowledge and skill to promote continuous professional growth and to improve administrator performance.

“Proficient” means there is clear evidence that the administrator know what to do and does it.

“Proficient performance in a domain” means the administrator clearly understands the concepts underlying

the domain and implements them well.

“Proficient performance on a summative evaluation” means the administrator receives no unsatisfactory ratings, and no more than one basic rating among the four domains of the summative evaluation and does not meet the criteria for a distinguished rating.

“Rubric survey” is a survey of an administrators’ performance on the ISLLC standards which is completed by the administrator, the evaluator, and the individuals directly supervised by the administrator. The evaluator uses data collected from the completed surveys to inform the overall rating on Domain 1.

“Satisfactory performance for administrators” means a summative score of proficient or higher rating in all of the four areas of the Delaware Performance Appraisal System for Administrators or a cumulative score of eight or higher.

“School performance classification” means the official accountability rating assigned to the school pursuant to 14 Del. C. § 154.

“School or district improvement plan” means a comprehensive plan, pursuant to 14 Del. C., § 805, developed by the school community which sets forth goals tied to state and local academic performance standards, strategies to achieve those goals, and resources needed to implement strategies. As used herein, it also means the strategic plan maintained by each school district, pursuant to 14 Del. Admin. Code 215.

“Secretary” means the Secretary of the Delaware Department of Education.

“Standards Board” means the Professional Standards Board established pursuant to 14 Del. C. § 1201.

“State Board” means the State Board of Education of the State of Delaware established pursuant to 14 Del. C. § 104.

“Student absence” means a student misses more than 15% of class time in a school year.

“Student chronic noncompliance with school rules” means two or more documented violations of district or charter school code of conduct.

“Student improvement” means growth over time on the DSTP and other assessment measures toward curriculum standards, as jointly determined by the administrator and the evaluator.

“Student mobility” means a student attends one school for less than an entire academic year from September 30 through May 31.

“Summative evaluation” means a collection of evidence which results in a summary of an administrator’s performance over time.

“Unsatisfactory” means the administrator does not yet appear to understand the concepts underlying the component.

“Unsatisfactory performance in a domain” means the

administrator does not yet appear to understand the concepts underlying the domain. The administrator’s performance in that domain is unacceptable.

“Unsatisfactory performance on a summative evaluation” means an administrator receives one or more unsatisfactory ratings in the four domains of the summative evaluation.

“Variety of assessments” means pre- and post-testing, on-line scores, performances, portfolios, oral presentations, and projects appropriate to the content being assessed.

3.0 Delaware Performance Appraisal System II (DPAS II) for Administrators: There shall be four components of the Delaware Performance Appraisal System for Administrators.

3.1 The domains of DPAS II for Administrators are as follows:

3.1.1 Domain 1: Assessment of Leader Standards provides a direct assessment of the school leader’s proficiency on the Delaware Administrator Standards, also known as the Interstate School Leaders Licensure Consortium (ISLLC) Standards (Council of Chief State School Officers, 1996). The rubrics, as described in *Frameworks for School Leaders* (ETS, 2001), are to be used as a guide to inform dialogue for both the administrator and the evaluator. The evaluator is not required to assess every component of the standards in the course of an evaluation.

3.1.1.1 Standard 1: The Vision of Learning -- The school administrator is an educational leader who promotes the success of all students by facilitating the development, articulation, implementation, and stewardship of a vision for learning that is shared and supported by the community.

3.1.1.2 Standard 2: The Culture of Teaching and Learning -- A school administrator is an educational leader who promotes the success of all students by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth.

3.1.1.3 Standard 3: The Management of Learning A school administrator is an educational leader who promotes the success of all students by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment.

3.1.1.4 Standard 4: Relationships with the Broader Community to Foster Learning – A school administrator is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources.

3.1.1.5 Standard 5: Integrity, Fairness, and Ethics in Learning -- The school administrator is an educational leader who promotes the success of all students by acting with integrity, with fairness, and in an ethical

manner.

3.1.1.6 Standard 6: The political, social, economic, legal, and cultural context learning -- A school administrator is an educational leader who has the knowledge and skills to promote the success of all students by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural contexts.

LEVEL OF PERFORMANCE				
STANDARD	UNSATISFACTORY	BASIC	PROFICIENT	DISTINGUISHED
<u>1a: The Vision of Learning</u>	There is little or no evidence that the school leader facilitates the development, articulation, implementation, and stewardship of a vision for learning that is shared and supported by the community.	There is limited evidence that the school leader facilitates the development, articulation, implementation, and stewardship of a vision for learning that is shared and supported by the community.	There is clear evidence that the school leader facilitates the development, articulation, implementation, and stewardship of a vision for learning that is shared and supported by the community.	There is clear, convincing, and consistent evidence that the school leader facilitates the development, articulation, implementation, and stewardship of a vision for learning that is shared and supported by the community.
<u>1b: The Culture of Teaching and Learning</u>	There is little or no evidence that the school leader advocates, nurtures, and sustains a school culture and instructional program conducive to student learning and staff professional growth.	There is limited evidence that the school leader advocates, nurtures, and sustains a school culture and instructional program conducive to student learning and staff professional growth.	There is clear evidence that the school leader advocates, nurtures, and sustains a school culture and instructional program conducive to student learning and staff professional growth.	There is clear, consistent, and convincing evidence that the school leader advocates, nurtures, and sustains a school culture and instructional program conducive to student learning and staff professional growth.
<u>1c: The Management of Learning</u>	There is little or no evidence that the school leader ensures management of the organization, operations, and resources for a safe, efficient, and effective learning environment.	There is limited evidence that the school leader ensures management of the organization, operations, and resources for a safe, efficient, and effective learning environment.	There is clear evidence that the school leader ensures management of the organization, operations, and resources for a safe, efficient, and effective learning environment.	There is clear, consistent, and convincing evidence that the school leader ensures management of the organization, operations, and resources for a safe, efficient, and effective learning environment.
<u>1d: Relationships with the Broader Community to Foster Learning</u>	There is little or no evidence that the school leader collaborates with families and community members, responds to diverse community interests and needs, and mobilizes community resources.	There is limited evidence that the school leader collaborates with families and community members, responds to diverse community interests and needs, and mobilizes community resources.	There is clear evidence that the school leader collaborates with families and community members, responds to diverse community interests and needs, and mobilizes community resources.	There is clear, consistent, and convincing evidence that the school leader collaborates with families and community members, responds to diverse community interests and needs, and mobilizes community resources.
<u>1e: Integrity, Fairness, and Ethics in Learning</u>	There is little or no evidence that the school leader acts with integrity, with fairness, and in an ethical manner.	There is limited evidence that the school leader acts with integrity, with fairness, and in an ethical manner.	There is clear evidence that the school leader acts with integrity, with fairness, and in an ethical manner.	There is clear, consistent, and convincing evidence that the school leader acts with integrity, with fairness, and in an ethical manner.
<u>1f: The Political, Social, Economic, Legal, and Cultural Context</u>	There is little or no evidence that the school leader has the knowledge and skills to understand, respond to, and influence the larger political, social, economic, legal, and cultural contexts.	There is limited evidence that the school leader has the knowledge and skills to understand, respond to, and influence the larger political, social, economic, legal, and cultural contexts.	There is clear evidence that the school leader has the knowledge and skills to understand, respond to, and influence the larger political, social, economic, legal, and cultural contexts.	There is clear, consistent, and convincing evidence that the school leader has the knowledge and skills to understand, respond to, and influence the larger political, social, economic, legal, and cultural contexts.

Adapted from the Interstate School Leaders Licensure Consortium Standards for School Leaders, Council of Chief State Officers, 1996.

3.1.2 Domain 2: Assessment on Goals and Priorities provides an assessment of progress on goals which connect to the standards, are organizationally grounded and emphasize the contributions of the leader, are anchored in analysis of data, and which are mutually established by the administrator and the evaluator.

3.1.2.1 The evaluator and the administrator will meet to establish, and agree upon, the number and substance of the goals the administrator will

focus on for the year. They will agree upon a target performance for each goal, and what levels of performance constitute “unsatisfactory”, “basic”, “proficient”, or “distinguished” for each goal. The agreed upon goals and target performances shall constitute Domain 2, which will be unique for each administrator. In the event that the evaluator and the administrator are unable to agree upon the goals and target performances for Domain 2, the evaluator will establish goals and target performances for the administrator.

3.1.2.2 Domain 2: Assessment on Goals and Priorities

PROPOSED REGULATIONS

LEVEL OF PERFORMANCE				
	<u>Unsatisfactory</u>	<u>Basic</u>	<u>Proficient</u>	<u>Distinguished</u>
2a <u>District Goals and Priorities</u>	<u>There is no evidence that the administrator's goals and professional development activities are aligned to district goals and superintendent/ Board priorities.</u>	<u>There is limited or unclear evidence that the administrator's goals and professional development activities are aligned to district goals and superintendent/ Board priorities.</u>	<u>There is clear and convincing evidence that the administrator's goals and professional development activities are aligned to district goals and superintendent/ Board priorities. Application of skills and knowledge in this area are clearly visible.</u>	<u>There is clear, convincing, and consistent evidence that the administrator's goals and professional development activities are aligned to district goals and superintendent/ Board priorities. Application of skills and knowledge in this area are clearly visible. Administrator sets goals in collaboration with others and articulates them to the staff and community.</u>
2b <u>Goals & Priorities of the Administrator</u>	<u>The goals and targets established at the beginning of the evaluation cycle, listed below, were not met. The targets fell well below those established by the evaluator and the administrator.</u>	<u>The goals and targets established at the beginning of the evaluation cycle, listed below, were partially met. The targets fell below those established by the evaluator and the administrator.</u>	<u>The goals and targets established at the beginning of the evaluation cycle, listed below, were fully met. The targets met those established by the evaluator and the administrator.</u>	<u>The goals and targets established at the beginning of the evaluation cycle, listed below, were fully met. The targets exceeded those established by the evaluator and the administrator.</u>

3.1.3 Domain 3: Assessment on the School or District Improvement Plan provides an assessment of the extent to which a school or district reaches important goals in the improvement plan.

3.1.3.1 At the beginning of the evaluation cycle, the evaluator and the administrator will meet to review the school or district improvement plan. During that meeting, the evaluator and the administrator will identify specific goals and targets for the administrator with respect to the improvement plan and those aspects of the improvement plan where the achievement of those goals and

targets is within the administrator's direct influence, or control. The agreed upon goals and target performances shall constitute Domain 3, which will be unique for each administrator. In the event that the evaluator and the administrator are unable to agree upon the goals and target performances for the Domain 3, the evaluator will establish goals and target performances for the administrator.

3.1.3.2 Domain 3: Assessment on the School or District Improvement Plan

3.1.4 Domain 4: Assessment on Measures of

LEVEL OF PERFORMANCE				
	<u>Unsatisfactory</u>	<u>Basic</u>	<u>Proficient</u>	<u>Distinguished</u>
3a <u>School or District Improvement Plan</u>	<u>There is no evidence that the administrator had any influence, implicit or explicit, on the accomplishment of the school or district improvement plan goals.</u>	<u>There is limited or unclear evidence that the administrator had any influence, implicit or explicit, on the accomplishment of the school or district improvement plan goals.</u>	<u>There is clear and convincing evidence that the administrator had influence, both implicit and explicit, on the accomplishment of the school or district improvement plan goals, and that a limited group was engaged with the administrator in planning.</u>	<u>There is clear, consistent and convincing evidence that the administrator had significant influence, both implicit and explicit, on the accomplishment of the school or district improvement plan goals. The administrator used the skills and knowledge in relation to the improvement and has worked in collaboration with staff and community, and articulated the design to the staff and community.</u>

<p>3b: Unique School or District Conditions</p>	<p>There is no evidence that the administrator identified goals that focus on the school's or district's unique needs, challenges and opportunities.</p>	<p>There is limited or unclear evidence that the administrator identified goals that focus on the school's or district's unique needs, challenges and opportunities.</p>	<p>There is clear and convincing evidence that the administrator identified goals that focus on the school's or district's unique needs, challenges and opportunities, and has used these goals to inform educational decisions.</p>	<p>There is clear, convincing and consistent evidence that the administrator identified goals that focus on the school's or district's unique needs, challenges and opportunities. The administrator has addressed the goals collaboratively with others and articulates decisions/solutions to staff and community.</p>
---	--	--	--	--

Student Improvement provides an assessment of student performance based on data from the DSTP, and student achievement in other areas. In the fall of the evaluation cycle, the administrator and the evaluator will meet to discuss the student improvement domain. Each party will bring data to inform the process of mutually establishing performance objectives and the criteria for defining success

in achieving those objectives in each of the three components of the domain.

3.1.4.1 Domain 4: Student Improvement

LEVEL OF PERFORMANCE				
	Unsatisfactory	Basic	Proficient	Distinguished
<p>4a: Uses data from the DSTP school or district performance classification to make instructional decisions</p>	<p>The DSTP school or district performance classification did not meet the targets established at the beginning of the evaluation cycle. The scores fell well below the targets established by the evaluator and the administrator.</p>	<p>The DSTP school or district performance classification partially met the targets established at the beginning of the evaluation cycle. The scores fell below the targets established by the evaluator and the administrator.</p>	<p>The DSTP school or district performance classification fully met the targets established at the beginning of the evaluation cycle. The scores met the targets established by the evaluator and the administrator.</p>	<p>The DSTP school or district performance classification exceeded the targets established at the beginning of the evaluation cycle. The scores exceeded the targets established by the evaluator and the administrator.</p>
<p>4b: Other Measures of Student Improvement</p>	<p>Other measures of student achievement did not meet the targets established at the beginning of the evaluation cycle. The evidence provided by the other measures fell well below the targets established by the evaluator and the administrator.</p>	<p>Other measures of student achievement did not meet the targets established at the beginning of the evaluation cycle. The evidence provided by the other measures fell below the targets established by the evaluator and the administrator.</p>	<p>Other measures of student achievement met the targets established at the beginning of the evaluation cycle. The evidence provided by the other measures met the targets established by the evaluator and the administrator.</p>	<p>Other measures of student achievement met the targets established at the beginning of the evaluation cycle. The evidence provided by the other measures exceeded the targets established by the evaluator and the administrator.</p>

PROPOSED REGULATIONS

<p>4c: Provides evidence of closing the achievement gap</p>	<p>Is unaware of the distribution in student achievement or makes no effort to close the gap by addressing the different needs of individual students or groups of students. Measurable discrepancies in student learning persist.</p>	<p>Is aware of the distribution in student achievement and makes a limited effort to close the gap by addressing the different needs of individual students or groups of students. The gap in student achievement is beginning to close.</p>	<p>Is very aware of the distribution in student achievement and makes a concerted effort to close the gap by addressing the different needs of students or groups of students. There is clear evidence that the gap in student achievement is being closed.</p>	<p>Is proactive in addressing the distribution in student achievement and uses research-based strategies to effectively close the gap by addressing the different needs of individual students or groups of students. There is clear evidence that students are achieving at higher levels and that the distribution in student achievement is being closed. The administrator keeps the staff informed of their progress. The administrator provides leadership in the identification and use of effective strategies to address the gap in student achievement.</p>
---	--	--	---	---

3.2 Pursuant to 14 Del. C. § 1270(c), mitigating factors, including student absence, student mobility, student chronic noncompliance with school rules, chronic failure by parents to abide by the Parents’ Declaration of Responsibilities, and other factors which include, but are not limited to, environmental disruptions over which the administrator has no control, an external event, such as the death or serious injury of a student, which impacts the school or district, as may be jointly agreed upon by the administrator and the evaluator, that may adversely affect an administrator’s evaluation must be taken into consideration in rating Domain 4, and must be included in any discussion between the evaluator and administrator.

3.3 Each component within a domain shall be weighted equally in determining an overall rating for an administrator. Using a set of scoring guides, each domain will be rated “distinguished”, “proficient”, “basic”, or “unsatisfactory”. An annual summative evaluation shall be completed for each administrator and shall result in a rating of “distinguished”, “proficient”, “basic”, or “unsatisfactory” for each domain and an overall rating of performance.

3.3.1A rubric shall be used to rate each domain, as well as to derive the overall rating of the DPAS II evaluation.

3.3.1.1 Distinguished: Administrators at this level are master educational leaders and make a contribution to the field, both in and outside their school and district.

3.3.1.2 Proficient: The administrator clearly understands the concept underlying the domain and implements it well.

3.3.1.3 Basic: The administrator appears to understand the concepts underlying the domain and attempts to implement its elements. Implementation is sporadic, intermittent, or otherwise not entirely successful.

3.3.1.4 Unsatisfactory: The administrator does not yet appear to understand the concepts underlying the domain.

3.4 Summative Domain Ratings -- Administrators shall receive an overall rating, annually, of “distinguished”, “proficient”, “basic”, or “unsatisfactory”. Such rating shall

be a summative rating, arrived at in accordance with the procedures for annual summative evaluation form based on ratings on all four domains over the year.

3.5 Overall Performance on a Summative Evaluation.

3.5.1 Distinguished Performance on a Summative Evaluation – The administrator receives four distinguished ratings among the four domains of the summative evaluation.

3.5.2 Proficient Performance on a Summative Evaluation – The administrator receives no unsatisfactory ratings, and no more than one basic rating among the four domains of the summative evaluation and does not meet the criteria for a distinguished rating.

3.5.3 Basic Performance on a Summative Evaluation – The administrator receives at least four basic or higher ratings and no unsatisfactory ratings among the four domains under the summative evaluation and does not meet the criteria for a rating of proficient or distinguished.

3.5.4 Unsatisfactory Performance on a Summative Evaluation – The administrator receives one or more unsatisfactory ratings in the four domains of the summative evaluation.

3.5.5 Summative Evaluation Scoring Guide.

3.5.5.1 Evaluators use the summative evaluation scoring guide set forth below to derive an overall summative rating for the administrator evaluation.

DPAS II Summative Evaluation Rubric

4	0	0	0	Distinguished
3	1	0	0	Proficient
3	0	1	0	Proficient
2	2	0	0	Proficient
2	1	1	0	Proficient
1	3	0	0	Proficient
0	3	1	0	Proficient
3	0	1	0	Basic

<u>2</u>	<u>0</u>	<u>2</u>	<u>0</u>	<u>Basic</u>
<u>1</u>	<u>2</u>	<u>1</u>	<u>0</u>	<u>Basic</u>
<u>1</u>	<u>1</u>	<u>2</u>	<u>0</u>	<u>Basic</u>
<u>1</u>	<u>0</u>	<u>3</u>	<u>0</u>	<u>Basic</u>
<u>0</u>	<u>2</u>	<u>2</u>	<u>0</u>	<u>Basic</u>
<u>0</u>	<u>0</u>	<u>4</u>	<u>0</u>	<u>Basic</u>
<u>0</u>	<u>1</u>	<u>3</u>	<u>0</u>	<u>Basic</u>
<u>2</u>	<u>0</u>	<u>1</u>	<u>1</u>	<u>Unsatisfactory</u>
<u>1</u>	<u>0</u>	<u>2</u>	<u>1</u>	<u>Unsatisfactory</u>
<u>1</u>	<u>2</u>	<u>0</u>	<u>1</u>	<u>Unsatisfactory</u>
<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>Unsatisfactory</u>
<u>1</u>	<u>1</u>	<u>0</u>	<u>2</u>	<u>Unsatisfactory</u>
<u>0</u>	<u>2</u>	<u>1</u>	<u>1</u>	<u>Unsatisfactory</u>
<u>0</u>	<u>2</u>	<u>0</u>	<u>2</u>	<u>Unsatisfactory</u>
<u>1</u>	<u>0</u>	<u>1</u>	<u>2</u>	<u>Unsatisfactory</u>
<u>0</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>Unsatisfactory</u>
<u>0</u>	<u>1</u>	<u>1</u>	<u>2</u>	<u>Unsatisfactory</u>
<u>0</u>	<u>1</u>	<u>0</u>	<u>3</u>	<u>Unsatisfactory</u>
<u>1</u>	<u>0</u>	<u>0</u>	<u>3</u>	<u>Unsatisfactory</u>
<u>0</u>	<u>0</u>	<u>3</u>	<u>1</u>	<u>Unsatisfactory</u>
<u>0</u>	<u>0</u>	<u>2</u>	<u>2</u>	<u>Unsatisfactory</u>
<u>0</u>	<u>0</u>	<u>1</u>	<u>3</u>	<u>Unsatisfactory</u>
<u>0</u>	<u>0</u>	<u>0</u>	<u>4</u>	<u>Unsatisfactory</u>

3.6 Pattern of Ineffective Administration.

3.6.1 An administrator receives a summative evaluation with an overall rating of unsatisfactory performance for a period of two consecutive years.

3.6.2 An administrator receives a summative evaluation with an overall rating of basic performance for a period of two consecutive years.

3.6.3 An administrator receives summative evaluations with any combination of basic and unsatisfactory performance for two consecutive years.

3.6.4 An overall rating of unsatisfactory or basic performance during the pilot year, if any, cannot be used in establishing a pattern of ineffective administration.

4.0 Procedures for Novice Administrators.

4.1 Administrators who are in the first three years in a given role will complete the self evaluation twice each year, once by November 30 and once by April 30. The rubric survey for Domain 1 will be completed in the same time periods by those the administrator directly supervises. In the case of a building level administrator, the survey will be completed by all teachers directly supervised by the

administrator. In the case of a district level administrator, the administrator and his/her supervisor shall jointly identify those individuals who will complete the rubric survey. An annual goal setting conference during which the administrator and his/her supervisor establish goals, identify evidence that will be used to make judgments, and agree upon criteria by which achievement will be measured, will take place in the early fall of the year. In the event that there is lack of agreement on the goals and targets, the evaluator will make the final determination. The administrator and the supervisor shall hold a minimum of two conferences during the school year to review progress toward goals and objectives, and either the administrator or the supervisor may request additional conferences, as necessary. A formative evaluation conference form shall be completed during each conference, and signed by both the administrator and the evaluator. The supervisor will observe the administrator at least twice each year to gather data to inform the evaluator on the administrator’s performance on the domains. An annual summative evaluation shall be completed for each administrator in the first three years in a given role, and shall result in a rating for each component and an overall performance rating of “distinguished”, “proficient”, “basic”, or “unsatisfactory”. The administrator may submit a summative evaluation response form within ten days of receipt of the evaluation, which shall be appended to the summative evaluation.

5.0 Procedures for Experienced Administrators.

5.1 Experienced administrators, those who have three or more years in a role shall complete the self evaluation twice each year, once by November 30 and once by April 30. The rubric survey for Domain 1 will be completed in the same time periods by those the administrator supervises. In the case of a building level administrator, the survey will be completed by all teachers directly supervised by the administrator. In the case of a district level administrator, the administrator and his/her supervisor shall jointly identify those individuals who will complete the rubric survey. An annual goal setting conference during which the administrator and his/her supervisor establish goals, identify evidence that will be used to make judgments, and agree upon criteria by which achievement will be measured, will take place in the fall of the year. In the event that there is lack of agreement on the goals and targets, the evaluator will make the final determination. The administrator and the supervisor shall hold a minimum of two conferences during the school year, and either the administrator or the supervisor may request additional conferences, as necessary. The supervisor will observe the administrator at least twice each year. An annual summative evaluation shall be completed for each administrator in the first three years in a given role, and shall result in a rating for each component and an overall performance rating of “distinguished”,

“proficient”, “basic”, or “unsatisfactory”. The administrator may submit a summative evaluation report response form within 10 days of receipt of the report, which shall be appended to the summative evaluation report.

6.0 Evaluators and administrators being evaluated shall sign all evaluation forms indicating that the documents have been reviewed.

7.0 Experienced administrators who receive a rating of “proficient” or “distinguished” may be granted a waiver from the required one year cycle. During the period in which the waiver is in effect, the prescribed rubric surveys, goal setting conferences and observations shall be conducted over a two year period, beginning in the fall of one school year and concluding in the spring of the following school year.

8.0 The goal of an assistance plan is to provide a structured vehicle to assist an administrator whose performance is unsatisfactory to improve performance to a proficient level. An assistance plan shall be developed for any administrator whose performance is rated “unsatisfactory” on any domain of DPAS II for Administrators or whose overall rating on the annual summative evaluation is rated “unsatisfactory” or “basic” on any domain of DPAS II for Administrators or whose overall rating on the annual summative evaluation is rated “unsatisfactory” or “basic” or receives a score of less than eight. The criteria set forth in an assistance plan must be designed to result in an overall summative rating of “proficient” at the conclusion of the assistance plan.

8.1 Assistance plans must include the following:

8.1.1 Definition of the specific deficiencies, which must be stated in terms of DPAS II rubrics for evaluating the identified domain(s).

8.1.2 Measurable goals for improving the deficiencies to satisfactory levels. All goals must be directly linked to the Delaware Administrator Standards and DPAS II rubrics.

8.1.3 Clear and specific professional development activities (i.e., intervention strategies that relate to the goals and objectives).

8.1.4 Resources for each professional development activity must be identified and made accessible to the administrator. Such resources may include, but are not limited to, opportunities for the administrator to work with mentors, curriculum specialists, and experienced administrators to implement the Assistance Plan.

8.1.5 Evidence that must be provided and behaviors that must be demonstrated at the end of the plan. These expectations must be stated in terms of DPAS II rubrics for evaluating the identified domain(s).

8.1.6 Procedures for evaluating and documenting improvement.

8.1.7 Time lines, including intermediate progress check-points and a final completion date, must be specified. These dates may be adjusted by mutual agreement of the administrator and the evaluator during the Assistance Plan process.

8.1.8 A record of judgment of satisfactory or unsatisfactory completion of the assistance plan and the date completed, signed by the administrator and the evaluator. In the event that a judgment of unsatisfactory completion is made, follow-up procedures shall be set forth by the evaluator to address the administrator’s continued deficiencies.

8.2 Assistance plan process. There is an expectation of mutual development by the evaluator and the administrator of the assistance plan. Both the evaluator and the administrator complete a preliminary assistance plan, which they meet to review and develop a final, mutually agreed upon plan. In the event that consensus cannot be reached between the evaluator and the administrator, the evaluator will develop the assistance plan, which the administrator must follow.

9.0 School districts and charter schools shall follow the procedures and use forms and software developed by the Department for implementation of DPAS II.

10.0 Challenge Process: A administrator may challenge the fairness of the evaluation process and the overall conclusions reached in the DPAS II summative evaluation.

10.1 An administrator may initiate a challenge by filing a DPAS II challenge form with the evaluator within ten (10) calendar days of receiving the written evaluation. The challenge shall set forth the grounds for the challenge in reasonable detail and shall identify the remedy sought.

10.2 Within ten (10) calendar days of receipt of the challenge form, the evaluator shall provide a written response and, if the remedy is granted, the revised evaluation document shall replace the challenged document. If the remedy sought is denied, the evaluator must state the reasons for the denial.

10.3 If the administrator is not satisfied with the decision of the evaluator, he/she may forward the challenge form and supporting documentation to the District Superintendent or charter school administrator or designee for review. The superintendent or charter school administrator or his/her designee shall be a trained, certified evaluator and shall not be a building level administrator in the same building as the administrator who filed the challenge.

10.4 Within ten (10) calendar days of receipt of the challenge form and supporting documentation, the District Superintendent or charter school administrator or designee shall provide a written response either supporting or not supporting the challenge. If the remedy sought is granted,

the revised evaluation document replaces the challenged document.

10.5 If the superintendent is the evaluator, the provisions set forth in 10.3 and 10.4 above do not apply.

10.6 The decision of the District Superintendent or charter school administrator or designee shall be final.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to establish the provisions relating to imposing and collecting copayments for pharmaceutical services from Medicaid/Medical Assistance clients.

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 19720-0906 by July 31, 2003.

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

Summary Of The Pharmacy Services Co-payment Policy

This notice is being given to provide information of public interest with respect to the intent of DSS to amend the Division of Social Services Manual (DSSM) and to submit to the Centers for Medicare and Medicaid Services (CMS) an amendment to the Title XIX Medicaid State Plan to establish and implement copayments for pharmacy services. The following provisions of this amendment shall be effective on and after October 1, 2003:

- All clients, other than those specifically excluded, are liable for sharing the cost of Medicaid covered prescription drugs. Medicaid clients are required to

pay a specific pharmacy co-pay amount for each prescription filled at a pharmacy participating in the Medicaid program.

- In accordance with 42 CFR §447.54, the pharmacy co-pay amount is based on the Medicaid fee for the drug being dispensed. The co-pay amounts imposed are as follows:

<u>Medicaid Fee</u>	<u>Co-Pay Amount</u>
<\$10.00	\$.50
\$10.01-\$25.00	\$1.00
\$25.01-\$50.00	\$2.00
>\$50.01 or more	\$3.00

- Cumulative Maximum [42 CFR §447.54(d)]. Not applicable, there is no maximum.
- In accordance with Social Security Act §1916 and 42 CFR §447.53, copayments are not imposed upon categorically needy individuals for the following:
- Services furnished to individuals under 21 years of age;
- Services furnished to pregnant women;
- Services furnished to any individual who is an inpatient in a hospital, long-term care facility, or other medical institution;
- Emergency services;
- Family Planning services; and,
- Services furnished to individuals receiving hospice care.
- The pharmacy will be advised via the Point-of-Sale System regarding the client's liability for the drug co-pay and the amount of the co-pay. When a client advises a pharmacy of an inability to pay the applicable co-pay amount at the time the first prescription is filled, the pharmacy must dispense the drug as prescribed, and will be responsible for pursuing reimbursement of the outstanding co-pay amount.
- Providers may refuse to serve only those Medicaid clients who are subject to the co-pay where the following conditions are met:

a) The policy of the pharmacy covering refusal to serve clients because of non-payment of any cost-sharing amounts must apply to all clients, private-pay, commercially-insured, or public;

b) The client has one or more outstanding co-pays;

c) The client has made no arrangement to reimburse for all outstanding co-pays;

d) Notification of the refusal to provide service is carried out in the same manner as is done for all clients who have outstanding cost-sharing obligations.

- The client will remain liable for reimbursement of

the co-pay amount and will be responsible for paying the pharmacy when financially able.

- Medicaid will not pay the co-pay amount to the pharmacy where a client declares an inability to pay. Provider payment will continue to be that sum which is the Medicaid fee minus the applicable client copay amount.

The proposed amendment applies to Medicaid clients.

Specific cost sharing requirements are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

DSS PROPOSED REGULATION #03-21a

Revision: HCFA-PM-91-4 (BPD) **OMB No.:**0938-
AUGUST 1991

State/Territory: DELAWARE

Citation 4.18 Recipient Cost Sharing and Similar
42 CFR 447.51 Charges
through 447.58

1916 (a) and (b)
of the Act

(a) Unless a waiver under 42 CFR 431.55(g) applies deductibles, coinsurance rates, and copayments do not exceed the maximum allowable charges under 42 CFR 447.54.

(b) Except as specified in items 4.18 (b) (4), (5) and (6) below, respect to individuals covered as categorically needy or as qualified Medicare beneficiaries (as defined in section 1905 (p) (1) of the Act under the plan:

(1) No enrollment fee, premium, or similar charge is imposed under the plan.

(2) No deductible, coinsurance, copayment, or similar charge is imposed under the plan for the following:

(i) Services to individuals under age 18, or under--

Age 19

Age 20

Age 21

Reasonable categories of individuals who are age 18 or older, but under age 21, to whom charges apply are listed

below, if applicable.

(ii) Services to pregnant women related to the pregnancy or any other medical condition that may complicate the pregnancy.

(iii) All services furnished to pregnant women.

Not applicable. Charges apply for services to pregnant women unrelated to the pregnancy.

(iv) Services furnished to any individual who is an inpatient in a hospital, long-term care facility, or other medical institution, if the individual is required, as a condition of receiving services in the institution, to spend for medical care costs all but a minimal amount of his or her income required for personal needs.

(v) Emergency services if the services meet the requirements in 42 CFR 447.53 (b) (4).

(vi) Family planning services and supplies furnished to individuals of childbearing age.

(vii) Services furnished by a health maintenance organization in which the individual is enrolled.

(viii) Services furnished to an individual receiving hospice care, as defined in section 1905 (o) of the Act.

(3) Unless a waiver under 42 CFR 431.55 (g) applies, nominal deductible, coinsurance, copayment, or similar charges are imposed for services that are not excluded from such charges

1916 of the Act,
P.L. 99-272,
(Section 9505)

- under item (b) (2) above.
- Not applicable. No such charges are imposed.
 - (i) For any service, no more than one type of charge is imposed.
 - (ii) Charges apply to services furnished to the following age groups:
 - 18 or older
 - 19 or older
 - 20 or older
 - 21 or older
 - Charges apply to services furnished to the following reasonable categories of individuals listed below who are 18 years of age or older but under age 21.

(iii) For the categorically needy and qualified Medicare beneficiaries, **ATTACHMENT 4.18-A** specifies the:

- A. Service(s) for which a charge(s) is applied;
- B. Nature of the charge imposed on each service;
- C. Amount(s) of and basis for determining the charge(s);
- D. Method used to collect the charge(s);
- E. Basis for determining whether an individual is unable to pay the charge and the means by which such an individual is

- identified to providers;
- F. Procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53 (b); and
- G. Cumulative maximum that applies to all deductible, coinsurance or copayment charges imposed on a specified time period.
 - Not applicable. There is no maximum.

1916 (c) of the Act 4.18 (b)(4) A monthly premium is imposed on pregnant women and infants who are covered under section 1902 (a) (10) (A) (ii) (IX) of the Act and whose income equals or exceeds 150 percent of the Federal poverty level applicable to a family of the size involved. The requirements of section 1916 (c) of the Act are met. **ATTACHMENT 4.18-D** specifies the method the State uses for determining the premium and the criteria for determining what constitutes undue hardship for waiving payment of premiums by recipients.

1902 (a) (52) (5) For families receiving extended **and 1925 (b)** benefits during a second 6-month **of the Act** period section 1925 of the Act, a monthly premium is imposed *in accordance* with sections 1925 (b) (4) and (5) of the Act.

1916 (d) of the Act (6) A monthly premium, set on a sliding scale, imposed on qualified disabled and working individuals who are covered under section 1902 (a) (10) (E) (ii) of the Act and whose income

PROPOSED REGULATIONS

exceeds 150 percent (but does not exceed 200 percent) of the Federal poverty level applicable to a family of the size involved. The requirements of section 1916 (d) of the Act are met.

ATTACHMENT 4.18-E
Specifies the methods and standards the State uses for determining the premium.

NEW STATE PLAN PAGE

Revision: CMS-PM-85-14 (BERC)
SEPTEMBER 1985

ATTACHMENT 4.18-A
Page 1
OMB NO.: 093-0193

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT STATE: DELAWARE

A. The following charges are imposed on the categorically needy for services other than those provided under section 1905 (1) through (5) and (7) of the Act:

Service	Type of Charge			Amount and Basis for Determination
	Deductible	Coinsurance	Copayment	
Pharmacy	-0-	-0-	X	This co-pay is effective October 1, 2003 and is based on the nominal ranges specified in 42 CFR 447.54(a)(3), based on the State fee for the service.

NEW STATE PLAN PAGE

Revision: CMS-PM-85-14 (BERC)
SEPTEMBER 1985

ATTACHMENT 4.18-A
Page 2
OMB NO.: 093-0193

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT STATE: DELAWARE

B. The method used to collect cost sharing charges for categorically needy individuals:

Providers are responsible for collecting the cost sharing charges from individuals.

The agency reimburses providers the full Medicaid rate for services and collects the cost sharing charges from individuals.

C. The basis for determining whether an individual is unable to pay the charge, and the means by which such an individual is identified to providers, is described below:

The Pharmacy (Pharmacist) Provider will be advised via the Point-of-Sale System regarding the client's liability for the drug co-pay and the amount of the co-pay. When a client advises a pharmacy of an inability to pay the applicable co-pay amount at the time the first prescription is filled, the pharmacy must dispense the drug as prescribed, and will be responsible for pursuing reimbursement of the outstanding co-pay amount. Providers may refuse to serve only those Medicaid clients who are subject to the co-pay where the following conditions are met: 1) The policy of the pharmacy covering refusal to serve clients because of non-payment of any cost-sharing amounts must apply to all clients, private-pay, commercially-insured, or public; 2) The client has one or more outstanding co-pays; 3) The client has made no arrangement to reimburse for all outstanding co-pays; 4) Notification of the refusal to provide service is carried out in the same manner as is done for all clients who have outstanding cost-sharing obligations.

The client will remain liable for reimbursement of the co-pay amount and will be responsible for paying the pharmacy when financially able. Medicaid will not pay the co-pay amount to the pharmacy where a client declares an inability to pay. Provider payment will continue to be that sum which is the Medicaid fee minus the applicable client copay amount.

NEW STATE PLAN PAGE
Revision: CMS-PM-85-14
SEPTEMBER 1985

(BERC)

ATTACHMENT 4.18-A
Page 3
OMB NO.: 093-0193

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE**

D. The procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53 (b) are described below:

Exclusions from cost sharing requirements are programmed into the Medicaid Management Information System and the Point-of-Sale (POS) System.

Pharmacy Providers have been informed about applicable service and amount; and, the prohibition of service denial if client is unable to meet the co-pay amount by the following methods: (1) provider manuals, which are distributed to all providers; and (2) provider newsletters.

Copayment requirements are set forth in provider manuals, which are distributed, to all providers. The billing instructions are updated and transmitted to providers via the Provider Newsletter. These instructions have been incorporated in the billing instruction section of the provider manuals, which are given to all providers.

E. Cumulative maximums on charges:

State policy does not provide maximums.

Cumulative maximums have been established as described below:

14960 Cost Sharing

Section 1902(a)(14) of the Social Security Act permits states to require certain recipients to share some of the costs of Medicaid by imposing upon them such payments as enrollment fees, premiums, deductibles, coinsurance, co-payments or similar cost sharing charges.

14960.1 Co-Payment Requirement

Effective October 1, 2003, a nominal co-payment will be imposed for generic and brand name prescription drugs as well as over-the-counter drugs prescribed by a practitioner.

The co-payment is based upon the cost of the drug as follows:

Medicaid Payment for the Drug	Co-payment
\$10.00 or less	\$.50
\$10.01 to \$25.00	\$1.00
\$25.01 to \$50.00	\$2.00
\$50.01 or more	\$3.00

The co-payment is imposed for each drug that is prescribed and dispensed.

14960.2 Exclusions from Co-payment Requirement

The following individuals and services are excluded from the co-payment requirement:

- a. individuals under age 21
- b. pregnant women including the postpartum

period

- c. individuals eligible for nursing home care
- d. emergency services
- e. family planning services and supplies
- f. hospice services

14960.3 Inability to Pay

The pharmacy provider may not refuse to dispense the initial prescription(s) subject to the co-payment requirement on account of the individual's inability to pay the co-payment amount. When a recipient indicates that he or she is unable to meet the co-payment requirement, the pharmacy provider must dispense the initial prescription(s). Medicaid reimbursement for the prescription(s) will be the Medicaid fee minus the applicable co-payment amount.

The recipient remains liable for the co-payment amount and is responsible for paying the pharmacy when financially able. The pharmacy provider is permitted to pursue reimbursement of the co-pay from the recipient. The pharmacy provider may refuse to dispense future prescription(s) because of any outstanding co-payment amount.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

**MEDICAID/MEDICAL ASSISTANCE STANDARDS
FOR PAYMENT OF RESERVED BEDS DURING
ABSENCE FROM LONG-TERM CARE FACILITIES**

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/Division of Social Services (DHSS/DSS) publishes this notice pursuant to federal law and regulations in 42 CFR §§447.40 and 447.205. Under Medicaid payment regulations in 42 CFR §447.40, federal financial participation (FFP) is available if a State plan includes provision for bed-reservation payments during a recipient's temporary absence from an inpatient facility.

Current state plan provision required Medicaid to make payments to long term care facilities to ensure a bed is reserved for a Medicaid recipient who is temporarily absent from the long-term care facility due to hospitalization or leave of absence. Bed reservation payments are limited to fourteen (14) days per hospitalization in any 30-day period. This notice is being given to provide information of public interest with respect to the intent of DSS to amend the Division of Social Services Manual (DSSM) and to submit to the Centers for Medicare and Medicaid Services (CMS) an amendment to the Title XIX Medicaid State Plan to reduce "bed hold days" from fourteen (14) to seven (7) days per hospitalization in any 30-day period, effective October 1, 2003.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this notice must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by July 31, 2003.

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

**STATE PLACE UNDER TITLE XIX UNDER THE
SOCIAL SECURITY ACT
ESTABLISHMENT AND MAINTENANCE OF STATE
AND FEDERAL STANDARDS
STATE OF DELAWARE
ATTACHMENT 4.19-C**

**Standards for Payment of Reserved Beds During
Absence from Long-Term Care Facilities**

Payment will be made for reserving beds in long-term care facilities for recipients during their temporary absence for the following purposes:

1. For periods of hospitalization for acute conditions up to ~~14~~ 7 days per hospitalization in any 30-day period.
2. For leaves of absence up to 18 days per calendar year as provided for in the recipient's plan of care.
3. The 18-day leave of absence may be waived as follows:

If a recipient's physical condition is being negatively impacted by their emotional need to be in a family setting, prior approval may be obtained for a waiver of the 18-day leave of absence limitation (for other than acute care hospitalization from the Title XIX Medical Consultant in order to allow the patient more time to visit with their family, as long as such absences are provided for in the recipient's written plan of care.

To obtain approval, a written request must be submitted by the nursing home to the Nursing Home Coordinator and must include:

1. reason for the request
2. medical summary
3. statement from the nursing home's medical director regarding the medical necessity of the patient being absent from the home in excess of 18 days per year.
4. anticipated frequency of absence.

The number of days waived must fall within a six-month period.

Any request for a waiver after the six-month limit must be resubmitted and approved for payment to be continued.

Division of Social Services Manual (DSSM)

**DSSM 20650 Temporary Absence from Nursing Home
for Hospitalization**

If a recipient is hospitalized for a short period of time and is expected to return to the facility, payment to the facility may continue for a period of not more than ~~14~~ seven (7) days provided the nursing home agrees to hold the bed for the resident. Medicaid reimbursement is available for no more than ~~14~~ seven (7) days within any 30-day period. The 30-day count begins with the first day of hospitalization. If

payments are suspended because the recipient remains hospitalized more than ~~44~~ seven (7) days and the 30 count expires, a new 30 day count starts with readmission to the nursing home.

DIVISION OF SOCIAL SERVICES

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

**PUBLIC NOTICE
FOOD STAMP PROGRAM**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, 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 / Food Stamp Program is proposing to amend its policy as it relates to the food stamp benefits to certain qualified aliens. These mandatory provisions must be implemented on October 1, 2003, in accordance with Title IV of the Farm Security and Rural Investment Act of 2002.

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 19720-0906 by July 31, 2003.

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

Summary Of Proposed Change

Restores food stamp eligibility to qualified aliens who are under the age of eighteen (18) regardless of their date of entry and who are otherwise eligible. Current law requires them to have been in the country on August 22, 1996.

DSSM 9007.1 Citizenship and alien status

Household members meeting citizenship or alien status requirements.

The following residents of the United States are eligible to participate in the Food Stamp Program without limitations based on their citizenship/alienage status:

1. Persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the

Northern Mariana Islands. Children born outside the United States are citizens if at least one of the parents is a citizen;

2. Naturalized citizens or a United States non-citizen national (person born in an outlying possession of the United States, like American Samoa or Sawin's Island, or whose parents are U.S. non-citizen nationals;

3. Individuals who are:

(A) An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) apply;

(B) A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act which is recognized as eligible for the special programs and services provided by the U. S. to Indians because of their status as Indians;

(C) Lawfully residing in the U. S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U. S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;

(i) The spouse or surviving spouse of such Hmong or Highland Laotian who is deceased, or

(ii) An unmarried dependent child of such Hmong or Highland Laotian who is under the age of 22; an unmarried child under the age of 18 or if a fulltime student under the age of 22 of such a deceased Hmong or Highland Laotian provided that the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent prior to the child's 18th birthday.

4. Individuals who are eligible indefinitely due to being:

(A) lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased. A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At that time, eligibility is determined without crediting the alien with the former spouse's quarters of coverage. (Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or

spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40th quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);

(B) lawfully in US ~~on 8/22/96~~ and is now under 18 years of age;

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE FOOD STAMP PROGRAM

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, 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 / Food Stamp Program is proposing to amend its policies in the Division of Social Services Manual (DSSM) as it relates to anticipating income and reporting changes. These mandatory provisions will be implemented on October 1, 2003.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by July 31, 2003.

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

Summary Of Proposed Changes

- DSSM 9038 – Requires verification of changes in income when the change is greater than \$50 in stead of the current \$25. Removes language about actual utilities since DSS does not use actual utilities in food stamps anymore.
- DSSM 9063.3 – Allows States to average the income of households with fluctuating income without the household opting to have its income averaged. Clarifies that conversion of income is not averaging of income.
- DSSM 9085 – Six-month reporting is now known

as simplified reporting. Changes the reporting threshold of \$25 per month to \$50 per month for regular change reporting households. Adds a sentence about changes in the sources of income. For reportable changes in income, allows the change to be reported within 10 days of the date when the household receives its first payment.

- DSSM 9085.2 – clarifies that action is to be taken on a change that is anticipated to continue into the month after the month the change is reported.

Citations:

- 7 CFR §§273.10 and 273.12
- Federal Register, Volume 68, Number 82, Food Stamp Program: Anticipating Income and Reporting Changes by FNS/USDA

DSSM 9038 Verification Subsequent to Initial Certification

[273.2(f)(8)]

A. Recertification - Verify a change in income ~~or actual utility expenses~~ if the source has changed or the amount has changed by more than ~~\$25~~ \$50. Previously unreported medical expenses and total recurring medical expenses which have changed by more than \$25 shall also be verified at recertification. Do not verify income if the source has not changed and if the amount is unchanged or has changed by ~~\$25~~ \$50 or less unless the information is incomplete, inaccurate or inconsistent. Do not verify total medical expenses or actual utility expenses claimed by households which are unchanged or have changed by \$25 or less, unless the information is incomplete, inaccurate or inconsistent.

Verify any changes in the legal obligation to pay child support, the obligated amount, and the amount of actual payments made to nonhousehold members for households eligible for the child support deduction. Verify unchanged child support payments only if questionable.

Verify newly obtained Social Security Numbers at recertification according to procedures outlined in DSSM 9032.5.

Other information which has changed may be verified at recertification. Do not verify unchanged information unless the information is incomplete, inaccurate or inconsistent.

B. Changes - Changes reported during the certification period are subject to the same verification procedures as apply at initial certification, except that we shall not verify changes in income if the source has not changed and if the amount has changed by ~~\$25~~ \$50 or less, unless the information is incomplete, inaccurate or inconsistent. Do not verify total medical expenses, ~~or actual utility expenses~~ unless the information is incomplete, inaccurate or

inconsistent.

For individuals who are satisfying the ABAWD work requirements by working, by combining work and participation in a work program, or by participating in a work or workfare program that is not operated or supervised by the State, the individuals' work hours shall be verified.

9063.3 Income Averaging

[273.10(c)(3)]

~~Households, except destitute households and PA households subject to a monthly reporting requirement, may elect to have income averaged.~~

~~Do not average income for a destitute household since averaging would result in assigning to the month of application income from future periods which is not available to the destitute household for its current food needs.~~

~~To average income, use the household's anticipation of income fluctuations over the certification periods. The number of months used to arrive at the average income need not be the same as the number of months in the certification period. For example, if fluctuating income for the past 30 days and the month of application are known and, with reasonable certainty, are representative of the income fluctuations anticipated for the coming months, the income from the two (2) known months may be averaged and projected over a certification period of longer than two (2) months.~~

Income may be averaged when the household has fluctuating income. When averaging income, use the household's anticipation of monthly income fluctuations over the certification period. Averages are recalculated at recertification and when changes in income are reported.

Conversion of income received weekly or biweekly according to DSSM 9063.2 is not averaging income.

Households which, by contract or by self-employment, derive their annual income in a period of time shorter than one (1) year will have that income averaged over a 12-month period, provided the income from the contract is not received on an hourly or piecework basis. These households may include school employees, share croppers, farmers and other self-employed households. However, these provisions do not apply to migrant or seasonal farmworkers. The procedures for averaging self-employed income are described in DSSM 9075. Contract income which is not the household's annual income and is not paid on an hourly or piecework basis shall be prorated over the period the income is intended to cover.

For food stamp purposes, a contract employee is one that has an agreement with an employer to work a certain length of time or perform a specific job. It may be either a written contract or an implied contract. Acceptable verification would be a statement from the employer or a written document, such as a copy of the contract or

agreement, that shows the terms of employment.

The following shows an example of contract and hourly work:

A teacher's aid works 10 months of the year for \$9.16 per hour and 6 hours per day. She does not sign a "contract" but it is implied that she will be "rehired" for the following school year. She will be considered a contract employee whose income must be annualized.

An employee who is paid hourly is one that is paid based on the number of hours he works when there is no established work schedule such as a handyman who does odd jobs around the school.

Earned and unearned educational income, after allowable exclusions, shall be averaged over the period which it is intended to cover. Income shall be counted either in the month it is received, or in the month the household anticipates receiving it or receiving the first installment payment, although it is still prorated over the period it is intended to cover.

9085 Reporting Changes

[273.12]

Certified food stamp households are required to report the following changes in circumstances:

Six Month Simplified Reporting Requirements

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

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

Additional reporting requirement for ABAWD

individuals:

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

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

- Changes ~~in the sources of or~~ in the amount of gross unearned income of more than ~~\$25~~ \$50, except changes in the public assistance grants. ~~Since DSS has prior knowledge of all changes in the public assistance grants, action shall be taken on the DSS information.~~ Changes reported in person or by telephone are to be acted upon in the same manner as those reported on the change report form;
- A change in the source of income, including starting or stopping a job or changing jobs, if the change in employment causes a change in income.
- All changes in household composition, such as the addition or loss of a household member;
- Changes in residence and the resulting changes in shelter costs;
- The acquisition of a licensed vehicle not fully excludable under DSSM 9051 (for non-categorically eligible households);
- When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of \$2,000 (for non-categorically eligible households);
- Changes in the legal obligation to pay child support; and
- Changes in work hours that bring an ABAWD individual below 20 hours per week, averaged monthly.

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

For reportable changes of income, households must report the change within 10 days of the date the household receives its first payment.

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

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

9085.2 DSS Responsibilities: Action on Changes [273.12(c)]

Take prompt action on all changes to determine if the changes affect the household's eligibility or allotment. Even if there is no change in the allotment, document reported changes in the case file, provide another change report form to the household, notify the household of the effect of the change, if any, on its benefits. Document the date of receipt of the report form or the date a change is reported by phone or in person. If a household reports a change in income which is expected to continue for a least one month beyond the month in which the change is reported, act on the change according to DSSM 9085.3 and 9085.4. If DSS fails to take action on a change within the time limits specified in DSSM 9085.3, restore the lost benefits.

PA households have the same reporting requirements as any other food stamp household and shall use the change report form. PA households who report changes to their workers for PA purposes will be considered to have reported the change for food stamp purposes as well.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE Transitional Medicaid Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the policy of the Transitional Medicaid Program in the Division of Social Services Manual (DSSM).

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 July 31, 2003.

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

**SUMMARY OF PROPOSED CHANGES - DSSM
15120.2 AND 15200**

This rule amendment corrects language in the recently revised regulations related to transitional coverage. The revised regulations were originally adopted on May 10, 2003 in order to continue Medicaid coverage absent a TANF waiver for families that lose coverage because of earnings.

15120.2 Financial Eligibility

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

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

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

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

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

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

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

When an earner has received the \$30 and 1/3 disregard in four (4) consecutive months and the \$30 deduction has been available for eight (8) consecutive additional months,

neither disregard can be applied to earned income until the individual has not received ~~the 30 and 1/3 disregard~~ Medicaid under Section 1931 for twelve (12) consecutive months.

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

All earned income is disregarded for recipients for 12 months after employment causes ineligibility.

Any diversion assistance provided does not count as income.

Resources are not counted for Medicaid under Section 1931.

15200 Transitional Medicaid

The Family Support Act of 1988, PL 100-485, mandated that effective April 1, 1990, states provide health care coverage known as Transitional Medical Assistance for up to twelve months for families who become ineligible for AFDC due to increased earnings, increased hours of employment, or loss of earned income disregards.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, repealed the AFDC program and replaced it with a program of block grants to states for Temporary Assistance for Needy Families (TANF). Delaware implemented its TANF program, Delaware's A Better Chance Welfare Reform Program (DABC), on March 10, 1997.

Prior to PRWORA, a family's eligibility for Transitional Medicaid was linked to receipt of AFDC. Under PRWORA, a family's eligibility for transitional Medicaid is linked to receipt of Medicaid under Section 15120, "Low Income Families with Children under Section 1931".

The eligibility group described in "Low Income Families with Children under Section 1931", will be referred to as "receiving Medicaid under Section 1931" throughout this section.

Delaware's welfare reform waiver, "Delaware's A Better Chance Welfare Reform Program" (DABC) included a modification to the length of the Transitional Medicaid period. The DABC waiver extended Transitional Medicaid benefits for up to 24 months. This waiver expired on September 30, 2002. DSS will use the option under Section 1931(b)(2)(C) of the Social Security Act to disregard all earned income for 12 months after employment causes ineligibility for a family under Section 1931. (See DSSM 15120.2.)

Effective October 1, 2002, Transitional Medicaid coverage extends for up to one year. The year is divided into two periods of six months each. Families who establish eligibility for Transitional Medicaid prior to October 1, 2002, may be eligible for up to 24 months of Transitional Medicaid. These are families who establish eligibility for Transitional Medicaid under the DABC waiver authority.

Families who establish eligibility for Transitional Medicaid on or after October 1, 2002, may be eligible for up to 12 months of Transitional Medicaid.

Families must meet the initial eligibility requirements described in this section to receive the first six months of coverage. Families can be eligible when their income exceeds either 185% of the standard of need or the standard of need.

To continue to receive Medicaid for the second six months, the family's gross earned income less dependent care costs must be at or below 185% FPL. Dependent care costs are for the care of dependent children or incapacitated persons living in the home. Family income will be budgeted prospectively.

HUMAN RELATIONS COMMISSION

Statutory Authority: 6 Delaware Code,
Section 4506 (6 Del.C. §4506)

PUBLIC NOTICE

The Human Relations Commission in accordance with 6 Del.C. §4506 has proposed changes to Rule 10 and Rule 27 implemented under the Equal Accommodations Act. The changes clarify that a party or the Division of Human Relations can move to dismiss a complaint before a hearing when the Commission lacks jurisdiction or the complaint does not allege facts to state a claim under the statute. The dismissal order can be appealed to court.

In addition, the proposed changes toll the time for an appeal if there has been an application for reconsideration after a panel hearing. Tolling the appeal time is consistent with the rules of the courts and other administrative agencies.

A public hearing will be held at 7:00 p.m. on August 14, 2003 in Room 204 of the MBNA Building, Delaware State University, Rte.13, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Division of Human Relations at the Carvel State Building, 820 North French St., 4th Floor, Wilmington, DE 19802. Persons wishing to submit written comments may forward these to the Commission at the above address. The final date to receive written comments will be at the public hearing.

The Commission will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

EQUAL ACCOMMODATIONS REGULATIONS OF THE STATE HUMAN RELATIONS COMMISSION

Rule 10: Voluntary Termination and Dismissal

A. ~~A case may be dismissed by the Complainant without order of the Commission by filing a notice of dismissal at any time before service of a response to the complaint or by filing a stipulation of dismissal signed by all parties who have appeared in the case. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a Complainant who has once dismissed a case before the Commission based on or including the same claim. A Complainant who dismisses a case pursuant to this paragraph may refile a complaint within ninety (90) days after the occurrence of the alleged discriminatory public accommodation practice. A case shall be considered to have been closed or voluntarily terminated upon withdrawal of complaint by Complainant with or without prejudice prior to answer by the Respondent. Such withdrawal shall be in writing. However, after answer by Respondent, a complaint may be withdrawn with or without prejudice only with the consent of the Respondent or with approval by the Chairperson or designee to preserve the public interest.~~

B. ~~After a Respondent has filed a response to the complaint, a case shall not be dismissed at the Complainant's request except upon order of the Commission and upon such terms and conditions as the Commission deems proper. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice. A case may be dismissed for lack of activity in the case for more than 1 year. Application shall be made in writing by the Division staff to a Panel or if no Panel has been appointed, then to the Division Director or Chairperson, stating the reason for the proposed closing.~~

C. ~~A case may be dismissed for failure of Complainant to cooperate upon application of the Division staff to the Panel or if no Panel has been appointed, then to the Division Director or Chairperson. Failure to co-operate includes, but is not limited to, failure to keep the Division informed of Complainant's current address.~~

D. ~~A case may be dismissed upon written application to the Panel by the Respondent or the Division Director when~~

- ~~1. the Commission does not have jurisdiction to determine the case; or~~
- ~~2. the facts alleged do not state a violation of the law.~~

E. ~~An application for dismissal by the Respondent shall show proof of service of the application upon the Complainant. Complainant shall have 10 days after being served to respond to the Respondent and Commission. An~~

application for dismissal by the Division shall show proof of service on all parties and all parties shall have 10 days after being served to respond to the Commission.

F. A Panel will convene to consider the application for dismissal without an evidentiary hearing or oral argument. The Panel will consider only the facts in the pleadings. The facts alleged by the claimant will be considered as true for the purpose of the dismissal proceeding.

G. All notices of case dismissals shall be served on all parties and shall include a statement of the right to appeal, to have the case reopened for good cause shown to the Panel, or if no Panel has been appointed, then to the Division Director or Chairperson.

Rule 27: Reconsideration

~~Any Party, within five(5) business days after receipt of the Final Order, may apply to the Panel for reconsideration, briefly and distinctly stating the grounds therefor. Within five (5) business days after service of such a motion, an opposing Party may serve and file a brief answer to each ground asserted in the motion. Any motion or answer filed under this Rule shall be submitted with five (5) copies to the office of the Division of Human Relations where the complaint was filed. The Panel shall promptly convene to consider a motion for reconsideration. The filing of such a motion shall not extend the time for judicial review as set forth in 6 Delaware Code, Section 4511. A copy of the Panel's decision on the motion for reconsideration shall be mailed by certified mail, return receipt requested, delivered by hand, or delivered by regular first class mail to the last address which each Party has provided to the Division of Human Relations for the Party or if the Party is represent to the Party's attorney.~~

Any party within five (5) business days after mailing of the Final order may apply to the Panel for reconsideration by briefly and distinctly stating the grounds. The application shall show that it was served on the opposing party. Within five (5) business days after service of such application, the opposing party may serve and file a brief answer to each ground asserted. The Panel shall promptly convene to consider such application for reconsideration. The filing of such application shall extend the time for judicial review under 6 Del. C. §4511.

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 CHIROPRACTIC
24 DE Admin. Code 700**

Statutory Authority: 24 Delaware Code,
Section 706(a)(1) (24 **Del.C.** 706(a)(1))

ORDER

Summary Of The Evidence

There were no written or verbal comments concerning the proposed Rule and Regulation.

Findings Of Fact

The Board of Chiropractic ("Board") makes the following findings of fact pursuant to 29 **Del.C.** §10118(b):

1. Pursuant to 24 **Del.C.** §706(a), the Board proposed to revise its existing Rules and Regulations, in order to set forth provisions and procedures concerning the retention, procurement and disposal of patient records, including when a chiropractor is on inactive status, leaves Delaware, or terminates his or her practice in Delaware, or when a patient changes care to a new chiropractor.

2. Pursuant to 29 **Del.C.** §10115, notice was given to the public that a hearing would be held on February 20, 2003

at 8:30 a.m. in the Second Floor Conference Room of the Cannon Building, 861 Silver Lake Blvd., Dover, Delaware to consider the proposed revisions. Notice of the public hearing was published in the Delaware Register of Regulations dated January 1, 2003 and two Delaware newspapers of general circulation.

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

4. A hearing was held on February 20, 2003, at which a quorum of the Board was present to hear public comment, deliberate and render a decision.

5. No written comments were received prior to and at the February 20, 2003 hearing and no person appeared at the hearing concerning the proposed revisions.

6. The Board reviewed and discussed the proposed revisions to Rule 5.0. Rule 5.0 is changed in order to be consistent with other State law, and establishes the requirements and procedures for retention, patient-procurement and disposal of patient records. The proposed revisions also set forth the requirements and procedures concerning patient records as to when a chiropractor is on inactive status, leaves Delaware, or terminates his or her practice in Delaware, and when a patient changes from the care of one chiropractor to a new chiropractor. It further provides that any patient records may be permanently disposed in a manner that ensures confidentiality of the records if: the records have not been procured within 7 years after a chiropractor terminates practice or leaves the State, or the patient has not treated within 7 years from the date of the last treatment. The Board finds the proposed revisions serve

to clarify and update 24 Del.C. Ch. 7 and its Rules and Regulations.

Text And Citation

The text of the Rules and Regulations hereby promulgated are as it appeared in the Delaware Register of Regulations, Vol. 6, Issue 7 (January 1, 2003), which is attached hereto and incorporated herein as Exhibit A with the revisions noted.

Decision And Order

NOW THEREFORE, by unanimous vote of the Board, it is the decision and order of the Board that the Rules and Regulations are adopted in the text as it appeared in the Delaware Register of Regulations, attached as Exhibit A with the revisions noted. A copy of the revised Rules and Regulations is attached hereto and incorporated herein as Exhibit B. The effective date of this Order and the Rules and Regulations is ten (10) days after the date the Order is published in its final form in the Delaware Register of Regulations pursuant to 29 Del.C. §10118(g).

IT IS SO ORDERED this 15th day of May, 2003.

State Of Delaware, Board Of Chiropractic:

Michael Kelman, D.C., President
W. Monroe Hearne, Secretary
Bryan Errico, D.C., Professional Member
Gary Morgan, D.C., Professional Member
Tamara Blossic, D.C., Professional Member¹
Rebecca Gates, Public Member

Attest:

Judy Letterman, Administrative Assistant to the Board

- 1.0 Chiropractic Defined; Limitations of Chiropractic License
- 2.0 Officers; Meetings; Quorum
- 3.0 Certification
- 4.0 Continuing Education
- 5.0 Issuance of License; Renewal; Inactive Status; Reinstatements.
- 6.0 Grounds for Discipline
- 7.0 License to Practice
- 8.0 Voluntary Treatment Option (See 4 DE Reg. 1940

1. Dr. Blossic and Ms. Gates, members of the Board, were not present at the February 20, 2003 public hearing and therefore, their signatures are not included in this decision and order.

(6/1/01)

1.0 Chiropractic Defined; Limitations of Chiropractic License

1.1 An adjunctive procedure not otherwise prohibited by Chapter 7 which aids and or assists the chiropractor in providing chiropractic care and includes by way of example and is not limited to:

- Acupuncture Procedures
- Physiological Therapeutics
- Diet and Nutritional Programs
- Rehabilitation/Exercise Programs

(See 4 DE Reg. 1940 (6/1/01))

2.0 Officers; Meetings; Quorum

The Board will hold elections for the offices of President and Secretary at the regularly scheduled meeting in October of each year or as soon thereafter as practical. Vacancies occurring in an office shall be filled for the remainder of the term in the month following the vacancy or as soon thereafter as is practical.

3.0 Certification

Certification in any nationally recognized specialty for a licensee requires a minimum of one hundred (100) or more hours of certified training beyond and in addition to any courses or training received toward a degree of Doctor of Chiropractic. Certification in any nationally recognized chiropractic specialty or technique requires that the licensee shall have completed all requirements for recognition as a practitioner of such chiropractic specialty or technique by the nationally recognized certification body.

4.0 Continuing Education.

4.1 Continuing Education for New Licensees:

4.1.1 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 pro-rated as follows:

License Granted During First Year:	Credit Hours Required:
July 1 - December 31	24 hours
January 1 - June 30	18 hours
License Granted During Second Year: Credit Hours Required:	
July 1 - December 31	12 hours
January 1 - June 30	6 hours

4.2 Continuing Education for Licensees other than new licensees:

4.2.1 Unless otherwise excused by the Board for good cause such as illness, extended absence from the

country, or unique personal hardship which is not the result of professional negligence or inadvertence, all Chiropractors seeking renewal more than two (2) years from initial licensure or reinstatement of a lapsed license must provide to the Board adequate proof of the satisfactory completion of twenty four (24) hours of Board approved continuing education within the immediately preceding two (2) year period.

4.2.2 Proof of continuing education shall be received at the Division of Professional Regulation, Dover, Delaware, no later than April 30th of the reporting year and shall be received every 2 years after such date. Continuing education completed before April 30th of the reporting year shall not be carried over to the next renewal period. The Board has the right to conduct an audit of the proof of continuing education submitted by licensees.

(See 4 DE Reg. 1940 (6/1/01))

5.0 Issuance of License; Renewal; Inactive Status; Reinstatements; Retention of Patient Records (24 Del. C. § 709)

5.1 The Biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee of his/her expiration date does not in any way relieve the licensee of the requirement of filing a renewal application with the Board. A licensee who fails to renew a license before the expiration date may renew on a late basis for a period not to exceed one (1) year.

5.2 Inactive Status and Termination of Practice. Any licensee who seeks to be placed on inactive status or terminates his or her practice who is terminating his or her practice in this State or is leaving this State and is not transferring his or her records to another chiropractor shall notify the Board in writing and notify all patients treated within the last three (3) years by publication in a newspaper of general circulation throughout the State of Delaware and offer to make the patients records available to the patient or his or her duly authorized representative. Except in an emergency situation where as much notice as is reasonably possible shall be given, the notice by publication shall be made at least ninety (90) days prior to termination of the practice or leaving the State and must be published at least 3 times over this ninety (90) day period and must explain how a patient can procure his or her patient records, except in an emergency situation where as much notice as is reasonably possible shall be given. All patients who have not requested their records thirty (30) days prior to the termination of the licensee's practice or the licensee leaving the State from such publication of notice shall, within thirty days of the closing of the business, be notified by first class mail by the

licensee to permit patients to procure their records. Any patient records that have not been procured within 7 years after the licensee terminates his or her practice or leaves the State may be permanently disposed of in a manner that ensures confidentiality of the records.

5.3 Retention of Patient Records. Patient records must be retained by the Chiropractor or arrangements made for the maintenance and retention of patient records for seven (7) years from the date of the last treatment.

5.4 Whenever a patient changes from the care of one Chiropractor to another Chiropractor and upon the request of either the new Chiropractor or the patient the previous Chiropractor (a) may charge for the reasonable expenses of copying the patient's records and upon receiving payment for such expenses, shall transfer the patient's records to the new Chiropractor, or (b) if there is no copying charge, shall transfer the records of the patient to the new Chiropractor, within a reasonable time frame. Alternatively, if the patient and new Chiropractor agree, the Chiropractor may forward to the new Chiropractor a summary of the patient's records in lieu of the entire record at no charge to the patient. If a patient changes care from one Chiropractor to another Chiropractor, and fails to notify the previous Chiropractor or leaves the care of the previous Chiropractor for a period of 7 years from the date of the last treatment and fails to notify the previous Chiropractor, or fails to request the transfer of records to the new Chiropractor, then the previous Chiropractor shall maintain said records for a period of 7 years from the date of last treatment, after which time the records may be permanently disposed of in a manner that ensures confidentiality of the records.

5.5 This rule shall not apply to a Chiropractor who has seen or treated a patient on referral from a Chiropractor and who has provided a record of the diagnosis or treatment to another chiropractor, hospital or agency which has provided treatment for the patient.

5.6 A Chiropractor or the personal representative of the estate of a Chiropractor who disposes of patient records in accordance with the provisions of this rule is not liable for any direct or indirect loss suffered as a result of the disposal of a patient's records.

(See 4 DE Reg. 1940 (6/1/01))

6.0 Grounds for Discipline

6.1 Unprofessional Conduct in Advertising. Any Licensee who advertises or holds out to the public that he or she is a specialist in any specific chiropractic or adjunctive procedure without having a valid current certification as having special training and/or certification in such procedure or procedures from a recognized certification body is guilty of unprofessional conduct.

6.2 Examples of Unprofessional Conduct in Advertising and Promotional Practices. The following advertising and promotional practices are deemed to be

misleading, false, deceptive, dishonorable and/or unethical and shall constitute unprofessional conduct by a licensee:

6.2.1 The use of testimonials without written permission of that doctor's patient.

6.2.2 Offering free or discounted examinations unless all charges associated with such examinations, including all x-ray fees and charges, are conspicuously set out in writing at the time of and in conjunction with such offer and unless such examinations are offered regardless of the availability of insurance coverage of any recommended subsequent treatment.

6.2.3 The use of unjustified or exaggerated claims, promises or statements which guarantee or strongly imply cure or successful treatment or are otherwise false, fraudulent, deceptive, or misleading.

6.2.4 Willful failure to identify licensee as a Doctor of Chiropractic, Chiropractor or Chiropractic Physician.

6.3 Unprofessional conduct with Patient, Employees, or Co-workers. Sexual misconduct in violation of a statute of the State of Delaware or any State or Commonwealth where such conduct takes place, involving a licensee and a patient, employee or co-worker shall be deemed to be unprofessional conduct.

(See 4 DE Reg. 1940 (6/1/01)

(See 6 DE Reg. 270 (9/1/02)

7.0 License to Practice

A Chiropractor licensed elsewhere but not licensed in the State of Delaware may practice chiropractic within the State of Delaware only in consultation with a duly Delaware licensed Chiropractor for not more than ten (10) consultations in any twelve (12) month period, which consultations shall be limited to examination, recommendation or testimony in litigation.

8.0 Voluntary Treatment Option

Any member of the public or a licensee may make a written report, signed by the complainant, of chemical dependency or impairment affecting any person regulated by the Board pursuant to 29 Del.C. §8807(n).

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

8.10 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 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 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 4 DE Reg. 1940 (6/1/01))

(See 5 DE Reg. 1959 (5/1/02))

DIVISION OF PROFESSIONAL REGULATION BOARD OF MASSAGE & BODYWORK

24 DE Admin. Code 5300

Statutory Authority: 24 Del.Code,
Section 5306(1) (24 Del.C. §5306(1))

ORDER

Pursuant to 29 Del.C. §10113(b) and 24 Del.C. §5306(1), the Delaware Board of Massage and Bodywork ("the Board") hereby issues this Order adopting proposed Rule amendments to Rules 6.3.1, 6.3.2, 6.3.2.1, and 6.3.2.6. Following notice and a public hearing held on May 1, 2003, the Board makes the following findings and conclusions:

Summary Of Evidence and Information Submitted

1. The Board posted public notice of the proposed rule amendments in the April 1, 2003 Register of Regulations and in two newspapers of general circulation. The proposed rule amendments propose to revise Rule 6.3 of the current Rules as follows: 1)amend Rule 6.3.1 to clarify that for each biennial licensing period, the Board requires that eighteen (18) of twenty-four (24) credits required of massage therapists be received in supervised in-class, hands-on study of the "practice of massage and bodywork," and that nine (9) of the required twelve (12) credits required for massage technicians must be received in supervised in-class, hands-

on study of the “practice of massage and bodywork”; 2) amend Rule 6.3.2 to clarify that, for each biennial licensing period, massage therapists may complete up to six (6) of the required twenty-four (24) hours in course areas listed in Rules 6.3.2.1-6.3.2.6 and that massage technicians may complete up to three (3) of the required twelve (12) hours in the course areas listed in Rules 6.3.2.1-6.3.2.6; and 3) amend Rules 6.3.2.1 and 6.3.2.6 to clarify the courses that are acceptable for continuing education credit requirements of Rule 6.3.2.

2. The Board received no written public comments prior to the public hearing. The Board received no public comments at the public hearing on May 1, 2003.

Findings of Fact and Conclusions

3. The public was given notice and an opportunity to provide the Board with comments in writing and at a public hearing. No comments were received from the public.

4. The proposed rule changes to Rule 6.3 would clarify the Board’s continuing education requirements for massage therapists and massage technicians. The proposed rule changes to Rule 6.3.2.1 and 6.3.2.6 would clarify the acceptable courses for continuing education credit.

5. The Board concludes that the proposed rule changes are a necessary improvement for clarification of the continuing education requirements. The Board concludes that the proposed rule changes will allow for better compliance with and understanding of the Board’s continuing education requirements by massage therapists and massage technicians. The Board concludes that adoption of the proposed rules is consistent with the Board’s objectives under 24 **Del.C.** §5301. The Board will adopt the rules as proposed and the adopted rules will replace any former version of said rules.

6. The Board’s rules as adopted will provide as follows.

7. The Board will submit this Order to the Register of Regulations for publication in the July 1, 2003 issue and the proposed rules will be effective July 11, 2003.

IT IS SO ORDERED this 5th day of June, 2003.

Daniel P. Stokes, President, Professional Member
Allan Angel, Vice-President, Public Member
Patricia Beetschen, Secretary, Professional Member
Vivian Cebrick, Public Member
Phyllis Mikell, Professional Member
Suzie Stehle, Professional Member
Clayton Yocum, Public Member

6.0 Continuing Education

6.1 *Hours required.* For license or certification periods beginning September 1, 2000 and thereafter, each massage/

bodywork therapist shall complete twenty-four (24) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Each massage technician shall complete twelve (12) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Completion of the required continuing education is a condition of renewing a license or certificate. Hours earned in a biennial licensing period in excess of those required for renewal may not be credited towards the hours required for renewal in any other licensing period.

6.1.1 *Calculation of Hours.* For academic course work, correspondence courses or seminar/workshop instruction, one (1) hour of acceptable continuing education shall mean 50 minutes of actual instruction. One (1) academic semester hour shall be equivalent to fifteen (15) continuing education hours; one (1) academic quarter hour shall be equivalent to ten (10) continuing education hours.

6.1.2 If during a licensing period an individual certified by the Board as a massage technician is issued a license as a massage and bodywork therapist, the continuing education requirement for that licensing period is as follows:

6.1.2.1 If the license is issued more than twelve (12) months prior to the next renewal date, the licensee shall complete twenty-four (24) hours of acceptable continuing education during the licensing period.

6.1.2.2 If the license is issued less than twelve (12) months prior to the next renewal date, the licensee shall complete twelve (12) hours of acceptable continuing education during the licensing period.

6.2 *Proration.* Candidates for renewal who were first licensed or certified twelve (12) months or less before the date of renewal are exempt from the continuing education requirement for the period in which they were first licensed or certified.

6.3 Content

6.3.1 Except as provided in Rule 6.3.2, continuing education hours must contribute to the professional competency of the massage/bodywork therapist or massage technician within modalities constituting the practice of massage and bodywork. Continuing education hours must maintain, improve or expand skills and knowledge obtained prior to licensure or certification, or develop new and relevant skills and knowledge. For each biennial licensing period, massage therapists must complete at least eighteen of the required twenty-four hours of continuing education hours in supervised in-class hands-on study of the “practice of massage and bodywork” as defined in Rule 1.3. For each biennial licensing period, massage technicians must complete at least nine of the required twelve hours of continuing education hours in supervised in-class hands-on study of the “practice of massage and bodywork” as defined in Rule 1.3.

6.3.2 For each biennial licensing period, massage therapists may complete (but are not required to complete) up to six hours of the required twenty-four hours of continuing education hours in any combination of the areas and methods listed in Rules 6.3.2.1 through 6.3.2.5. In each biennial licensing period, massage technicians may complete (but are not required to complete) up to three hours of the required twelve hours of continuing education hours in any combination of the areas and methods listed in Rules 6.3.2.1 through 6.3.2.5. No more than twenty-five percent (25%) of the continuing education hours required in any licensing period may be earned in any combination of the areas and methods described or listed in Rules 6.3.2.1 through 6.3.2.5. For example, a licensed massage therapist licensed for the entire licensing period may obtain no more than six (6) hours of the required twenty-four (24) hours in any combination of the following areas and methods:

6.3.2.1 Courses in modalities such as are listed in Rule 1.4, which are modalities other than in the practice of massage and bodywork ~~massage/bodywork therapy~~

6.3.2.2 Personal growth and self-improvement courses

6.3.2.3 Business and management courses

6.3.2.4 Courses taught by correspondence or mail

6.3.2.5 Courses taught by video, teleconferencing, video conferencing or computer.

6.3.2.6 Courses in anatomy or physiology

*** PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE BOARD OF MASSAGE & BODYWORK REGULATIONS ARE AVAILABLE AT:**

<http://www.state.de.us/research/profreg/Frame.htm>

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

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

ORDER

Pursuant to 29 *Del. C.* §10113(b) and 3 *Del. C.* §10005, the Delaware Harness Racing Commission (“the Commission”) hereby issues this Order adopting proposed Rules 7.3.9 and 7.6.6.3. Following notice and a public hearing held on April 29, 2003, the Commission makes the following findings and conclusions:

Summary Of Evidence And Information Submitted

1. The Commission posted public notice of the proposed rule amendment in the March 1, 2003 Register of Regulations and in the Delaware Capital Review and the Delaware State News. The proposal contained a proposed amendments to Rule 7.3.9 to provide for a more detailed procedure for the cancellation of races due to weather conditions. The proposed amendment to Rule 7.6.6.3 would delete the phrase “after the recall point is passed” from the Rule.

2. The Commission received no written public comments prior to the public hearing. The Commission received no comments at the public hearing on April 29, 2003.

Findings Of Fact And Conclusions

3. The public was given notice and an opportunity to provide the Commission with comments in writing and at a public hearing. No comments were received from the public.

4. The proposed rule change to Rule 7.3.9 would clarify the existing rule on the procedure for cancellation of racing in the event of adverse weather conditions. The Commission finds that the proposed rule is an improvement over the existing procedure and is in the best interests of the track, the horsemen, and the public. The proposed rule amendment to Rule 7.6.6.3 would simply delete the phrase “after the recall point is passed” and is necessary since there no longer is a recall point.

5. The Commission concludes that the adoption of the rule amendments in their proposed form is in the best interests of the public and consistent with the Commission’s duties under 3 *Del. C.* §10005. The Commission will adopt both rules as proposed. The Commission’s Order will be effective ten days after publication in the Register of Regulations.

IT IS SO ORDERED this 29th day of May, 2003

Beth Steele, Chair
Mary Ann Lambertson, Commissioner
Robert L. Everett, Commissioner
Kenneth Williamson, Commissioner

7.0 Rules of the Race

7.1 Declarations and Drawing

7.1.1 Declarations

7.1.1.1 Unless otherwise specified in the conditions, the declaration time shall be as follows:

7.1.1.1.1 Extended pari-mutuel meetings, 9:00 a.m.

7.1.1.1.2 All other meetings, 10:00

a.m.

7.1.1.2 The time when declarations close will be considered to be local time at the track where the race is being contested.

7.1.1.3 No horse shall be permitted to start in more than one race on any one racing day. Races decided by more than one heat are considered a single race.

7.1.1.4 The association shall provide a locked box with an aperture through which declarations shall be deposited.

7.1.1.5 The Presiding Judge shall be in charge of the declaration box.

7.1.1.6 Just prior to opening of the box at extended pari-mutuel meetings where futurities, stakes, early closing or late closing events are on the program, the Presiding Judge shall check with the racing secretary to ascertain if any declarations by mail, telegraph, facsimile machine or otherwise, are in the office and not deposited in the entry box, and shall see that they are declared and drawn in the proper event. At other meetings, the Presiding Judge shall ascertain if any such declarations have been received by the speed superintendent or racing secretary of the fair, and shall see that they are properly declared and drawn.

7.1.2 Drawing

7.1.2.1 The entry box shall be opened at the advertised time by the Presiding Judge, who shall ensure that at least one horseman or an official representative of the horsemen is present. No owner or agent for a horse with a declaration in the entry box shall be denied the privilege of being present. Under the supervision of the Presiding Judge, all entries shall be listed, the eligibility verified, preference ascertained, starters selected and post positions drawn. If it is necessary to reopen any race, public announcement shall be made at least twice and the box reopened to a definite time.

7.1.2.2 Subject to Commission approval, at non-extended meetings in the event of the absence or incapacity of the Presiding Judge, the functions enumerated above may be performed by one or more associate judges, or by a person designated by the Presiding Judge, for whose acts and conduct Presiding Judge shall be wholly responsible. If a substitution is made as herein provided, the name and address of the associate judge(s) or person so substituting shall be entered in the Judges' Book.

At extended meetings in the event of the absence or incapacity of the Presiding Judge, the functions enumerated above may be performed by one or more associate judges who shall have been designated by the Presiding Judge, prior to the start of the meeting, in the form of a written notice to the Commission and to the association conducting the meeting. A record shall be kept in the Judges' Book showing the name of the individual who performed such functions on each day of the meeting.

7.1.2.3 In races of a duration of more than

one dash or heat at pari-mutuel meetings, the judges may draw post positions from the stand for succeeding dashes or heats.

7.1.2.4 Declarations by mail, telegraph, facsimile machine or telephone actually received and evidence of which is deposited in the box before the time specified to declare in, shall be drawn in the same manner as the others. Such drawings shall be final. Mail, telegraph, facsimile machine and telephone declarations must state the name and address of the owner or lessee; the name, color, sex, sire and dam of the horse; the driver's name and racing colors; the date and place of last start; a current summary, including the number of starts, firsts, seconds, thirds, earnings and best winning time for the current year; and the event or events in which the horse is to be entered.

7.1.2.5 Failure to declare as required shall be considered a withdrawal from the event.

7.1.2.6 After declaration to start has been made no horse shall be withdrawn except by permission of the judges. A fine, not to exceed \$500, or suspension may be imposed for withdrawing a horse without permission, the penalty to apply to both the horse and the party who violates the regulation.

7.1.2.7 Where the person making the declaration fails to honor it and there is no opportunity for a hearing by the judges, this penalty may be imposed by the commission representative.

7.1.2.8 Where a horse properly declared is omitted from the race by error of the association, the race shall be redrawn; provided, however, that the error is discovered prior to the publication of the official program.

7.1.2.9 In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier, except as provided for in handicap claiming races. Whenever a horse is drawn from any tier, horses on the outside move in to fill up the vacancy. When there is only one trailer, it may start from any position in the second tier. When there is more than one trailer, they must start from inside any horse with a higher post position.

7.1.3 Qualifying Races

7.1.3.1 Qualifying races and starting gate schooling shall be held according to the demand as determined by the Presiding Judge or State Steward.

7.1.3.2 Qualifying standards shall be set at each track by the racing secretary and the judges. These may vary at different times of the year to accommodate weather and the class of horse available. Standards for trotters will be two seconds slower than pacers.

7.1.3.3 At all extended pari-mutuel meetings declarations for overnight events shall be governed by the following:

7.1.3.3.1 Before racing at a chosen

gait, a horse must go a qualifying race at that gait under the supervision of a licensed judge and acquire at least one charted line by a licensed charter. In order to provide complete and accurate chart information on time and beaten lengths, a standard photo finish shall be in use.

7.1.3.3.2 Any horse that fails to race within thirty (30) days of its last start must go a qualifying race as set forth in a) above. However, at any race meeting this period can be extended up to sixty (60) days upon receiving approval of the Commission. The time period allowed shall be calculated from the date of the last race to and including the date of declaration. Horses entered and in to go in a race or races which are canceled due to no fault of their own, shall be considered to have raced in that race, and no start shall be counted for date preference purposes.

7.1.3.3.3 When a horse has raced at a charted meeting and then gone to meetings where the races are not charted the information from the uncharted lines may be summarized including each start and consolidated in favor of charted lines to include a charted line within the last thirty (30) days before the horse is permitted to race. The consolidated line shall carry date, place, time, driver, finish, track condition and distance.

7.1.3.3.4 The judges may permit a horse to qualify by means of a timed workout consistent with the time of the races in which he will compete in the event adequate competition is not available for a qualifying race.

7.1.3.3.5 When, for the purpose of qualifying the driver, a horse is declared in to race in a qualifying race, its performance shall be applicable to the horse's eligibility to race and the chart line shall be notated to indicate driver qualifying.

7.1.3.3.6 If a horse takes a win race record in either a qualifying race or a matinee race, such record must be prefaced with the letter "Q" wherever it appears, except in a case where, immediately prior to or following the race, the horse taking the record has been submitted to an approved urine, saliva or blood test. It will be the responsibility of the Presiding Judge to report the test on the Judges' Sheet.

7.1.3.4 Any horse regularly wearing hobbles shall not be permitted to be declared to race without them and any horse regularly racing without hobbles shall not be permitted to wear hobbles in a race without first having qualified with this equipment change. In addition to the foregoing, any horse regularly wearing hobbles and which is not on a qualifying list or Stewards' List, is allowed one start without hobbles in a qualifying race; and this single performance shall not affect its eligibility to race with hobbles in a subsequent event to which it is declared.

7.1.3.5 In their discretion the judges may require a horse to qualify for any reason; provided, however, that a horse making a break in each of two consecutive races may not be required to qualify if the breaks were solely

equipment breaks and/or were caused solely by interference and/or track conditions.

7.1.3.6 A horse must qualify if:

7.1.3.6.1 it does not finish for reasons other than interference or broken equipment.

7.1.3.7 A charted line containing only a break or breaks caused by interference or an equipment break shall be considered a satisfactory charted line.

7.1.3.8 The judges shall use the interference break mark only when they have reason to believe that the horse was interfered with by another horse or the equipment of another horse.

7.1.3.9 If qualifying races are postponed or canceled, an announcement shall be made to the participants as soon as the decision is made.

7.1.4 Coupled Entries

When the starters in a race include two or more horses owned by the same person, or trained in the same stable or by the same management, they shall be coupled as an "entry", and a wager on one horse in the entry shall be a wager on all horses in the "entry"; provided, however, that when a trainer enters two or more horses in a stake, early closing, futurity, free-for-all or other special event under bona fide separate ownership, such horses may, at the request of the association, made through the State Steward, and with the approval of the Commission, be permitted to race as separate entries. If the race is split in two or more divisions, horses in an "entry" shall be seeded in separate divisions insofar as possible, but the divisions in which they compete and their post positions shall be drawn by lots. The above provisions shall also apply to elimination heats. The person making the declaration of a horse that qualifies as a coupled entry with another horse entered in the same event shall be responsible to designate the word "entry" on the declaration blank. The Presiding Judge shall be responsible for coupling horses. In addition to the foregoing, horses separately owned or trained may be coupled as an entry where it is necessary to do so to protect the public interest for the purpose of pari-mutuel wagering only; provided, however, that where this is done entries may not be rejected.

7.1.5 Also Eligibles

Not more than two horses may be drawn as also eligibles for a race and their positions shall be drawn along with the starters in the race. In the event one or more horses are excused by the judges, the also eligible horse or horses shall race and take the post position drawn by the horse that it replaces, except in handicap races. In handicap races the also eligible horses shall take the place of the horse that it replaces in the event 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. No horse may be added to a race as an also eligible unless the horse was drawn as such at the time declarations closed. No horse may be barred from a race to

which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list cannot be drawn except by permission of the judges, but the owner or trainer of such a horse shall be notified that the horse is to race and it shall be posted at the racing secretary's office. All horses on the also eligible list and not moved in to race by Scratch Time on the day of the race shall be released.

7.1.6 Preference Dates

Preference dates shall be given to horses in all overnight events at extended pari-mutuel tracks in accordance with the following:

7.1.6.1 The date of the horse's last previous start in a purse race is its preference date with the following exceptions:

7.1.6.1.1 The preference date on a horse that has drawn to race and has been scratched is the date of the race from which scratched.

7.1.6.1.2 When a horse is racing for the first time after February 1 in the current year, the date of the first declaration into a purse race shall be considered its preference date.

7.1.6.1.3 Wherever horses have equal preference in a race, the actual preference of said horses in relation to one another shall be determined by backdating, up to two starts, the horse having raced closest to the draw having the least preference. If no preference is determined, preference will be determined by lot.

7.1.6.1.4 When an overnight race has been re-opened because it did not fill, all eligible horses declared into the race prior to the re-opening shall receive preference over other horses subsequently declared, irrespective of the actual preference dates, excluding horses already in to go.

7.1.6.2 This rule relative to preference is not applicable at any meeting at which an agricultural fair is in progress. All horses granted stalls and eligible must be given an opportunity to compete at these meetings.

7.2 Timing and Records

7.2.1 Timing

7.2.1.1 The time of each heat or dash shall be accurately taken by two timers or an approved electric timing device, in which case there shall be one timer, and placed in the record in minutes, seconds and fifths of seconds, and upon the decision of each heat the time thereof shall be publicly announced or admitted to the record. When the timers fail to act, no time shall be announced or recorded.

7.2.1.2 The time shall be taken from the first horse leaving the point from which the distance of the race is measured until the winner reaches the wire.

7.2.1.3 The leading horse shall be timed and its time only shall be announced. No horse shall obtain a win race record by reason of the disqualification of another horse unless the horse's actual race time can be determined by

photo finish or electronic timing.

7.2.1.4 In the case of a dead heat, the time shall constitute a record for the horses making the dead heat and both shall be considered winners.

7.2.2 Records

7.2.2.1 In order that performances thereon may be recognized or published as official, every association shall have filed with the Commission the certificate of a duly licensed civil engineer or land surveyor that the track has been measured from wire to wire three feet out from the inside hub rail or other fixed marker and certifying exactly the result of such measurement. Each track shall be measured and re-certified in the event of any changes or relocation of the hub rail or other fixed marker.

7.2.2.2 A record will be the fastest time made by a horse in a heat or dash which it won, or in a performance against time.

7.2.2.3 No time record shall be recognized as a world record if obtained on a track without an inside rail or other fixed marker.

7.2.2.4 In any case of alleged error in the record, announcement or publication of the time made by a horse, the time so questioned shall not be changed to favor said horse or owner, except upon the sworn statement of the judges and timers who officiated in the race.

7.2.2.5 If a horse takes a win-race record in a qualifying race or schooling race, such record must be prefaced with the letter "Q" wherever it appears, except in a case where the horse was subjected to the collection of an test sample. The Presiding Judge shall note on the judges' official race reports each qualifying race from which test samples were collected.

7.2.2.6 For horses bred in North America and subsequently exported, foreign earnings shall be converted to U.S. dollars and credited to the horse's official records. A winning performance at a mile or greater distance, expressed at a mile rate, shall receive recognition as the horse's record.

7.2.2.7 Any person found guilty of fraudulent misrepresentation of time or the alteration of the record thereof, in any race, shall be fined, suspended, expelled or a combination thereof and time declared not a record.

7.3 Postponement and Cancellation

7.3.1 In case of unfavorable weather or other unavoidable cause, the association upon notifying the Commission shall postpone or cancel races in accordance with the following rules.

7.3.2 Added money events shall be postponed to a definite hour on a scheduled race date when favorable conditions prevail.

7.3.3 An early closing event or a late closing event that cannot be raced during the scheduled meeting shall be declared off and the total of nomination, sustaining and starting payments divided equally among the owners of eligibles in proportion to the number of horses declared to

start.

7.3.4 An early closing event or late closing event that has been started, but remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary.

7.3.5 Stakes and futurities should be raced where advertised and the meeting may be extended to accomplish this. Any stake or futurity that has been started, but which remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary, except where the association elects to extend the meeting to complete the race. Horses that are scratched after a heat and before the race is declared finished shall not participate in purse distributions for subsequent heats in the event the race is called off and declared finished.

7.3.6 Unless otherwise provided in the conditions, in order to transfer stakes and futurities to another meeting, unanimous consent must be obtained from the association and all those having eligibles in the event.

7.3.7 At extended meetings, overnight events may be postponed and rescheduled within two days, or may be canceled if circumstances or weather conditions warrant. Postponed overnight events not raced within two days shall then be canceled.

7.3.8 At non-extended meetings, overnight events shall be canceled, unless the association is willing to add the postponed races to the advertised program for subsequent days of the meeting. At the option of the association, any postponed races may be contested in single one-mile dashes. Where races are postponed under this rule, the association shall have the privilege of selecting the order in which events will be raced in any combination program.

7.3.9 If the track conditions are questionable for the warming up or racing of horses, the ~~State Steward and Presiding Judges shall convene~~ call a meeting consisting of a committee including himself/herself, an Agent of the track with the representative of the drivers and trainers and a Representative of the Horsemen management. The Agent of the track will notify the Track Superintendent to attempt to correct any problem with the racing surface as soon as possible. Once the Track Superintendent has addressed the problem, The Horsemen's Representative will physically review the areas in question. If all are in agreement that the problem has been corrected, racing will proceed. If the Representative of the Horsemen is not satisfied, the Track Superintendent will be given a final opportunity to rectify the problem.

If after the second attempt to rectify the problem, the Horsemen's Representative is still not satisfied, there will be a vote of the Drivers and Trainers of horses participating in that night's program to determine if racing will be conducted. A secret vote will be taken of those participants and will be conducted and monitored by the

Judges. The Judges will count the ballots and inform Track Management of the outcome. If required by the State Stewards and judges and the representative of the drivers and trainers shall conduct a vote of the drivers and trainers of horses participating in that program of racing to determine whether racing should be conducted. If a tally the vote of the drivers and trainers determines that ~~more than 50~~ 25 percent or less vote to race against racing, the card shall be canceled. If more than ~~50~~ 25 percent and less than 75 percent vote to race, trainers will be allowed to withdraw horses without penalty. If ~~more than~~ 75 percent or more vote to race, the regular rules of withdrawal and scratching of horses will apply. The foregoing does not preclude ~~prevent~~ race track management from canceling racing the races due to track ~~and or~~ weather conditions without consultation with the ~~State Steward, Presiding~~ Judges and the Horsemen's Representative upon notification of the Commission or its designee.

7.3.10 If qualifying races are postponed or canceled, an announcement shall be made to the participants as soon as the decision is made.

7.3.11 Where a race is postponed pursuant to any of the foregoing provisions only those horses originally declared in to the postponed event shall to be eligible to race. Where a race is postponed and moved to another location, horses previously declared may withdraw without penalty.

7.3.12 In the event the State Steward/Judges declare a "No Contest", the designated purse for that contest shall be divided equally among those horses that were eligible to participate in that contest. The declaration date for those horses credited with earnings in this manner shall be the scheduled date of the "No Contest" race.

7.4 Horses Permitted to Race

7.4.1 A horse shall be eligible to be declared in to race provided the following conditions have been met:

7.4.1.1 the eligibility fee, which shall become due and payable when a horse makes its first start in any type of race in a calendar year, has been paid to the United States Trotting Association, or a current eligibility certificate has been granted for the horse by the United States Trotting Association or by the Canadian Trotting Association.

7.4.1.2 the horse has been registered in the current ownership with the Canadian Standardbred Horse Society or in the United States Trotting Association Register;

7.4.1.3 if leased, a copy of the lease is on file with, and is acceptable to the United States Trotting Association or Canadian Trotting Association, as appropriate. The horse must race in the name of the lessee;

7.4.1.4 for overnight races, the horse has qualified at an extended meeting in accordance with the rules prior to the time of closing of declarations in accordance with the qualifying standards of the track presenting the race.

7.4.1.5 for added money events, the horse has

qualified at an extended meeting in accordance with the rules prior to the time of closing of declarations.

7.4.1.6 not more than 30 days prior to the time of closing of declarations, the horse was credited with a satisfactory charted past performance line obtained in a purse, qualifying or schooling race conducted at a charted meeting; provided, however, that with the permission of the Presiding Judge, a satisfactory charted past performance within 60 days prior to the time of closing of declarations may be used;

7.4.1.7 the horse is at least two years of age to race at any meeting but not older than 14 years of age;

7.4.1.8 the horse has not been denerved by any method above its pastern. The decision at any given time whether the horse has been denerved shall be the State veterinarian's.

7.4.1.9 if a mare has been spayed, the United States Trotting Association or Canadian Trotting Association, as appropriate, has been notified in writing by the owner, trainer or veterinarian;

7.4.1.10 the horse does not have a trachea tube or a hole in its throat for a trachea tube;

7.4.1.11 the horse has unimpaired vision in at least one eye; and

7.4.1.12 the horse has been lip tattooed or freeze-branded in accordance with the constitution and by-laws and regulations of the United States Trotting Association or Canadian Standardbred Horse Society.

7.4.2 Any participant who declares, or causes to be declared, an ineligible horse to start shall be guilty of a violation of the rules and subject to disciplinary action by the judges. If after declarations close, and prior to the race, the judges become aware that an ineligible horse has been declared, they shall immediately scratch the horse and starting fees, if applicable, shall be forfeited.

7.4.3 If the ownership of a horse changes, such horse may start under the new ownership not more than one time without reasonable evidence being given to the judges that the registration certificate has been forwarded to the United States Trotting Association.

7.4.4 Any participant skipping or omitting transfers of ownership of any horse shall be guilty of a violation.

7.4.5 For the purposes of these rules, the term eligibility certificate shall refer to a printed document or its electronically produced equivalent.

7.4.6 Horses not under lease must race in the name of the bona fide owner.

7.5 Equipment

7.5.1 Any owner or trainer who wishes to change any equipment or hobbles on a horse from one race to another shall apply to the judges for permission to do so, and no change shall be made without such permission. The judges shall assure themselves of the necessity for any

change of equipment or hobbles before granting permission.

7.5.2 No horse will be permitted in a race to wear any type of equipment that covers, protrudes, or extends beyond its nose or that in any way could interfere with the true placing of the horse.

7.5.3 It shall be the responsibility of the owner and trainer to provide every sulky used in a race with unicolored or colorless wheel discs on the inside and outside of each wheel of a type approved by the Commission. In his discretion, the Presiding Judge may order the use of mud guards.

7.6 Racing Rules

7.6.1 Under Supervision of Starter

7.6.1.1 Horses shall be under supervision of the starter from the time they arrive on the track until the start of the race.

7.6.1.2 All horses shall parade from the paddock to the starting post, and no driver shall dismount without the permission of the starter. Attendants may not care for the horses during the parade except by permission of the starter.

7.6.1.3 After entering the track not more than ten (10) minutes shall be consumed in the parade of the horses to the post except in cases of unavoidable delay.

7.6.1.4 Horses awaiting post time may not be held on the backstretch in excess of five (5) minutes, except when delayed by an emergency.

7.6.2 Pre-Race Accidents

When, before a race starts:

7.6.2.1 A horse is a runaway or is otherwise involved in an accident, such horse shall be examined by the racing veterinarian and if the horse is not ordered scratched by the veterinarian, the judges may permit the horse to compete and have this decision announced.

7.6.2.2 A driver is unseated and appears to have been injured, the horse that was being driven by that driver may compete with a substitute driver.

7.6.2.3 If a horse is scratched in error and cannot be added back into the pari-mutuel system, the horse may race for purse only. The judges shall ensure that the race announcer informs the public that the horse will be racing without pari-mutuel wagering.

7.6.3 Fair Start

The starter shall give such orders and take such measures that do not conflict with the rules of racing, as are necessary to secure a fair start.

7.6.4 Starter's Duties

7.6.4.1 The starter shall be in the starting gate ten (10) minutes before the post time of the race.

7.6.4.2 The starter shall have control over the horses and authority to assess fines and/or suspend drivers for any violation of the rules from the formation of the parade until the word "go" is given.

7.6.4.3 The starter may assist in placing the

horses when requested by the judges to do so.

7.6.4.4 The starter shall notify the judges and the drivers in writing of penalties imposed by him/her.

7.6.5 Starting

7.6.5.1 The starter shall have control of the formation of the parade until giving the word "go".

7.6.5.2 After warming up scores, the starter shall notify the drivers to come to the starting gate.

7.6.5.3 The horses shall be brought to the starting gate as near one-quarter of a mile before the start as the track will permit.

7.6.5.4 Allowing sufficient time so that the speed of the gate can be increased gradually, the following minimum speeds will be maintained:

7.6.5.4.1 For the first one-eighth of a mile, not less than 11 miles per hour.

7.6.5.4.2 For the next one-sixteenth of a mile, not less than 18 miles per hour.

7.6.5.4.3 From that point to the starting point, the speed will be gradually increased to maximum speed.

7.6.5.4.4 On mile tracks horses will be brought to the starting gate at the head of the stretch and the relative speeds mentioned in a), b) and c) above will be maintained.

7.6.5.5 The starting point will be a point marked at a designated spot not less than 200 feet from the first turn. The starter shall give the word "go" at the starting point.

7.6.5.6 When a speed has been reached in the course of a start there shall be no decrease except in the case of a recall.

7.6.6 Recall Rules

7.6.6.1 In case of a recall, a light plainly visible to the drivers shall be flashed and a recall sounded, but the starting gate shall proceed out of the path of the horses. In the case of a recall, whenever possible, the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. In an emergency, however, the starter shall use his/her discretion to close the wings of the gate.

7.6.6.2 There shall be no recall after the word "go" has been given unless there is a mechanical failure of the starting gate.

7.6.6.3 The starter shall attempt to dispatch all horses away in position and on gait but there shall be no recall for a breaking horse after the recall point is passed.

7.6.6.4 In the event a horse causes two recalls, it may be an automatic ruling of the judges that the offending horse be scratched.

7.6.6.5 The starter may sound a recall for the following reasons:

7.6.6.5.1 A horse scores ahead of the gate;

7.6.6.5.2 There is interference;

7.6.6.6.3 A horse has broken equipment;

7.6.6.6.4 A horse falls before the word "go" is given; or

7.6.6.6.5 A mechanical failure of the starting gate.

7.6.6.7 A fine and/or suspension may be applied to any driver for:

7.6.6.7.1 Delaying the start;

7.6.6.7.2 Failure to obey the starter's instructions;

7.6.6.7.3 Rushing ahead of the inside or outside wing of the gate;

7.6.6.7.4 Coming to the starting gate out of position;

7.6.6.7.5 Crossing over before reaching the starting point;

7.6.6.7.6 Interference with another driver during the start; or

7.6.6.7.7 Failure to come up into position.

7.6.7 Starting Gate

7.6.7.1 No persons shall be allowed to ride in the starting gate except the starter and the driver or operator and a patrol judge, unless permission has been granted by the State Steward.

7.6.7.2 Use of the mechanical loudspeaker for any purpose other than to give instructions to the drivers is prohibited. The volume shall be no higher than necessary to carry the voice of the starter to the drivers.

7.6.7.3 The arms of all starting gates shall be provided with a screen or shield in front of the position for each horse, and such arms shall be perpendicular to the rail.

7.6.7.4 The official starter must ensure that the starting gate is in good working order prior to the beginning of each race program.

7.6.7.5 The official starter and starting gate driver shall operate the starting gate in a manner consistent with the safe conduct of the race, the safety of the race participants and the safety of the patrons.

7.6.8 Two-Tiered Races

7.6.8.1 In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the positions of horses that have drawn or entered positions in the second tier.

7.6.8.2 Whenever a horse is drawn from any tier, horses on the outside move in to fill the vacancy. Where a horse has drawn a post position in the second tier, the driver of such horse may elect to score out behind any horse in the front tier so long as it does not interfere with another trailing horse or deprive another trailing horse of a drawn position.

7.6.8.3 When there is only one trailer, it may start from any position in the second tier. When there is more

than one trailer, they must start from inside any horse with a higher post position.

7.6.9 Starting Without a Gate

7.6.9.1 When horses are started without a gate the starter shall have control of the horses from the formation of the parade until giving the word "go". The starter shall be located at the wire or other point of start of the race at which point as nearly as possible the word "go" shall be given. No driver shall cause unnecessary delay after the horses are called. After two preliminary warming-up scores, the starter shall notify the drivers to form in parade.

7.6.9.2 The driver of any horse refusing or failing to follow the instructions of the starter as to the parade or scoring ahead of the pole horse may be set down for the heat in which the offense occurs, or for such other period as the starter shall determine, and may be fined. Whenever a driver is taken down, the substitute shall be permitted to score the horse once. A horse delaying the race may be started regardless of its position or gait and there shall not be a recall because of a bad acting horse. If the word "go" is not given, all the horses in the race shall immediately turn on signal, and jog back to their parade positions for a fresh start. There shall be no recall after the starting word is given.

7.6.10 Horse Deemed a Starter

Horses shall be deemed to have started when the word "go" is given by the starter and all horses must go the course except in the case of an accident in which it is the opinion of the judges that it is impossible to go the course.

7.6.11 Unmanageable/Bad Acting Horses

7.6.11.1 If, in the opinion(s) of the judges and/or the starter, a horse is unmanageable or liable to cause accidents or injury to any other horse or to any driver, it may be sent to the barn. When this action is taken, the starter will notify the judges who will in turn notify the public and order any refunds as may be required in Rule 10 of these rules.

7.6.11.2 The starter may place a bad acting horse on the outside at his/her discretion. Such action may be taken only where there is time for the starter to notify the judges who will in turn notify the public prior to any pari-mutuel wagering on the race. If pari-mutuel wagering has already begun on the race, the horse must be scratched as stipulated in subdivision 1 above.

7.6.12 Post Positions, Heat Racing

7.6.12.1 The horse winning a heat shall take the inside position in the succeeding heat, unless otherwise specified in the published conditions of the race, and all others shall take their positions in the order they were placed in the prior heat.

7.6.12.2 When two or more horses dead heat, their positions shall be determined by lot.

7.6.13 Conduct of the Race

7.6.13.1 A driver shall not commit any of the following acts which are considered violations of driving

rules:

7.6.13.1.1 Change course or position, or swerve in or out, or bear in or out during any part of the race in such a manner as to compel a horse to shorten its stride or cause another driver to change course, take his or her horse back, or pull his/her horse out of its stride.

7.6.13.1.2 Impede the progress of another horse or cause it to break from its gait.

7.6.13.1.3 Cross over too sharply in front of another horse or in front of the field.

7.6.13.1.4 Crowd another horse by 'putting a wheel under it.'

7.6.13.1.5 Allow another horse to pass needlessly on the inside, or commit any other act that helps another horse to improve its position.

7.6.13.1.6 Carry another horse out.

7.6.13.1.7 Take up or slow up in front of other horses so as to cause confusion or interference among the trailing horses.

7.6.13.1.8 Maintain an outside position without making the necessary effort to improve his/her overall position.

7.6.13.1.9 Strike or hook wheels with another sulky.

7.6.13.1.10 Lay off a normal pace and leave a hole when it is well within the horse's capacity to keep the hole closed.

7.6.13.1.11 Drive in a careless or reckless manner.

7.6.13.1.12 Fail to set, maintain or properly contest a pace comparable to the class in which he/she is racing considering the horse's ability, track conditions, weather and circumstances confronted in the race.

7.6.13.1.13 Riding 'half-in' or 'half-out'.

7.6.13.1.14 Kicking a horse.

7.6.13.2 A complaint by a driver of any foul, violation of the rules or other misconduct during a race shall be made immediately after the race to which it relates, unless the driver is prevented from doing so by an accident or injury or other reasonable excuse. A driver desiring to enter a claim of foul, or other complaint of violation of the rules, shall make this known to the starter before dismounting and shall proceed immediately to the paddock telephone to communicate immediately with the judges. Any driver who is involved in an objection or inquiry shall proceed immediately to the paddock telephone to communicate with the judges. The judges shall not cause the official sign to be posted until the matter has been dealt with.

7.6.13.3 If a violation is committed by a person driving a horse coupled as an entry the judges may set both horses back if, in their opinion, the violation may have affected the finish of the race, otherwise penalties may be applied individually.

7.6.13.4 In the case of interference, collision,

or violation of any rules, the offending horse may be placed back one or more positions in that heat or dash, and in the event of such collisions, interference or violation preventing any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings and the driver may be fined or suspended. If a horse is set back, it must be placed behind the horse with which it interfered. If an offending horse has interfered with a horse involved in a dead heat and the offending horse is set back, it must be placed behind the horses in the dead heat.

7.6.13.5 If the judges believe that a horse is, or has been driven with design to prevent it winning a race or races, they shall consider it a violation by the driver.

7.6.13.6 If the judges believe that a horse has been driven in an inconsistent manner, they shall consider it a violation.

7.6.13.7 If the judges believe that a horse has been driven in an unsatisfactory manner due to lack of effort or a horse has been driven in an unsatisfactory manner for any reason, they shall consider it a violation punishable by a fine and/or suspension.

7.6.13.8 If a horse is suspected to have choked or bled during a race, the driver and/or trainer of that horse is required to report this to the judges immediately after the race.

7.6.13.9 If, in the opinion of the judges, a driver is for any reason unfit or incompetent to drive, or is reckless in his/her conduct and endangers the safety of horses or other drivers in a race, he/she shall be removed and another driver substituted at any time and the offending driver may be fined, suspended or expelled.

7.6.13.10 If for any cause other than being interfered with, or broken equipment, a horse fails to finish after starting a race, that horse shall be ruled out of any subsequent heat of the same event. If it is alleged that a horse failed to finish a race because of broken equipment, this fact must be reported to the paddock judge who shall make an examination to verify the allegation and report the findings to the judges.

7.6.13.11 A driver must be mounted in the sulky at all times during the race or the horse shall be placed as a non-finisher.

7.6.13.12 Shouting or other improper conduct in a race is forbidden.

7.6.13.13 Drivers shall keep both feet in the stirrups during the post parade and from the time the horses are brought to the starting gate until the race has been completed. Drivers shall be permitted to remove a foot from the stirrups during the course of the race solely for the purpose of pulling ear plugs and once same have been pulled the foot must be placed back into the stirrup. Drivers who violate this rule may be subject to a fine and/or suspension.

7.6.13.14 Drivers will be allowed to use whips not to exceed three feet, nine inches in length plus a

snapper not to exceed six inches in length. Drivers shall keep a line in each hand from the start of the race until the quarter pole. From the quarter pole to the 7/8th pole, a driver may only use the whip once for a maximum of three strokes. Once the lead horse is at the 7/8th pole, these restrictions do not apply.

7.6.13.15 The use of any goading device, or chain, or spur, or mechanical or electrical device other than a whip as allowed in the rules, upon any horse, shall constitute a violation.

7.6.13.16 The possession of any mechanical or electrical goading device on the grounds of an association shall constitute a violation.

7.6.13.17 The judges shall have the authority to disallow the use of any equipment or harness that they feel is unsafe or not in the best interests of racing.

7.6.13.18 Brutal or excessive or indiscriminate use of a whip, or striking a horse with the butt end of a whip, or striking a wheel disc of a sulky with a whip, shall be a violation. At extended pari-mutuel meetings, under the supervision of the judges, there may be a mandatory visual inspection of each horse following each race for evidence of excessive or brutal use of the whip. At all other meetings, the judges shall have the authority to order and/or conduct such visual inspections at their discretion.

7.6.13.19 Whipping a horse by using the whip below the level of the shafts or the seat of the sulky or between the legs of the horse shall be a violation.

7.6.13.20 When a horse breaks from its gait, it shall be considered a violation on the part of the driver for:

7.6.13.20.1 Failure to take the horse to the outside of other horses where clearance exists.

7.6.13.20.2 Failure to properly attempt to pull the horse to its gait.

7.6.13.20.3 Failure to lose ground while on a break.

7.6.13.20.4 If no violation has been committed, the horse shall not be set back unless a contending horse on his/her gait is lapped on the hind quarter of the breaking horse at the finish. The judges may set any horse back one or more places if in their judgment, any of the above violations have been committed, and the driver may be penalized.

7.6.13.20.5 Any horse making a break which causes interference to other horses may be placed behind all offended horses. If there has been no failure on the part of the driver of the breaking horse in complying with Rule 7.6.13.20, no fine or suspension shall be imposed on the driver as a consequence.

7.6.13.21 If, in the opinion of the judges, a driver allows a horse to break for the purpose of losing a race, he or she shall be in violation of the rules.

7.6.13.22 It shall be the duty of one of the judges to call out every break made and have them duly recorded in judges official race reports.

7.6.13.23 The horse whose nose reaches the wire first is the winner. If there is a dead heat for first, both horses shall be considered winners. In races having more than one heat or dash, where two horses are tied in the summary, the winner of the longer dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same distance and the horses are tied in the summary, the winner of the faster dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same time, both horses shall be considered winners and the entitlement of the trophy will be decided by lot.

7.6.13.24 The wire or finish line is a real line established with the aid of a surveyor's transit, or an imaginary line running from the center of the judges' stand to a point immediately across and at right angles to the track.

7.6.13.25 If, during the preliminary scores or during a race a driver is unseated in such a manner that he or she falls to the ground, the State Steward or judges may direct the driver to report to the infirmary or to the emergency department of the nearest hospital for examination and receive clearance to continue with driving assignments on that day of racing.

7.6.13.26 If a horse is to warm up it must go its last warm-up on the same racing strip as it will compete on unless excused by the judges.

7.6.14 Harness Race Track Without a Hubrail

7.6.14.1 If at a racetrack which does not have a continuous solid inside hub rail, a horse or part of the horse's sulky leaves the course by running over or going inside the pylons or other demarcation which constitutes the inside limits of the course, the offending horse may be placed one or more positions where, in the opinion of the judges, the action gave the horse an unfair advantage over other horses in the race, or the action helped the horse improve its position in the race. Drivers may be fined or suspended for permitting a horse's sulky to run over or go inside the pylons or other demarcation which constitutes the inside limits of the course. In addition, when an act of interference causes a horse or part of the horse's sulky to cross the inside limits of the course, and the horse is placed by the judges, the offending horse shall be placed behind the horse with which it interfered.

7.6.14.2 In the event a horse or part of a horse's sulky leaves the course for any reason, it shall be the driver's responsibility to take all reasonable steps to safely reenter the race course as soon as possible.

7.6.15 Extended Homestretch

7.6.15.1 With approval of the Commission, a track may extend the width of its homestretch up to 10 feet inward in relation to the width of the rest of the racetrack.

7.6.15.2 In the event the home stretch is

expanded pursuant to 7.6.15.1 above, the following shall apply:

7.6.15.2.1 When entering or while going through the homestretch for the first time in a race, no horse shall use the expanded inside lane in an attempt to pass other horses or improve its position. Any horse, which does so shall be disqualified and placed last in the order of finish.

7.6.15.2.2 the lead horse in the homestretch shall maintain as straight a course as possible while allowing trailing horses full access to the extended inside lane. If, in the opinion of the judges, the lead horse changes course in the homestretch in an attempt to prevent a trailing horse from passing, said horse shall be placed accordingly.

7.6.15.2.3 Horses using the expanded inside lane during the homestretch drive for the finish of the race, must first have complete clearance of the pylons marking the inside boundary of the racecourse. Any horse or sulky running over one or more of the pylons or going inside the pylons while attempting to use the expanded inside lane, may be disqualified or placed back one or more positions.

7.6.15.2.4 A horse may only be driven into the expanded homestretch lane for the purpose of passing another horse and may not be driven into the expanded homestretch lane for the purpose of blocking a trailing horse. If, in the opinion of the judges, a horse is driven into the expanded homestretch lane for the purpose of blocking a trailing horse, the driver of the blocking horse may be fined and/or suspended and the horse may be placed accordingly.

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

See 2 DE Reg. 684 (10/01/98)

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

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

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

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

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

DEPARTMENT OF EDUCATION

14 DE Admin. Code 101

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

Regulatory Implementing Order 101 Delaware Student Testing Program

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 101 Delaware Student Testing Program. The amendment to 2.0 Levels of

Performance adds the statement “Beginning with the 2006 assessments, there shall be the same five levels of performance for students in grades 4, 6, 7 and 9 in reading, mathematics and writing”. The amendments to the last sentence of 2.1 through 2.5 simply remove the reference to the standard setting process. The amendment to 4.1.1 clarifies the reasons for assigning an Individual Improvement Plan to a student. These changes reflect changes made to state and federal statutes.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on April, 21 2003, in the form hereto attached as *Exhibit A*. The State Board of Education recommended adding some clarifying language to 2.0 and removing wording from 2.4 to make it compatible with 2.3 and 2.5. These changes were made to the regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend this regulation to conform to changes in state and federal statutes.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del.C.* §122, the regulation attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 *Del.C.* §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit “B”, and said regulation shall be cited as 14 DE Admin. Code § 101 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 June 19, 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 19th day of June 2003.

Department of Education

Valerie A. Woodruff, Secretary of Education

Approved this 19th day of June, 2003

State Board of Education

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President

Mary B. Graham, Esquire

Valarie Pepper

Dennis J. Savage

Dr. Claibourne D. Smith

101 Delaware Student Testing Program

1.0 Definition: The Delaware Student Testing Program (DSTP) shall include the assessments of all students in grades K-10 in the areas of reading, writing and mathematics and the assessments of all students in grades 4, 6, 8, and 11 in the areas of science and social studies. The DSTP shall also include the participation of Delaware students in the National Assessment of Educational Progress (NAEP) as determined by the Department of Education. All districts and charter schools shall participate in all components of the DSTP including field test administrations.

1.1 All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education’s Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same, may from time to time be amended hereafter.

1.2 The Department of Education shall determine the dates upon which the DSTP will be administered, and will advise the school districts and charter schools of those dates.

2.0 Levels of Performance: There shall be five levels of student performance relative to the State Content Standards on the assessments administered to students in grades 3, 5, 8 and 10 in reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in social studies and science. **[In reading, writing and mathematics at grades 3, 5, 8 and 10 and science and social studies at grades 4, 6, 8 and 11 the cut points for Exceeds the Standard and Meets the Standard shall be determined by the Department of Education with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.]** Beginning with the 2006 assessments, there shall be the same five levels of performance for students in grades 4, 6, 7 and 9 in reading, mathematics and writing. Said levels are defined and shall be determined as follows:

2.1 Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students

performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education, with the consent of the State Board of Education, ~~using test data and the results from the Standard Setting process.~~

2.2 Exceeds the Performance Standard (Level 4): A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Performance Standard. Students in this category show mastery of the Delaware Content Standards beyond what is expected at the grade level. Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good." The cut points for Exceeds the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, ~~using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.~~

2.3 Meets the Performance Standard (Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. Student performance in this range can be classified as "good." The cut points for Meets the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, ~~using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.~~

2.4 Below the Performance Standard (Level 2): A student's performance in the tested domain shows a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be classified as academically "deficient." The cut points for Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, ~~[using test data and the results from the Standard Setting process].~~

2.5 Well Below the Performance Standard (Level 1): A student's performance in the tested domain shows an incomplete and a clearly unsatisfactory understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Well Below the Performance Standard have demonstrated broad

deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and can be classified as "very deficient." The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, ~~using test data and the results from the Standard Setting process.~~

3.0 Other Indicators of Student Performance

3.1 Local school districts and charter schools may consider other indicators of student performance relative to the state content standards pursuant to 14 **Del.C.** §153(b) when determining the placement of students who score at Level I or Level II on a mandated retake of a portion of the DSTP. The only other indicators of student performance that may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 **Del.C.** §153(e)(1); student performance on end-of-course assessments; student classroom work products and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 **Del.C.** §153(a).

3.2 Any local school district or charter school planning to use other indicators of student performance shall submit the proposed indicators to the Department of Education by September 1st of each year.

3.2.1 Any such submission must include a demonstration of how an indicator of student performance aligns with and measures state content standards and the level of performance required to demonstrate performance equivalent to meeting state content standards.

3.2.2 Any proposed indicators of student performance must be approved by the Department of Education following consultation with the Student Assessment and Accountability Committee and the State Board of Education.

3.3 An academic review committee composed of educators in the student's local school district or charter school may then determine if a student has demonstrated proficient performance relative to the state content standards using evidence from the other indicators of student performance as approved by the Department of Education.

3.3.1 The academic review committee shall be composed of two classroom teachers from the student's tested grade, one classroom teacher from the grade to which the student may be promoted, one guidance counselor or other student support staff member and two school building administrators.

3.3.2 The supervisor of curriculum or instruction for the school district or charter school or his/ her designee shall chair the committee.

3.3.3 Placement of students with disabilities who are eligible for special education and related services is determined by the student's IEP team.

4.0 Individual Improvement Plan (IIP)

4.1 The following students are required to have an Individual Improvement Plan: Students who score below Level 3 Meets the Standard, on the reading portion of the 3rd, 5th or 8th grade Delaware Student Testing Program or the mathematics portion of the 8th grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student.

4.1.1 Students assessed on the DSTP in grades K, 1, 2, 4, 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in reading shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student. Students assessed on the DSTP in grades 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in mathematics shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student.

4.2 The Individual Improvement Plan shall be on a form adopted by the student's school district or charter school. The IIP shall be placed in a student's cumulative file and shall be updated based on the results of further assessments. Such assessments may include further DSTP results as well as local assessments, classroom observations or inventories. For students with an Individualized Education Program (IEP), the IEP shall serve as the Individual Improvement Plan (IIP).

4.3 The Individual Improvement Plan shall at a minimum identify a specific course of study for the student that the school will provide and the academic improvement activities that the student shall undertake to help the student progress towards meeting the standards. Academic improvement activities may include mandatory participation in summer school, extra instruction and/or mentoring programs.

4.4 Individual Improvement Plan shall be prepared by school personnel and signed by the teacher(s), principal or designee and the parent or legal guardian of the student. A parent or the student's legal guardian must sign and return a copy of the student's Individual Improvement Plan to the student's school by the end of the first marking period.

4.5 Disputes initiated by a student's parent or legal guardian concerning the student's IIP shall be decided by the academic review committee. Any dispute concerning the content of a student's IEP is subject to resolution in conformity with the Regulations, Children with Disabilities.

5.0 Summer school programs for students in grades 3, 5, and 8 as required pursuant to 14 *Del.C.* § 153.

5.1 Summer school programs shall be provided by the student's district of residence with the following exceptions:

5.1.1 Where a student attends another district as a result of school choice or attends a charter school the district of choice or charter school shall provide the summer school program.

5.1.2 Where by mutual agreement of both districts or a charter school and the parent or guardian of the student another district provides services.

5.1.3 Where by mutual agreement of the student's school district or a charter school and the student's parent or guardian, the parent or guardian arranges for summer school instruction to be provided outside the public school system. Under such conditions the parent or guardian shall be responsible for the cost of providing non-public school instruction unless the districts or the charter school and parents or guardian agree otherwise. Requirements for secondary testing shall be met.

5.1.4 Where a student has been offered admission into a vocational technical school district or charter school that district or charter school may provide summer school services.

6.0 High School Diploma Index As Derived from the 10th Grade Assessments Pursuant to 14 *Del.C.* § 152.

6.1 Students who graduate from a Delaware public high school, as members of the class of 2004 and beyond shall be subject to the diploma index as stated herein.

6.1.1 Beginning in 2002 for the graduating class of 2004, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, and mathematics.

6.1.2 Beginning in 2005 for the graduating class of 2006, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies.

6.2 A student may choose to participate in additional scheduled administrations of the DSTP in order to improve his/her diploma index. The highest earned performance level in each content area will be used in calculating the diploma index.

6.3 The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight and summing the results.

6.3.1 Beginning with the year 2002, the assigned weights shall be .40 for reading, .40 for mathematics, and .20 for writing for the graduating class of 2004.

6.3.2 Beginning with the year 2005, the assigned weights shall be .20 for reading, .20 for

mathematics, .20 for writing, .20 for science and .20 for social studies for the graduating class of 2006.

6.4 Students shall qualify for State of Delaware High School diplomas as follows:

6.4.1 A student shall be awarded a Distinguished State Diploma upon attainment of a diploma index greater than or equal to 4.0 provided that the student has attained a Performance Level 3 or higher in each content area and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.2 A student shall be awarded a Standard State Diploma upon attainment of a diploma index greater than or equal to 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.3 A student shall be awarded a Basic State Diploma upon attainment of a diploma index less than 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.5 Parent or Guardian Notification: Within 30 days of receiving student performance levels and/or diploma indices, school districts and charter schools shall provide written notice of the same and the consequences thereof to the student's parent or legal guardian.

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

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

7.2 Violation of the security or confidentiality of any test required by the Delaware Code and the Regulations of the Department of Education shall be prohibited.

7.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials in 14 Del.C. §170 through §174.

7.4 Procedures for Reporting Security Breaches

7.4.1 School Test Coordinators shall report any questionable situations to the District Test Coordinators immediately.

7.4.2 District Test Coordinators shall report all situations immediately to the State Director of Assessment and Analysis.

7.4.2.1 Within 5 days of the incident the District Test Coordinator shall file a written report with the State Director of Assessment and Analysis that includes the

sequence of events leading up to the situation, statements by everyone interviewed, and any action either disciplinary or procedural, taken by the district.

7.4.2.2 Following a review of the report by the State Director of Assessment and Analysis and the Associate Secretary of Education for Assessment and Accountability, an investigator from the State Department of Education will be assigned to verify the district report.

7.4.2.3 Within 10 days of the receipt of the report from the District Test Coordinator, the assigned investigator shall meet with the district personnel involved in the alleged violation. The meeting will be scheduled through the District Test Coordinator and the investigator shall be provided access to all parties involved and/or to any witnesses.

7.4.2.4 The investigator shall report the findings to the Associate Secretary for Assessment and Accountability. Following the review the Associate Secretary shall make a ruling describing any recommendations and or required actions.

7.4.2.5 The ruling shall be delivered within 10 days of the receipt of all reports and information and records shall be kept of all investigations.

8.0 Procedures for reviewing questions and response sheets from the Delaware Student Testing Program (DSTP)

8.1 School personnel, local school board members and the public may request to review the Delaware Student Testing Program (DSTP) questions. In order to review the DSTP questions individuals shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education.

8.1.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.1.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.1.3 In cases where more than one individual is requesting to view the DSTP questions, the local school district shall send a representative to sit in on the review.

8.2 Parent/guardian(s) may request to view the test questions and their student's responses. In order to review the DSTP questions and their student's responses parents/guardian(s) shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education. The Department shall be allowed sufficient time to secure a copy of student responses from the test vendor.

8.2.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.2.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.2.3 In the case of the stand-alone writing response, the parent/guardian(s) may go to the local school district or charter school to view the test responses.

See 4 DE Reg. 464 9/1/00

See 5 DE Reg. 620 (9/1/01)

9.0 Invalidations and Special Exemptions

9.1 Invalidations for students in grades 3, 5, 8 and 10 for reading, writing and mathematics and grades 4,6,8 and 11 for science and social studies: Invalidations are events or situations that occur during the administration of the DSTP assessments which may result in a statistically unreliable score report for a student. Invalidations may occur as a result of either: intentional student conduct, including but not limited to cheating and disruptive behavior; or unforeseen and uncontrollable events, including but not limited to onset of illness.

9.1.1 Reporting of situations that occur during testing.

9.1.1.1 The school building principal or designee shall notify the District Test Coordinator in writing within 24 hours of events or situations that the principal reasonably believes may result in an invalid score report for a student(s).

9.1.1.2 The District Test Coordinator shall notify the Department of Education staff person assigned to the district for test security purposes as soon as the Coordinator learns of events or situations which may result in invalidation(s).

9.1.1.2.1 The District Test Coordinator shall submit a DSTP Incident Report Form within three business days of the events. Written reports from the building principal or designee and any staff must be included with the DSTP Incident Report Form.

9.1.1.3 The Director of Assessment for the Department of Education shall determine whether the reported events warrant invalidating a student(s) score and such decision shall be final.

9.1.1.3.1 If the Director determines that the events also warrant a security investigation the matter will be referred to the Department of Education staff person assigned to the district for test security purposes.

9.1.2 Consequences of invalidations.

9.1.2.1 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an intentional act of the student, the student will be assigned a performance level 1 (well below standard) for that assessment and will be subject to such consequences as may otherwise be imposed pursuant to law for students who score at performance level 1 of the assessment; the assessment test score of any such student shall be reported and counted in the test scores of the student's school for all purposes, including school and district accountability.

9.1.2.2 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an event which is unforeseen and beyond the control of the student and if the student is unable to participate in a regularly scheduled test make-up, the student shall not be subject to any of the consequences as would otherwise be imposed pursuant to law; the assessment score of any such student shall not be reported or counted in the test scores of the student's school for any purpose, including school and district accountability.

9.2 Special Exemptions for students in grades 3, 5, 8, and 10 for reading, writing and mathematics and grades 4, 6, 8 and 11 for science and social studies: A special exemption may be available when a student's short-term, physical or mental condition prevents the student from participating in the DSTP assessments even with accommodations, or when an emergency arising before the start of the test prevents the student's participation.

9.2.1 Special exemptions for students who are tested according to the Department of Education's Guidelines for Inclusion of Students with Disabilities and Students with Limited English Proficiency are also available as provided in the Guidelines.

9.2.2 Requests for special exemptions based on physical or mental condition.

9.2.2.1 Special exemptions based on a student's physical or mental condition may be available for students suffering from terminal illnesses or injuries or receiving extraordinary short-term medical treatment for either a physical or psychiatric condition. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which; describes the nature of the terminal condition or extraordinary treatment; confirms that the terminal condition or the extraordinary treatment arose more than 60 calendar days before the test administration for which the exemption is requested and has substantially prevented the student from accessing educational services since its inception; and confirms that the condition or treatment is expected to be resolved or completed within 12 months of the test administration.

9.2.2.2 The District Test Coordinator shall submit a completed Request for Special Exemption Form to

the Director of Assessment for the Department of Education at least 60 calendar days before the first day of testing. A copy of the physician's statement required in the preceding subsection will accompany the request.

9.2.2.2.1 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.2.2.2 The Associate Secretary shall decide whether a request for a special exemption based on physical or mental conditions should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.3 Request for special exemptions based on emergency.

9.2.3.1 Emergencies are unforeseen events or situations arising no more than 60 calendar days before the start of the test administration. They may include, but are not limited to, death in a student's immediate family, childbirth, accidents, injuries and hospitalizations.

9.2.3.2 Special exemptions due to an emergency may be requested for the entire test or for one or more content areas, as the district determines appropriate.

9.2.3.3 The District Test Coordinator shall notify the Director of Assessment for the Department of Education as soon as the Coordinator learns of events or situations which may result in a request for a special exemption due to an emergency.

9.2.3.3.1 The District Test Coordinator shall submit a completed DSTP Request for Special Exemption Form to the Director of Assessment for the Department of Education within 7 calendar days of the last day for make up testing. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which describes the nature of the situation.

9.2.3.3.2 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions due to an emergency. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.3.3.3 The Associate Secretary shall decide whether a request for a special exemption based on an emergency should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.4 Consequences of Special Exemptions.

9.2.4.1 Any special exemption granted by the Department of Education is limited to the testing period for which it was requested and does not carry forward to future

test administrations.

9.2.4.2 Students who are granted a special exemption shall not be reported or counted in the school's test scores for any purpose, including school and district accountability.

9.2.4.3 Students who are granted a special exemption shall not be subject to any of the student testing consequences for students in grades 3, 5, or 8 for the testing period to which the exemption applies.

See 5 DE Reg. 2115 (5/1/02)

Regulatory Implementing Order 103 School Accountability for Academic Performance

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 103 School Accountability for Academic Performance by changing the regulation to conform to the changes in the state and federal statutes which address school, district and state accountability for student performance. The title of the amended regulation has been changed to Accountability for Schools, Districts and the State. The amended regulation defines Adequate Yearly Progress (AYP) as it affects student achievement and discusses how AYP is determined and calculated. The amended regulation addresses other academic indicators, assessment criteria and the school and district review process. The five annual performance classifications for schools, districts and the State are also defined and the consequences are discussed.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on April 21, 2003, in the form hereto attached as *Exhibit A*. The State Board of Education recommended that "Under Improvement" be added to 5.4 and 5.5 to clarify that the new performance classifications "Academic Progress" and "Academic Watch" mean that the school or district is under improvement. This change was made to the regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend this regulation to conform with changes in state and federal statutes

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of

14 *Del. C.* §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code § 103 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 June 19, 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 19th day of June, 2003.

Department of Education

Valerie A. Woodruff, Secretary of Education

Approved this 19th day of June, 2003

State Board of Education

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

~~103 School Accountability for Academic Performance~~

~~1.0 Accountability School: The school to which a student's performance is assigned shall be the Accountability School. Except as defined in sections 1.1 to 1.3 the Accountability School shall be the school that provided the majority of instructional services to that student in a given school year so long as the student was enrolled in the school for more than 530 school hours or more than 90 school days. No student shall have his/her performance assigned to more than one Accountability School in a given school year.~~

~~1.1 Except as in section 1.1.1, for students enrolled in an intra-district intensive learning center or intra-district special school or program operating within one or more existing school facilities the school facility in which the student is served shall be the Accountability School.~~

~~1.1.1 If in such a program the number of students included in a School Composite Score would be greater than or equal to 30 a school district may elect to define the program as an Accountability School.~~

~~1.1.2 Within 30 days of request by the Secretary of~~

~~Education school districts shall inform the Secretary of Education in writing of any Accountability Schools they elect to define pursuant to section 1.1.1. Such definitions may not be changed for four measurement cycles.~~

~~1.2 For students enrolled in inter-district special schools or programs that have an agreement to serve students from multiple school districts that school or program shall be the Accountability School provided the number of students included in the School Composite Score is greater than or equal to 30.~~

~~1.2.1 If in such a school or program the number of students included in a School Composite Score is less than 30 the student scores shall be assigned to the Accountability School the student would have been assigned to if an Individual Education Program was not in place.~~

~~1.3 For students enrolled in alternative school programs pursuant to 14 *Del. C.*, Chapter 16, or the Delaware Adolescent Program the Accountability School shall be the school that assigned them to the program. For the purposes of this chapter the time the students were enrolled in the alternative or transitional program shall be credited to the Accountability School.~~

~~2.0 Composite Score: A School Composite Score for each Accountability School shall be created utilizing the formula found in 14 *Del. C.*, Section 154(b)(1).~~

~~2.1 The School Composite Score shall include the collective performance of all students in each Standards Cluster as defined in section 2.6 and 2.7 below on the assessments administered pursuant to 14 *Del. C.*, Section 151 (b) and (c).~~

~~2.1.1 For students who take a portion of the assessment more than once within a measurement cycle, the best test score] except re-tests by 12th grade students shall be included in the School Composite Score.~~

~~2.1.2 For school accountability purposes a student not assessed either pursuant to 14 *Del. C.*, Section 151 (b) and (c) or not assessed with alternate assessments approved by the Department of Education shall be assigned to Performance Level 0, and such score shall be assigned to the school that failed to assess the student.~~

~~2.1.3 Except for students who participate in out-of-level testing, students who test with non-aggregable conditions as defined in the Department of Education's *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency* shall have her/his performance level included in the School Composite Score.~~

~~2.1.4 For school accountability purposes a student who tests but does not meet attemptedness rules as defined in the Department of Education's Scoring Specifications, who participates in out-of-level testing or otherwise receives an invalid score shall be assigned to Performance Level 1.~~

~~2.1.5 A student participating in alternate~~

assessments shall have her/his performance level included in the School Composite Score.

2.2 Schools with more than one tested grade shall receive a single School Composite Score determined by aggregating the performance levels of students who score at each performance level in each tested grade.

2.3 Baselines for Accountability Schools shall be determined using two years of their students' performance, beginning with the Accountability School's first two administrations of the Delaware Student Testing Program. New School Composite Scores shall be established each two years thereafter.

2.3.1 Prior to 2003 reading, writing and mathematics results shall be utilized to determine School Composite Scores.

2.3.2 In 2003 two School Composite Scores shall be calculated. The School Composite Score used to determine performance shall include reading, writing and mathematics results. The School Composite Score used as the school's new baseline shall include reading, writing, mathematics, science and social studies results.

2.3.3 After 2003 reading, writing, mathematics, science and social studies results shall be utilized to determine all School Composite Scores.

2.4 Schools shall be evaluated for performance by comparing their performance on the three measures defined in section 3.0 over a measurement cycle.

2.5 Student performance in a tested grade shall be apportioned in equal weights to each grade in a Standards Cluster, except that Kindergarten shall be weighted at 10%.

2.6 Prior to the inclusion of science and social studies results in the School Composite Score the weights assigned to each subject shall be 40% for reading, 40% for mathematics and 20% for writing.

2.6.1 Standards Clusters shall be defined as follows:

Standards Cluster	Spring Assessments, Calendar Year A
Grades K-3	Grade 3 reading, writing, mathematics
Grades 4-5	Grade 5 reading, writing, mathematics
Grades 6-8	Grade 8 reading, writing, mathematics
Grades 9-10	Grade 10 reading, writing, mathematics

2.7 When science and social studies results are included in the School Composite Score, the weights assigned to each subject shall be as follows:

2.7.1 For assessments in grades 3 through grade 6: 35% for reading, 35% for mathematics, 10% for writing,

10% for science and 10% for social studies.

2.7.2 For assessments in grades 8 through grade 11: 20% for reading, 20% for mathematics, 20% for writing, 20% for science and 20% for social studies.

2.7.3 Standards Clusters shall be defined as follows:

Standards Cluster	Spring Assessments, Calendar Year A	Fall Assessments, Calendar Year A
Grades K-3	Grade 3 reading, writing, mathematics	Grade 4 science, social studies
Grades 4-5	Grade 5 reading, writing, mathematics	Grade 6 science, social studies
Grades 6-8	Grade 8 reading, writing, mathematics, science, social studies	
Grades 9-10	Grade 10 reading, writing, mathematics	
Grades 9-11	Grade 11 science, social studies	

See 5 DE Reg. 1281 (12/1/01)

3.0 Performance Criteria: The Department of Education shall determine the performance status of a school by utilizing three measures of performance.

3.1 Absolute Performance: The Absolute Performance of the school's student body on the assessments administered pursuant to 14 *Del. C.*, Section 151 (b) and (c) measured using the School Composite Score. Target School Composite Scores shall be determined by the Department of Education with the consent of the State Board of Education.

3.2 Improvement Performance: The school's record in improving its School Composite Score over a measurement cycle by an amount determined by the Department of Education with the consent of the State Board of Education.

3.2.1 The expected improvement for a given school shall be the difference between the school's current composite score and a target School Composite Score that all schools are expected to achieve divided by the number of measurement cycles the school has to reach the target School Composite Score.

3.2.2 For schools that have already met the target School Composite Score, a higher target shall be established. Target School Composite Scores and time periods shall be determined by the Department of Education with the consent of the State Board of Education.

3.3 Distributional Performance: The school's record in improving the performance of low achieving students over a

measurement cycle by an amount determined by the Department of Education with the consent of the State Board of Education.

3.3.1 The expected Distributional Performance for a given school shall be a specified decrease in the percentage of students performing below the standard (those in levels 0, 1, and 2) in tested content areas while the percentage of students in Level 0 and the percentage of students in Level 1 in tested content areas do not increase by a targeted amount.

3.3.1.1 All regulations utilized to calculate school composite scores pursuant to 2.0 shall also apply to calculate distributional performance.

3.3.2 An Accountability School that has no change in the percentage of students performing below the standard or reduces that percentage by less than the target shall be assessed by whether the Distributional Composite Score, calculated by including only those students who have not met the standard, increases by a targeted amount. Distributional Targets shall be determined by the Department of Education with the consent of the State Board of Education.

See 5 DE Reg. 1281 (12/1/01)

4.0 Performance Classifications: Schools shall be rated by the Department of Education based on their collective performance on the three specific measures of performance described in section 3.0. The performance classification of each school shall be reported in School Profiles.

4.1 Superior Performance: A school's performance is deemed excellent. Schools in this category shall have met or exceeded performance targets as determined by the Department of Education with the consent of the State Board of Education.

4.2 Commendable Performance: A school's performance is deemed acceptable. Schools in this category shall have met sufficient performance targets as determined by the Department of Education with the consent of the State Board of Education.

4.3 Under School Improvement: A school's performance is deemed as needing improvement. Schools in this category have not met sufficient performance targets as determined by the Department of Education with the consent of the State Board of Education. Schools initially classified in this category shall be evaluated using a School Review Process pursuant to section 5.0 below. Following a final classification of a school as Under School Improvement the school shall be required to undertake improvement and accountability activities as defined in 14 Del.C., Section 154(d)(2).

4.4 Unsatisfactory Performance: A school's performance is deemed as unacceptable. Schools Under School Improvement who after two years have not met sufficient performance targets as determined by the Department of Education with the consent of the State Board

of Education shall be classified as Unsatisfactory. Schools in this category shall be required to undertake improvement and accountability activities as defined in 14 Del.C., Section 154(d)(3).

4.5 Schools required to develop a school improvement plan pursuant to 14 Del.C., Section 154(d)(2) and (3) shall include specific strategies to improve the performance of students in each low performing sub-population as defined by the Department of Education.

See 5 DE Reg. 1281 (12/1/01)

5.0 School Review Process: Schools classified as Under School Improvement shall be evaluated by a School Review Team.

5.1 The purpose of the evaluation is to determine whether additional evidence of school performance demonstrates that a school should be reclassified as Commendable.

5.2 For each school subject to review, the School Review Team shall consist of four members who shall include two representatives of the Department of Education and two educators from Delaware public schools, and may include educators who have retired within the previous five years. Each team shall be chaired by a representative of the Department of Education. All School Review Team members shall be appointed by the Secretary of Education.

5.3 Schools subject to review shall provide the Department of Education with evidence of school performance in a form acceptable to the Department. Such evidence, along with school performance data available to the Department of Education, shall provide the basis for the evaluation of the school's performance.

5.4 Criteria used to evaluate other evidence of school performance shall include at a minimum:

5.4.1 The use and analysis of student achievement data and other data to determine areas of need

5.4.2 Curriculum and instructional decisions based on student needs identified through data analysis

5.4.3 Professional development aligned to curriculum, instruction and identified student needs

5.4.4 Community involvement in the school's decision making process, including evaluation and planning

5.4.5 Curriculum aligned to the state content standards

5.4.6 Research-based instruction aligned to curriculum and teaching strategies based on student needs

5.4.7 Resources aligned with student needs and goals and objectives identified in the School Improvement Plan

5.4.8 The school develops and implements strategies to promote a positive climate supportive of student achievement.

5.5 The School Review Team shall evaluate evidence of school performance with respect to the criteria in section

5.4 above using a scoring process approved by the Department of Education. A target score shall determine whether a school should receive a site visit or shall remain classified as Under School Improvement. Target scores for site visits shall be determined by the Department of Education with the consent of the State Board of Education. No school with a score below the target shall receive a site visit or be reclassified.

5.5.1 Schools that are designated to receive a site visit shall have the option of declining such a visit. No school shall receive a recommendation to be reclassified to Commendable without a site visit by a School Review Team. The district in which the school is located shall have five working days to notify the Secretary of Education in writing if they do not wish to receive a site visit. Charter schools shall have five working days to notify the Secretary of Education in writing if they do not wish to receive a site visit. All schools that decline a site visit shall remain classified as Under School Improvement.

5.6 Following any site visits the School Review Team shall recommend to the Secretary of Education whether a school shall remain Under School Improvement or whether additional evidence exists to reclassify the school to Commendable Performance. Target scores used as the basis for such recommendations shall be determined by the Department of Education with the consent of the State Board of Education.

5.6.1 Upon such a recommendation the Secretary of Education may reclassify a school to Commendable Performance subject to the consent of the State Board of Education.

See 4 DE Reg. 1661 (4/1/01)

See 5 DE Reg. 1281 (12/1/01)

6.0 Appeals Process: A school may appeal its performance classification as follows.

6.1 The school must file a written notice of appeal with the Secretary no later than 30 days after receiving written notification of its performance classification. The notice of appeal shall state with specificity the grounds for the appeal, and shall be signed by the principal of the school and except in the case of a charter school, the superintendent of the district that has authority over the school.

6.2 Upon receipt of a satisfactory form of notice of appeal, the Secretary will decide whether to hear the appeal or assign it to a hearing officer.

6.3 The Secretary or hearing officer, as the case may be, will establish a date upon which the appeal will be heard. The school shall be given not less than 20 days notice of the hearing date. A written position statement, legal brief or memorandum in support of its appeal shall be filed by the school with the Secretary or hearing officer no later than 10 days prior to the hearing date. Any written statement must clearly identify the issues raised in the appeal. Briefs or

legal memoranda shall be submitted with the written statement if the appeal is based upon a legal issue or interpretation.

6.4 A school challenging its classification must prove by clear and convincing evidence that the classification assigned to it by the department was contrary to law or regulations, was not supported by substantial evidence, or was arbitrary or capricious, or should be changed because of other extraordinary mitigating circumstances beyond the school's control.

6.5 If the appeal has been assigned to a hearing officer, the hearing officer will issue a recommended decision to the Secretary in the form of a Proposed Order. The Secretary will not conduct any further hearings on the matter, but with the consent of the State Board of Education, will issue a final decision within 30 working days thereafter.

See 5 DE Reg. 1281 (12/1/01)

103 Accountability for Schools, Districts and the State.

1.0 Accountability

1.1 Accountability: All public schools, including charter schools, reorganized and vocational-technical school districts and the state shall be subject to the calculation and reporting of Adequate Yearly Progress (AYP) as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S. C.A. §6301 et seq. Additionally, public schools, including charter schools, reorganized and vocational-technical school districts shall be subject to the applicable rewards, sanctions and other accountability activities as prescribed in this regulation.

2.0 Adequate Yearly Progress (AYP)

2.1 Adequate Yearly Progress shall be determined by the Department of Education for all public schools, including charter schools, reorganized and vocational-technical school districts and the State on an annual basis. In order for a public school, including a charter school, reorganized or vocational-technical school district or the State to meet AYP, the aggregate student population and each subgroup of students as identified in ESEA, must meet or exceed the target for percent proficient in the state assessments of reading/language arts and mathematics; 95% of the students as an aggregate and within each subgroup must participate in the state assessments of reading/language arts and mathematics, except for those students who meet the exemption criteria as specified in 14 DE Admin. Code 101 §9.0; and the respective entity must [maintain or] show progress towards the state target for other academic indicator(s). In calculating the percent proficient each year, the state will average the most recent two years of percent proficient (including the current year's percent proficient) and compare the results to the current year percent proficient. The highest percent proficient score will be used

to determine the school, district or State AYP status.

2.2 Full academic year for accountability:

2.2.1 For school accountability students enrolled continuously in the school from September 30 through May 31 of a school year and those students identified in 3.1 and 3.2, shall be considered enrolled for a full academic year.

2.2.2 For district accountability students enrolled continuously in the district (but not necessarily the same school), from September 30 through May 31 of a school year, and those students identified in 3.1 and 3.2, shall be considered enrolled for a full academic year.

2.2.3 For state accountability students enrolled continuously in the state (but not necessarily the same school or district) from September 30 through May 31 of a school year shall be considered enrolled for a full academic year.

2.3 Proficient: For accountability purposes students who score at Performance Level 3 (Meets the Standard) or above and who have met the requirements of a Full Academic Year as defined in 2.2 shall be deemed proficient. Students who score at Performance Level 2, Level 1 or Level 0 who have met the requirements of a Full Academic Year as defined in 2.2 shall not meet the definition of proficient.

2.4 Participation Rate: For accountability purposes in school years 2002-2003 through 2004-2005, the participation rate for each subgroup, all public schools, including charter schools, districts, and the State, shall be the number of students who participate in the DSTP in grades 3, 5, 8 and 10 divided by the number of students enrolled in these tested grades during the testing period. Beginning with the 2005-2006 school year the participation rate shall include the number of students who participate in the DSTP in grades 3 through 8 inclusive and grade 10. Students exempted by 14 DE Admin. Code 101, Section 9.0 are not included in the participation rate calculation. For schools with no accountability tested grades (K-2), the participation rate shall be determined by the number of students who participated in the work sampling or grade 2 DSTP assessments divided by the number of students enrolled during the testing period.

2.5 Safe Harbor: For accountability purposes if a school, district or the State fails to meet the target for percent proficient for a given subgroup or for the entity in aggregate, safe harbor provisions shall be examined for that group. When the percentage of students in a subgroup not meeting the definition of proficient decreases by at least 10% when compared to the previous year's data, the participation rate for the population is at least 95%, and the subgroup maintains or shows progress on the other academic indicator the subgroup will have met AYP.

2.6 Other academic indicator:

2.6.1 High School: For AYP purposes, the other academic indicator shall be graduation rate as defined as the number of students in one cohort who started in the school/

district/state in 9th grade and graduated four years later, [excluding students who earn a GED certificate,] divided by the same number plus those that have dropped out during the same four year period.

2.6.1.1 The statewide target for the high school other academic indicator shall be a graduation rate of 90% by the school year 2013-2014. Beginning with the school year 2002-2003, if the graduation rate is used for safe harbor purposes, the high school shall be expected to maintain its graduation rate or show positive progress when compared to the previous year.

2.6.1.2 A school that does not maintain its graduation rate or show positive progress from the previous year shall be considered as not meeting AYP for that year.

2.6.2 Elementary and Middle School: For AYP purposes, the Other Academic Indicator for elementary and middle schools shall be the percent of students proficient on the grade 4, 6, and 8 DSTP science and social studies assessments combined. The science and social studies content standards are arranged by grade clusters. Students shall be tracked back to the school/district that provided the instructional services for the grade cluster.

2.6.2.1 The statewide target for the elementary and middle school other academic indicator shall be a percent proficient of 85% by the school year 2013-2014. Beginning with the school year 2002-2003, when compared to the previous year, the school or subgroup, if used for safe harbor purposes, shall be expected to maintain its percent proficient or show positive progress when compared to the previous year towards the state target of 85%.

2.6.2.2 An elementary or middle school that does not maintain its percent proficient for the other academic indicator or show positive progress from the previous year shall be considered as not meeting AYP for that year.

2.6.3 For state and district accountability purposes, the state or a district shall be expected to maintain both the graduation rate and percent proficient or show positive progress when compared to the previous year towards the state target of 90% for the high school other academic indicator and 85% for the elementary and middle school other academic indicator.

2.7 Annual Objective: The annual objectives for reading/language arts and mathematics shall be determined by the Department of Education and published annually. The annual objectives shall be the same for all schools, districts and subgroups of students.

2.8 Intermediate Target: There shall be seven intermediate targets with the first intermediate target occurring in the 2004-2005 school year. The second intermediate target shall occur in 2006-2007; the third in 2008-2009; the fourth in 2009-2010; the fifth in 2010-2011, the sixth in 2011-2012 and the seventh in 2012-2013. By the end of the school year 2013-2014, all students in all

subgroups shall be proficient in reading/language arts and mathematics. The intermediate targets shall be calculated using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S. C.A. §6301 et seq.

2.9 Starting Point: A single statewide starting point shall be calculated for reading/language arts and a single statewide starting point shall be calculated for mathematics using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S. C.A. §6301 et seq.

2.10 Subgroup categories: For AYP purposes, subgroup categories shall be delineated as follows: 1) Children with Disabilities (as per IDEA); 2) Economically Disadvantaged Students, as determined by eligibility for free and reduced lunch program; 3) Students with Limited English Proficiency, as determined by the language proficiency assessment; and 4) Race/ethnicity, to be furthered divided into African American/black, American Indian/Alaska native, Asian/Pacific Islander, Hispanic, and White. Such subgroup categories shall include all students eligible for the AYP calculation as further defined throughout this Chapter. The "All" categories shall include all students in the entity for which AYP is calculated and who meet all other eligibility criteria for the AYP calculation.

2.11 Adequate Yearly Progress (AYP) Calculations

2.11.1 For each public school, including charter schools, reorganized and vocational-technical school district, and the State, AYP shall be calculated annually.

2.11.2 School AYP: In order to meet AYP, the aggregate student population of a school and each subgroup of students within a school, shall meet or exceed the annual target for percent proficient as defined in 2.3; the participation rate shall be 95% or greater; and the school in the aggregate shall maintain or show progress on the other academic indicator. If there are 15 or more students in the aggregate or in any subgroup the percent proficient shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient shall be reported and used to determine AYP status and accountability ratings. The Safe Harbor provision as defined in 2.5 shall be used for a school that does not meet AYP in the aggregate or in any subgroup within the school.

2.11.3 District AYP: In order to meet AYP, the aggregate student population of a district and each subgroup of students within a district, shall meet or exceed the annual target for percent proficient as defined in 2.3; the participation rate shall be 95% or greater; and the district in the aggregate shall maintain or show progress on both of the other academic indicators. If there are 15 or more students in the aggregate or in any subgroup the percent proficient shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient shall be reported

and used to determine AYP status and accountability ratings. The Safe Harbor provision as defined in 2.5 shall be used for a district that does not meet AYP in the aggregate or in any subgroup within the school.

2.11.4 State AYP: In order to meet AYP, the aggregate student population in the State and each subgroup of students within the State, shall meet or exceed the annual target for percent proficient as defined in 2.3; the participation rate shall be 95% or greater; and the State in the aggregate shall maintain or show progress on both of the other academic indicators. If there are 15 or more students in the aggregate or in any subgroup the percent proficient shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient shall be reported and used to determine AYP status and accountability ratings. The Safe Harbor provision as defined in 2.5 shall be used for state accountability if the State does not meet AYP in the aggregate or in any subgroup within the State.

2.11.5 Under Improvement: A school or district shall be deemed Under Improvement if AYP is not met two consecutive years in the same content area of reading/language arts or mathematics, or if a school or district in the aggregate does not maintain or show progress on the Other Academic Indicator(s).

See 5 DE Reg. 1281 (12/1/01)

3.0 Accountability School and/or District: For AYP purposes, the school/district to which a student's performance is assigned for a full academic year shall be the Accountability School/District. No student shall have his/her performance assigned to more than one Accountability School/District in a given school year.

3.1 For a student enrolled in an intra-district intensive learning center or intra-district special school or program operating within one or more existing school facilities, the school/district of residence shall be considered the Accountability School/District for the student. For a student enrolled in inter-district special schools or programs that have an agreement to serve students from multiple school districts, the school/district of residence shall be considered the Accountability School/District.

3.2 For a student enrolled in an alternative school program pursuant to 14 Del. C., Chapter 16, or the Delaware Adolescent Program, the Accountability School/District shall be the school/district that assigned such student to the program or the school/district of residence. For the purposes of this chapter the time the students were enrolled in the alternative or transitional program shall be credited to the Accountability School/District.

3.3 For a student who participates in the choice program pursuant to 14 Del. Code, Chapter 4 the Accountability School/District shall be the school/district to which the student has choiced.

See 5 DE Reg. 1281 (12/1/01)4.0 Assessment Criteria.

4.1 For a student who takes a portion of the assessment more than once during the school year, the first score shall be included in the AYP calculation.

4.2 A student who tests with non-aggregable conditions as defined in the Department of Education's *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency* shall have his/her earned performance level included in the calculation of AYP.

4.3 For accountability purposes a student who tests but does not meet attemptedness rules as defined in the Department of Education's scoring specifications or otherwise receives an invalid score shall be deemed as not meeting proficiency.

4.4 A student participating in alternate assessments shall have her/his [earned] performance level included in the AYP calculation.

4.5 Schools with more than one tested grade shall receive a single accountability rating.

4.6 Student performance in a tested grade shall be apportioned in equal weights to each grade in a standards cluster, except that Kindergarten shall be weighted at 10% and grade 10 shall be weighted at 100%. Beginning with the school year 2005-2006 students in grades 4,5,6,7,8, and 10 will count 100%. Students in grade 3 will continue to be weighted to each grade in the K-3 standards cluster.

4.7 For AYP purposes the reading/language arts percent proficient shall be based on a combination of the reading and writing DSTP assessments. The reading percent proficient scores shall be weighted to count 90% and the writing percent proficient scores shall be weighted to count 10%.

4.8 For AYP purposes, the mathematics percent proficient shall be based on 100% of the DSTP mathematics assessment.

See 5 DE Reg. 1281 (12/1/01)

5.0 Performance Classifications: Schools and districts shall receive one of five levels of performance classification annually.

5.1 Superior: A school or district's performance is deemed excellent. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement and additional rigorous state criteria are met. The additional state criteria shall be developed by the Department of Education with the consent of the State Board of Education.

5.2 Commendable: A school or district's performance is deemed above average. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement.

5.3 Academic Review: A school or district's

performance is deemed acceptable. Schools or districts in this category shall not have met APY for one year and are not Under Improvement.

5.4 Academic Progress [- Under Improvement]: A school or district's performance is deemed as needing improvement. Schools or districts in this category shall have met AYP for one year while the school or district is Under Improvement. If a school or district was classified as Academic Watch the prior year, all accountability sanctions from that prior year remain in effect.

5.5 Academic Watch [- Under Improvement]: A school or district's performance is deemed as unsatisfactory. Schools or districts in this category shall not have met AYP for two or more years and shall be Under Improvement.

See 4 DE Reg. 1661 (4/1/01)**See 5 DE Reg. 1281 (12/1/01)**

6.0 Schools and Districts that are classified as Under Improvement.

6.1 Accountability sanctions for schools that are classified as Under Improvement:

6.1.1 Under Improvement - Year 1 - A school shall review and modify its current School Improvement Plan outlining additional specific school improvement activities to be implemented beginning in this same year. A school designated as Title I shall implement federal ESEA Choice. The school shall follow the district Federal ESEA Choice Program.

6.1.2 Under Improvement - Year 2 - A school shall continue to review and modify the School Improvement Plan as needed. A school designated as Title I shall continue to offer federal ESEA Choice. In addition a Title I school shall provide supplemental services according to the federal ESEA requirements. Schools not designated as Title I shall give priority, as appropriate, within their extra time services to students in those subgroups that have not met the target for percent proficient in the reading/language arts and/or mathematics assessments.

6.1.3 Under Improvement - Year 3 - A school shall continue with the activities as per 6.1.2. In addition, all schools shall be subject to corrective action as outlined by federal ESEA requirements.

6.1.4 Under Improvement - Year 4 - A school shall continue with the activities as per 6.1.3. In addition, shall develop a plan for restructuring as outlined by federal ESEA requirements.

6.1.5 Under Improvement - A school shall continue with the activities as per 6.1.2. In addition, the school shall implement the restructuring plan as outlined by federal ESEA requirements.

6.2 Accountability sanctions for districts that are classified as Under Improvement:

6.2.1 Under Improvement - Year 1 - A district shall develop and implement a District Improvement Plan.

6.2.2 Under Improvement - Year 2 - A district shall evaluate and modify the District Improvement Plan and shall incorporate such plan into the Consolidated Application.

6.2.3 Under Improvement - Year 3 - A district shall continue with the activities outlined in 6.2.2. In addition the district shall develop a corrective action plan as outlined by Federal ESEA requirements.

6.2.4 Under Improvement - Year 4 - A district shall continue with the activities as outlined in 6.2.3. In addition the district and the Department of Education shall evaluate the corrective action plan and make appropriate modifications as needed.

See 5 DE Reg. 1281 (12/1/01)

7.0 Review Process: A school or district deemed Under Improvement may review school or district level data, including academic assessment data upon which the proposed classification is based. The school or district shall present statistical evidence or other substantive reasons why the classification should be changed before the final classification will be determined.

7.1 The school or district must file a written notice of review with the Secretary no later than 15 calendar days after receiving preliminary notification of its designation of Under Improvement. The request for review shall state with specificity the grounds for the review, and shall be signed by the principal or lead authority of the school, or the signature of the Superintendent of the district. This request for review shall include all supporting evidence and documentation and shall be clear and concise.

7.2 Upon receipt of a written notice of review, the Department of Education shall conduct a review of the evidence or other substantive reasons presented by the school or district.

7.3 The Department of Education shall make a final determination within 30 calendar days from the written notice of review on the Under Improvement status of the school or district based on the evidence or other substantive reasons presented by the school or district.

**Regulatory Implementing Order
104 Education Profiles for the Schools,
Districts and the State**

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to adopt a new regulation 104 Education Profiles for Schools, Districts and the State. The regulation is required due to changes in state and federal statutes concerning school, district and State accountability

for student performance. The regulation continues the mandates for the development of profiles for schools districts and the State and includes the information that must appear in each type of profile. Other additional information can be added. The regulation also defines when and how the profiles will be published.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on April 21, 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 adopt this regulation in order to meet the requirements of recently amended state and federal statutes.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as *Exhibit "B"* is hereby adopted. Pursuant to the provision of 14 *Del. C.* §122(e), the regulation hereby adopted 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 adopted hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code § 104 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 June 19, 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 19th day of June 2003.

Department of Education

Valerie A. Woodruff, Secretary of Education

Approved this 19th day of June, 2003

State Board of Education

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Mary B. Graham, Esquire

Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

104 Education Profiles for Schools, Districts, and the State

1.0 Education Profiles: All public schools, including charter schools, reorganized or vocational-technical school districts and the State shall issue Delaware Public Education Profiles on the state of Delaware's public school system as required by 14 Del.C. §124A. The profiles shall be referred to as school, district, and state Profiles respectively. Each profile shall contain, but need not be limited to, the following information, aggregated at the appropriate level (school, district or state), unless otherwise noted:

1.1 Information on student achievement at each performance level on the state reading, writing, mathematics, science, and social studies academic assessments. Such information shall be disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged except that such disaggregation shall not be required in a case in which the number of students in a category is less than fifteen (15).

1.2 The most recent 2-year trend in student achievement in each of the five content areas [as assessed by the DSTP], and for each grade level the assessments are administered;

1.3 The percentage of students not tested in reading/language arts and mathematics disaggregated by the student subgroups as defined in 1.9, except that such disaggregation shall not be required in a case in which the number of students in a category is less than fifteen (15).

1.4 Information that provides a comparison between the actual achievement levels of each student subgroup meeting proficiency and those that have not met proficiency, as defined in 14 DE Admin. Code 103, 1.4 and the state's annual measurable objectives for each such group of students in the reading/language arts and mathematics academic assessments;

1.5 Aggregate information of the percent proficient on the combined scores of the science and social studies academic assessments for elementary and middle schools, used as the other indicator to determine Annual Yearly Progress (AYP) of students in achieving the state academic standards disaggregated by student subgroups. Such disaggregation shall not be required in a case in which the number of students is less than fifteen (15).

1.6 For secondary schools only, graduation rate [is] defined as the number of students enrolled in the school in the ninth grade and [graduation who graduate] with a diploma four years later[, excluding students who earn a GED certificate, divided by the same number plus those

who have dropped out during the same four year period,] disaggregated by student subgroups. Such disaggregation shall not be required in a case in which the number of students is less than fifteen (15).

1.7 Information on the performance of the school, district, or state regarding making adequate yearly progress, including the number and names of each school identified as Under School Improvement.

1.8 Information regarding the professional qualifications of teachers in the school, district and state, the percentage of such teachers teaching with emergency or provisional credentials, and the percentage of classes in the state not taught by highly qualified teachers, in the aggregate and disaggregated by high-poverty compared to low-poverty schools which means schools in the top quartile of poverty and the bottom quartile of poverty in the State;

1.9 Information pertaining to the AYP status and accountability ratings;

1.10 Information pertaining to school safety and discipline and student attendance;

1.11 Information pertaining to school district administrator-student ratios, school teacher-student ratios and other staffing ratios;

1.12 Information pertaining to pupil and staff demographics;

1.13 Information pertaining to school district revenues, expenditures, tax rates and wealth (district profile only);

1.14 Information pertaining to school curricular offerings (school profile only);

1.15 Information pertaining to parent and community involvement in the school and school district;

1.16 Examples of exemplary programs, successful teaching, school climate or disciplinary strategies and other developments (only in school profile); and

1.17 Other items from time to time that may be required by the federal Elementary and Secondary Education Act.

2.0 Publishing of Profiles: The profiles will be published, subject to an annual appropriation in the annual state budget act, at the expense of the state. School and districts-specific data shall be submitted, in the format requested, to the Department in the time frame delineated in the Data Acquisition Calendar. The State shall have the profiles available on the Department of Education website no later than August 15, 2003 and on or before August 1 of each subsequent year.

Regulatory Implementing Order**608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students Who Have been Victims of a Violent Felony****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to adopt a new regulation 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who Have Been Victims of a Violent Felony. The Unsafe School Choice Option (USCO) (section 9532 of the Elementary and Secondary Education Act (SEA) of 1965, as amended by the No Child Left Behind Act of 2001) requires that a State Education Agency establish a State USCO policy in order to receive funding under ESEA. The regulation identifies the conditions that must exist in order to identify persistently dangerous schools, defines a violent crime and other relevant terms and identifies the responsibilities of the local school districts and charter schools in implementing the federal statute.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on April 21, 2003, in the form hereto attached as *Exhibit A*. The State Board of Education recommended changing "to the extent possible" in 3.0 to "provided such an option exists" and removing "to the extent possible" from 4.0 in order to add clarity to these statements. These changes were made.

II. Findings of Facts

The Secretary finds that it is appropriate to adopt this regulation because the Unsafe School Choice Option (USCO) (section 9532 of the Elementary and Secondary Education Act (SEA) of 1965, as amended by the No Child Left Behind Act of 2001) requires that a State Education Agency establish a State USCO policy in order to receive funding under ESEA.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as *Exhibit "B"* is hereby adopted. Pursuant to the provision of 14 *Del. C.* §122(e), the regulation hereby adopted 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 adopted hereby shall be in the form attached hereto as Exhibit "B", and said regulation

shall be cited as 14 DE Admin. Code §608 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 June 5, 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 5th day of June 2003.

Department of Education

Valerie A. Woodruff, Secretary of Education

Approved this 5th day of June, 2003

608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who Have Been Victims of a Violent Felony

The Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001, requires that a State Education Agency establish a State Unsafe School Choice Option policy in order to receive funding under ESEA.

1.0 Definitions:

In this regulation, the following terms shall have the meanings indicated below:

"Crime" shall have the same meaning as provided in 14 Del.C. §4112.

"Enrolled students" unless the context indicates otherwise, means all students included in the Delaware Student Information System (DELSIS) report for the year of the data collection.

"Firearm" means handgun, rifle, shotgun, or other type of firearm as that term is defined in the federal Gun Free Schools Zone Act at 18 U.S.C.A. §921.

"Fiscal year" means the period of July 1 through June 30. "Gun free school's violation" means the prohibited bringing to school, or possession while in school of a firearm by a student.

"Persistently Dangerous School" means a school that has five or more unsafe incidents for every one hundred students enrolled for three consecutive fiscal years.

"Safe school" means a school in the same school district that is not currently identified by the Department of Education as a persistently dangerous school.

"School" means any public school including charter schools. "School property" shall have the same meaning as provided in 14 Del.C. §4112 (a)(9).

"Suspension" means, for the purpose of this

regulation, the external removal of a student from the general school population.

"Terroristic threatening" shall have the same meaning as provided in 11 **Del.C.** §621.

"Unsafe incidents" means any of the following:

The school suspended or expelled a student for a gun-free schools violation; or

The school suspended or expelled a student for a crime committed on school property which is required to be reported under 14 **Del.C.** §4112; or

The school reported a crime committed by a non-student on school property that is required to be reported under 14 **Del.C.** §4112; or

The school suspended or expelled a student for terroristic threatening as that term is defined in 11 **Del.C.** §621.

"Violent felony" shall have the same meaning as provided in 11 **Del.C.** §4201(c). (A list of these crimes can be found in the *Delaware Guidelines for the Development of the Unsafe School Choice Option*.)

2.0 Beginning in July 2003, the Department of Education shall identify each persistently dangerous school using the data reported to it pursuant to the provisions of 14 **Del.C.** §4112 and 14 DE Admin. Code 601.

2.1 Notwithstanding any provision herein to the contrary, any year that a school fails to comply with the reporting mandates, as set forth in 2.0 above, to the Delaware Department of Education or to the appropriate police agency as set forth above, the Department of Education will consider the school as if it otherwise met the criteria to be classified as a persistently dangerous school for that year until such time as it may be determined, in the sole discretion of the Department, that the school has met such reporting requirements.

2.2 A school identified as persistently dangerous will retain that designation for the entire fiscal year.

3.0 A student attending a persistently dangerous school shall be allowed to choice to a safe school in the same school district, including a charter school; ~~to the extent possible~~ **provided such an option exists in the district**, the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring.

3.1 Each public school district having one or more persistently dangerous schools and any charter school identified as a persistently dangerous school shall develop a plan and time line that describes the process for notifying parents of the school's status and for relocating any student who exercises the right to choice to a safe school. The plan shall also describe the corrective actions that will be implemented. The plan shall be forwarded to the

Department of Education no later than September 15th of the year that the school is identified.

4.0 A student who is the victim of a violent felony while in or on the grounds of a school in which the student is enrolled shall be allowed to choice to a safe school in the same school district, including a charter school; ~~to the extent possible,~~ the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring.

4.1 All school districts and charter schools shall establish a plan that describes their policies and procedures for providing school choice options to a student who is the victim of a violent felony, including the process for notifying parents. These plans shall be forwarded to the Department of Education by September 15, 2003.

Regulatory Implementing Order
811 School Health Record Keeping Requirements
815 Physical Examinations and Screening
817 Administration of Medications and Treatments

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to repeal the following twelve (12) regulations:

- 801 Delaware Emergency Treatment Card
- 802 Delaware School Health Record
- 803 Daily Log
- 806 Physical Examinations
- 807 Vision Screening
- 808 Hearing Screening
- 809 Orthopedic Screening
- 810 Accident Reporting
- 826 Administration of Prescription Medications
- 827 Administration of Non-Prescription Medications
- 828 Assistance with Medications on Field Trips
- 829 The School Nurse and the Child with Special Health Needs

and to adopt the following three (3) new regulations:

- 811 School Health Record Keeping Requirements
- 815 Physical Examinations and Screening
- 817 Administration of Medications and Treatments

In the new regulations the titles and numbers are new and the terms "Relative Caregiver", "students 18 years of age and older" and "or an unaccompanied homeless youth (as defined by 42 USC 11434a)" have been added in most cases when the parent/guardian reference is used to comply with

state and federal laws. In addition, much of the wording has been edited for clarity.

In regulation 811 School Health Record Keeping Requirements, the use of the term "Daily Log" has been discontinued, in an effort to move toward a system of completely computerized individual health records rather than a log where all students are recorded on the same record sheet.

In regulation 815 Physical Examinations and Screening, a statement was added to require that students have their physical examination within two years of entry into the school system.

Orthopedic Screening has been changed to "screening for posture and gait" too more accurately represent what is actually done. Current screening is not a complete orthopedic screening and the use of the term Orthopedic is misleading for parents. The revisions in the new regulations also change the grades for the vision and hearing screening from grades 3, 5, 8 and 10 to grades 2, 4, 7 and grades 9 or 10 beginning with school year 2004-2005 and moves the date for completing this process from December 15th to January 15th of the school year. The grade change will help to identify vision or hearing problems a year before the state assessment is administered to allow time for appropriate follow up. The change to January 15th allows for additional time to complete the process.

In regulation 817 Administration of Medications and Treatments, the concept of the administration of treatments has been added to the administration of medications. In addition the administration of treatments includes a reference to the specialized treatments required for some students. Section 4.0 has been added to assure that the Individual Education Program (IEP) Team will include the school nurse when a student requires significant medical and /or nursing interventions. Regulation 828 Administration of Medications on Field Trips has been eliminated as a separate regulation and is included in the new regulation 817 as it is part of the whole concept of the administration of medications during school hours.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on April 21, 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 repeal the twelve (12) existing regulations and adopt three (3) new regulations to consolidate the twelve regulations into three regulations in order to add clarity and focus to the regulations. The terminology has been updated and the regulations now more accurately reflect current practice.

III. Decision to Repeal Twelve Regulations and Adopt Three New Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal twelve (12) regulations and adopt three (3) new regulations. Therefore, pursuant to 14 *Del. C.* §122, the Twelve (12) regulations attached hereto as *Exhibit "B"* are hereby repealed and the three (3) new regulations are adopted. Pursuant to the provision of 14 *Del. C.* §122(e), the regulations hereby repealed shall be removed from the *Regulations of the Department of Education* and the three (3) new regulations shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulations adopted hereby shall be in the form attached hereto as Exhibit "B", and said regulations shall be cited as 14 DE Admin. Code § 811, § 815 and § 817 in the *Regulations of the Department of Education*. Regulations cited as 14 DE. Admin. Code § 801, § 802, § 803, § 806, § 807, § 808, § 809, § 810, § 826, § 827, § 828, and § 829 shall be removed from 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 June 5, 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 5th day of June 2003.

Department of Education

Valerie A. Woodruff, Secretary of Education

~~801—Delaware Emergency Treatment Card~~

~~1.0 A Delaware Emergency Treatment Card shall be on file for every child enrolled in the Delaware Public Education system and the card must contain at a minimum, requests for the following information: student's name, birth date, school district, school, grade, homeroom or teacher, home address, home phone, mother/guardian's name and/or father/guardian's name, their place of employment and work phone, two other names, addresses and phone numbers for times when the parent or guardian can not be reached, family physician, name and phone, family dentist, name and phone, student's medical problems and allergies, the student's medical insurance and if possible the parent/guardian's signature. This information may be shared on a need to~~

know basis.

See 1 DE Reg. 1799 (5/1/98)

802 Delaware School Health Record

1.0 The "School Health Record" is confidential and shall be stored so that only duly authorized persons have access to it.

2.0 A "School Health Record" shall be prepared for each school child. When a child is promoted to another school in the district or transfers to another school in or out of state this shall accompany the other school records.

3.0 The health record will serve for the duration of the child's schooling. The school nurse shall use the "Student Health History Update" to keep health records current.

4.0 The "School Health Record" shall remain in the general school file or nurse's file during the pupil's attendance in school. The school nurse shall destroy any duplicate or partial health record after entries have been transferred to the official record so that there is only one correct and up-to-date record.

5.0 No health or psychological data shall be filmed with school academic records.

6.0 All student health records shall be retained at the school for two years after termination (graduation, drop-out).

7.0 All health records shall be transferred to the Delaware Public Archives which will retain the records for a total of 25 years.

See 1 DE Reg. 1798 (5/1/98)

803 Daily Log

1.0 The school nurse shall maintain a daily log which includes at a minimum:

- 1.1 School name
- 1.2 Three point date
- 1.3 Student's first and last name
- 1.4 Time of arrival and departure
- 1.5 Presenting complaint
- 1.6 Nurse's assessment and plan
- 1.7 Disposition (return to class, sent home, etc.)
- 1.8 Parent contact, if appropriate
- 1.9 Complete nurse's signature

See 1 DE Reg. 1800 (5/1/98)

806 Physical Examinations

1.0 All pupils upon entrance to the Delaware school system shall have had a physical examination within a licensed

medical physician, nurse practitioner or physician's assistant. The physical examination form can be given to the parent or guardian if requested.

1.1 New enterers have 14 school days to comply with the regulation before being excluded from school. A documented appointment with a licensed provider as stated above will defer exclusion.

1.2 All Students shall have a physical examination each year before participating in interscholastic sports (see regulation 1051, section 8.0 and regulation 1052, section 8.0).

1.3 Those selected students whose health status suggests further follow-up as a result of observations and/or conferences by the teacher and the school nurse shall have an additional physical examination or medical consultation.

1.4 Children of Christian Scientist parents may request exemption from physical exams by having their parents obtain the proper form from the "Committee on Publication for Delaware" which is responsible for such matters. The school should not furnish these forms.

1.5 The school nurse shall record all findings on the School Health Record.

807 Vision Screening

1.0 All children in kindergarten or grade 1 and in grades 3, 5, 8, and 10 shall receive a vision screening by December 15th of the current school year.

1.1 Students new to the school system, teacher referrals, those students considered for special education placement and driver education students shall have a vision screening.

1.2 The school nurse shall record the results on the School Health Record.

1.3 The school nurse shall notify parents/guardians if the child has a suspected vision problem.

See 1 DE Reg. 1797 (5/1/98)

808 Hearing Screening

1.0 All children in kindergarten or grade 1 and in grades 3, 5, 8 and in grade 10 or 11 shall receive a hearing screening by December 15th of the current school year.

1.1 Students new to the school system and those students considered for special education placement shall have a hearing screening.

1.2 Should any child fail the screening, a repeat screening shall be done within two (2) weeks of the initial screening.

1.3 The school nurse shall record the test results on the School Health Record.

1.4 The school nurse shall notify the parents/guardian that the child has failed the hearing screening and may have a hearing loss.

See 1 DE Reg. 1797 (5/1/98)

809 Orthopedic Screening

1.0 All pupils in grades 5 through 9 shall have an orthopedic screening by December 15th of each year.

1.1 The school nurse shall notify the parents/guardian if a suspected deviation has been detected.

1.2 The school nurse shall record the findings on the school health record.

See 1 DE Reg. 1813 (5/1/98)

810 Accident Reporting

1.0 In addition to entering an accident incident in daily log, the school nurse shall make a written report on the appropriate form to the district office in the following circumstances:

1.1 The school nurse has referred the student for medical evaluation, regardless of whether the parent/guardian followed through on that request.

1.2 The student has missed more than one half day due to the accident.

See 1 DE Reg. 1801 (5/1/98)

826 Administration of Prescription Medications

1.0 Medications prescribed by a licensed health care provider may be administered to students by the school nurse under the following conditions:

1.1 Request received from the parent/guardian.

1.2 The medication is brought/sent to school in the original container that is properly labeled with the student's name; the name of the medication; time; dosage; how it is to be administered; the physician's name; name of pharmacy and phone number; and a current date of the prescription.

1.3 Any allergies are noted.

1.4 All controlled substances are counted and reconciled at least once a month and kept under double lock.

1.5 The daily log or special medication record shows the student's name, time, and date of administration.

1.6 All long-term medications shall be preauthorized each year.

See 1 DE Reg. 1802 (5/1/98)

827 Administration of Nonprescription Medications

1.0 Nonprescription medications may be administered by the school nurse to students. The school nurse shall do the following:

1.1 Assess the particular complaint and symptoms to determine if other measures can be used before medication is administered.

1.2 Look for a record of all allergies, especially to

medications, on the student's school health record.

1.3 Have the permission of the parent or guardian to administer any medications.

1.4 Seek medical attention if the symptoms or conditions persist.

1.5 Record the student's name, name of medicine, dosage and time on the daily log.

See 1 DE Reg. 1803 (5/1/98)

828 Assistance With Medications on Field Trips

1.0 Definitions

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

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

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

"Paraprofessionals" mean teaching assistants or aides.

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

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

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

2.3 A registered nurse employed by the school district in which the student is enrolled shall determine which

teachers, administrators and paraprofessionals are qualified to safely assist a student with medication. Each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 Del.C. §1921. Said nurse shall complete instructor training as designated by the Department of Education and shall submit a list of successful staff participants to the Department of Education. No person shall assist a student with medication without written acknowledgment that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein.

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

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

829 The School Nurse and the Child with Special Health Needs

1.0 The school nurse, as a member of the evaluation team shall:

1.1 Assist in identifying candidates for placement in a special program.

1.2 Conduct the initial health evaluation and parent a parent/guardian/ conference.

1.3 Assist in obtaining an in depth health and developmental history and home environment assessment.

1.4 Provide and interpret all pertinent information including results of recent physical assessments.

1.5 Develop the individual health maintenance plan with the student/parent if possible.

1.6 Provide the evaluation team with the health information necessary to develop the health component of the individual education plan, IEP.

1.7 Periodically confer with the student, parent and faculty to revise the health maintenance plan.

1.8 Help the student or the student's parent or guardian to access appropriate community resources.

1.9 Follow up on medical recommendations and report to teachers and appropriate personnel.

1.10 Provide and/or supervise nursing treatment, medications, and specialized health procedures with the following conditions:

1.10.1 A written request shall be obtained from the parent for the procedure.

1.10.2 A written authorization from the child's

physician shall be on file.

1.10.3 Each change in the request from the parent or physician requires reauthorization. All requests shall be re-authorized each year.

1.10.4 A daily treatment log that includes child's name, date and time shall be kept on all medications and treatment administered with any reactions or comments noted.

811 School Health Record Keeping Requirements

1.0 Emergency Treatment Card

1.1 An Emergency Treatment Card shall be on file for each public school student. The card shall contain general emergency procedures for the care of a student when the student becomes sick or injured at school. The card shall contain the student's name, birth date, school district, school, grade, home room or teacher, home address, home telephone and the name, place of employment and work telephone of the parent/guardian[**or Relative**] Caregiver. The card shall also contain two other names, addresses and phone numbers of individuals who can be contacted at times when the parent/ guardian or [**Relative**] Caregiver can not be reached. The name and telephone number of the family physician and family dentist, any medical conditions and/or allergies the student has and the student's medical insurance shall be on the Emergency Treatment Card.

The information on the Emergency Treatment Card may be shared only on a need to know basis.

The parent/guardian [**Relative**] Caregiver or the student [if 18 years or older **or an unaccompanied homeless youth (as defined by 42 USC 11434a)**] shall sign the card to assure they understand the purpose of the card and acknowledge the accuracy of the information.

2.0 School Health Record

2.1 A School Health Record shall be prepared and updated for each public school student. This record is confidential and shall be protected so that only duly authorized persons have access to it.

2.2 When a student transfers to another school in the district or transfers to another school in or out of state, the School Health Record shall be forwarded with the student's other school records.

2.3 The School Health Record shall be maintained for the duration of the student's schooling. The school nurse shall use the Student Health History Update form to keep health records current.

2.4 The School Health Record shall remain in the general school file or nurse's file during the student's attendance in school. The school nurse shall destroy any duplicate or partial health record after entries have been transferred to the official record so that there is only one correct and up-to-date record.

Non-regulatory note: also see Department of Education Regulation 250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data and the Delaware Public Archives Document *Delaware School Districts General Records Retention Schedule*.

2.5 The school nurse shall document any nursing care provided including: the school name, a three point date, the person's (student, staff or visitor) first and last name, the time of arrival and departure, the presenting complaint, the nurse's assessment intervention plan and outcome, the disposition of the situation, the parent/other contact, if appropriate, and the nurse's complete signature.

2.5.1 Accident Reporting: In addition to documenting the care given at the time of an accident, the school nurse shall also complete the *Student Accident Report Form* if the school nurse has referred the student for a medical evaluation regardless of whether the parent/guardian [~~, Relative~~] Caregiver or student [~~if 18 years or older~~], or an unaccompanied homeless youth (as defined by 42 USC 11434a)) followed through on that request and/or if the student missed more than one-half day due to the accident.

3.0 The school nurse shall submit the Department of Education form, *Summary of School Health Services* for his or her building to the local school district or charter school designee. The district or charter school shall submit the summary of all school health services to the Department by June 30st of each school year.

815 Physical Examinations and Screening

1.0 Physical Examinations

1.1 All public school students shall have a physical examination that has been administered by a licensed medical physician, nurse practitioner or physician's assistant. The physical examination shall have been done within the two years prior to entry into school. Within fourteen calendar days after notification of the requirement for a physical examination, new enterers shall have received a physical examination or shall have a documented appointment with a licensed health care provider for a physical examination.

1.1.1 The requirement for the physical examination may be waived for students whose parent/ ~~or legal~~ guardian[, Relative Caregiver, or the student [~~if 18 years or older~~, or an unaccompanied homeless youth (as defined by 42 USC 11434a)] presents a written declaration acknowledged before a notary public, that because of individual religious beliefs, they reject the concept of physical examinations.

1.1.2 The school nurse shall record all findings on the School Health Record.

Non regulatory note: [R ~~regulations~~ 1051 DIAA Senior High School Interscholastic Athletic[s ~~Association~~] and 1052 DIAA Junior High/Middle School Interscholastic Athletic[s ~~Association for address~~] physical examination requirements associated with participation in sports.

2.0 Screening

2.1 Vision and Hearing Screening

2.1.1 Beginning with the school year 2004-2005, each public school student in kindergarten and in grades 2, 4, 7 and grades 9 or 10 shall receive a vision and a hearing screening by January 15th.

2.1.1.1 In addition to the screening requirements in 2.1.1, screening shall also be provided to new enterers, students referred by a teacher or an administrator, and students considered for special education.

2.1.1.1.1 Driver education students shall have a vision screening within a year prior to their in-car driving hours.

2.1.2 The school nurse shall record the results on the School Health Record and shall notify the parent/guardian[~~, Relative~~] Caregiver or the student (if 18 years or older[, or an unaccompanied homeless youth (as defined by 42 USC 11434a)] if [~~the student has there is~~] a suspected problem.

2.2 Postural and Gait Screening

2.2.1 Each public school student in grades 5 through 9 shall receive a postural and gait screening by December 15th.

2.2.2 The school nurse shall record the findings on the school health record and shall notify the parents/guardian[~~, Relative~~] Caregiver, or the student [~~if 18 years or older~~], or an unaccompanied homeless youth (as defined by 42 USC 11434a)) if a suspected deviation has been detected.

817 Administration of Medications and Treatments

1.0 Medications, in their original container, and treatments may be administered to a public school student by the school nurse when a written request to administer the medication or treatment is on file from the parent/guardian[~~,Relative~~] Caregiver or the student [~~if 18 years or older~~], or an unaccompanied homeless youth (as defined by 42 USC 11434a)). The school nurse shall check the student health records and history for contra indications and all allergies, especially to the medications, and shall provide immediate medical attention if an allergic reaction is observed or make a referral if symptoms/conditions persist. The school nurse shall also document the student's name, the name of medication and/or treatment administered, the date and time it was administered and the dosage if medication was administered.

2.0 Any prescribed medication or treatment administered to a student, in addition to the requirements in 1.0, shall be prescribed by a licensed health care provider. Prescription medication shall be properly labeled with the student's name; the licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia/National Formulary standards.

Treatment, including, specialized health procedures, shall be signed by a licensed health care provider with directions on how and when to administer.

2.1 The prescription and the medication shall be current and long term prescriptions shall be re-authorized at least once a year.

2.2 All medications classified as controlled substances shall be counted and reconciled each month by the school nurse and kept under double lock.

3.0 Non-prescription medications may be given by the school nurse after the nurse assesses the complaint and the symptoms to determine if other interventions can be used before medication is administered and if all requirements in 1.0 have been met.

4.0 For a student who requires significant medical and/or nursing interventions, the Individual Education Program (IEP) team shall include the school nurse.

5.0 Assistance With Medications on Field Trips

5.1 Definitions

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

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

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

"Paraprofessionals" mean teaching assistants or aides.

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

5.2.1 Assistance with medication shall not be provided without the prior written request or consent of a parent[/]guardian[, ~~or~~ Relative] Caregiver (or [the student [f] if 18 years or older[, or an unaccompanied homeless youth (as defined by 42 USC 11434a)]. Said written request or consent shall contain clear instructions including: the student's name; the name of the medication; the dose; the time of administration; and the method of administration. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a field trip.

5.2.2 The prescribed medication, in addition to the requirements in 1.0, shall be prescribed by a licensed health care provider. The medication shall be properly labeled with the students' name; the licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia/National Formulary standards.

5.2.3 A registered nurse employed by the school district in which the student is enrolled shall determine which teachers, administrators and paraprofessionals are qualified to safely assist a student with medication. In order to be qualified, each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 Del.C. §1921. Said nurse shall complete instructor training as designated by the Department of Education and shall submit a list of successful staff participants to the Department of Education. No person shall assist a student with medication without written acknowledgment that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein.

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

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

Non-regulatory note: Regulation 876 Possession, Use and Distribution of Drugs and Alcohol ~~{Section 3.12}~~ addresses student self administration of a prescribed asthmatic quick relief inhaler.

PROFESSIONAL STANDARDS BOARD

IV. Text And Citation

**Regulatory Implementing Order
Regulation 1593 Delaware Professional Teaching
Standards**

The text of the regulation adopted shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code § 1593 in the *Regulations of the Department of Education*.

I. Summary Of The Evidence And Information Submitted

V. Effective Date Of Order

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend regulation 393 Delaware Professional Teaching Standards of the *Regulations of the Department of Education*. The proposed amendments align the Delaware Professional Teaching Standards with the Model Standards for Licensing General and Special Education Teachers of Students with Disabilities developed by the Interstate New Teacher Assessment and Support consortium, a program of the Council of Chief State School Officers. The Delaware Professional Teaching Standards enacted in 1998 were aligned with the INTASC Model Standards for Teachers. The 2001 INTASC Model Standards for Licensing general and Special Education Teachers of Students with Disabilities reflect current research and changes resulting from the last reauthorization of IDEA. The amended regulation will also be renumbered to reflect its movement to the Professional Standards Board section of the regulations. The regulation concerns standards for teachers.

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 12th Day Of June, 2003.

Charles Michels, Chair	Mary Ellen Kotz, Vice Chair
Patricia Clements	Barbara Grogg
Michele Hazeur-Porter	Sherie Hudson
Tony Marchio	Mary Mirabeau
John Pallace	Joanne Reihm
Harold Roberts	Karen Schilling Ross
Teresa Schooley	Carol Vukelich

For Implementation By The Department Of Education:
Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 19th Day Of June, 2003

State Board Of Education

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

II. Findings Of Facts

~~393~~ 1593 Delaware Professional Teaching Standards

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to reflect current research and changes resulting from the last reauthorization of IDEA. The regulation concerns standards for teachers.

1.0 Content: The Delaware Professional Teaching Standards establish a common set of knowledge, skills, and attributes expected of Delaware's teachers. In accordance with 14 Del. C. § 1205, this regulation shall be applied to all teachers employed within the public schools and charter schools of the State of Delaware.

III. Decision To Adopt The Regulation

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to adopt 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 adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

"Alignment of assessment" means the ability to determine what students know and are able to do with respect to the curriculum is dependent upon how well the assessment methods and tasks are aligned with, or in agreement with, the curriculum. Assessments should be

aligned with the content of the curriculum, consistent with the instructional approaches, and address the range of topics as weighted in the curriculum.

“Authentic experiences” means ~~T~~the use of performances, or "authentic activities", such as writing a letter, solving a real-world mathematics problem, or investigating a question in science, as a way to teach and to assess student learning.

“Culturally and/or linguistically diverse” means ~~S~~students and families who come to schools with cultural and/or language backgrounds that differ from the predominant experience of monolingual English speakers. The term calls attention to the range of geographic background, cultural heritage, and level of English proficiency found among students in schools.

“Codes of conduct” mean ~~many professional educational organizations have adopted~~ codes of conduct adopted by professional educational organizations that establish the ethical parameters that guide professional behavior. The codes range from general guides for teachers (NEA) to more specific guidelines for teachers of certain subject area.

“Communication theory” means ~~A~~an understanding of the principles of communication theory (e.g., productive and receptive communication, cultural context of language, metacommunication) as they apply in practice in the classroom.

“Community” means ~~T~~the school community and includes teachers, administrators, students, and parents and/or guardians. However, the schools are a part of a larger community (i.e., neighborhood, town, city) that supports the school and the students will live.

“Disciplines” means ~~A~~academic disciplines which include the arts, humanities, languages, mathematics, and natural and social sciences that provide the basis of the subjects taught in schools.

“Discourse” means ~~discourse refers to~~ both the writing and speaking in the classroom that teachers and students engage in as they seek ways to represent ideas, concepts and their thinking. It is the ways in which they discuss agree and disagree, and explore the discipline.

“Diverse learners” means ~~S~~students are individuals who differ in the ways in which they learn. They have different learning styles, modalities, interests, talents and personalities, all of which affect the ways in which teachers design instruction.

“Domains” means ~~T~~the broad areas of human development - intellectual, social, emotional, and physical - that influence learning.

“Educational Technology” means ~~T~~the use of any technology (e.g., word processing, data retrieval, electronic mail) as a set of skills that can be learned and used to support learning in the classroom.

“Habits of Mind” mean ~~M~~mental habits influence

what students do and how they learn. The development of habits of mind, like perseverance, confidence, a willingness to explore new ideas and experiment, seeking feedback from others, valuing accuracy and precision, avoiding impulsivity, are a part of the teaching and learning process.

“Health” means ~~H~~health issues that can affect learning range from cerebral palsy, Down's Syndrome, and other severe disabilities to less pronounced and not easily detected concerns such as diabetes or asthma or nutrition. An awareness of these conditions and how they affect learning furthers a teacher's ability to meet the needs of students.

“Instructional ~~T~~technology” means ~~T~~the use of specific technologies that are integrated with content to enhance learning within the disciplines (e.g., graphing calculators in mathematics, accounting or tax software in business, editing software for writing).

“Learning ~~T~~theory” means ~~A~~an understanding of the principles of learning theory (e.g., behaviorism, constructivism, transmission of knowledge) as they apply in practice in the classroom.

“Meaningful (to students)” means ~~Meaningful is intended~~ to convey a sense of purpose to students for their learning. The content takes on significance because of the connections that are made between the learning and students' lives. It helps students make sense out of what they are learning.

“Measurement ~~T~~theory” means ~~A~~an understanding of the principles of measurement theory (e.g., validity, reliability, bias in testing, test construction, interpretation of tests) as they apply in practice in the classroom.

“Media ~~C~~ommunication” means ~~T~~the use of technologies that document events (e.g., audio- tape, videotape, electronic transfer of information through computer programs) as a means of communicating information.

“Methods (~~P~~rocess) of ~~I~~nquiry” means ~~Inquiry is~~ the process through which students make new discoveries, extend their knowledge, or deepen their understandings of things they already know. Students need to be able to create, observe, compare, question, record and interpret data, evaluate and revise, search resources, and share information.

“Multicultural” means ~~The term multicultural is usually used as an adjective to describe~~ the diverse cultural backgrounds of students and their families and school personnel, with an emphasis on their ethnicity, race, religion, gender, socio-economic status, and family structures. The term takes on importance in the development of teachers as they learn to recognize the importance of these factors in the education process.

“Multiple ~~A~~ssessments” means ~~D~~decisions about what students know and are able to do should be based on an analysis of information obtained from a variety of sources of evidence. Assessments should be conducted in a variety of formats (e.g., written and oral tests, observations,

performances) and address the full range of content.

“Multiple Intelligences” means Based on the writing of Howard Gardner, the identification of seven abilities (i.e., linguistic, logical-mathematical, spatial, musical, bodily-kinesthetic, inter-personal, intra-personal) that describe distinct aspects of "intelligent."

“Nonverbal Communication” means Communication through means other than the use of words (e.g., facial expressions, body position, action).

“Pedagogical Knowledge” means Pedagogical knowledge is the knowledge of how to teach the knowledge of instructional methods.

“Performance” means Carrying out or completing an activity or production which displays a student's knowledge and ability through demonstration.

“Performance Modes” means The range of ways in which students can demonstrate what they know and are able to do (e.g., writing, speaking, visual works, videotapes, enacting).

“Professional Growth” means The process in which teachers examine the relationship between what they and their students are doing and what their students are learning. This process involves self-reflection and feedback from students and colleagues and an exploration of the findings from research, as well as the use of this information as the basis for improving personal practice in the future.

“Structures” means The structures of disciplines which provide the overall framework which both connects and transcends the skills and content of the discipline. The big picture or outline of the discipline helps students understand the commonalties and the interrelationships of concepts within a discipline. An understanding of the structure of a discipline allows students to see connections as they acquire new knowledge.

“Technology” means The use of the word technology is meant to encompass both educational and instructional technology within this document unless one of these terms is used specifically.

“Theory” means The knowledge of the principles and methods of a science (e.g., learning, measurement) as contrasted with its application.

3.0 +0 Content: [Content Knowledge:] The teacher understands the core concepts and structure(s) of the discipline(s) and their related content standards and creates learning experiences that make the content meaningful to students.

3+.1 Knowledge Components

3+.1.1 Understands major concepts, principles, and theories that are central to the discipline

3+.1.2 Understands the dynamic and complex nature of the content of the discipline

3+.1.3 Understands the processes of inquiry central to the discipline

3+.1.4 Understands the relationship of knowledge within the discipline to other content areas and to life applications

3+.2 Performance Indicators

3+.2.1 Uses a variety of explanations and multiple representations of concepts to help develop conceptual understanding

3+.2.2 Anticipates and adjusts for common misunderstandings that impede learning within the discipline

3+.2.3 Engages students in generating and testing knowledge according to the processes of inquiry of the discipline

3+.2.4 Creates learning experiences that make connections to other content areas and to life experiences

4 2.0 Human Development and Learning: The teacher understands how children develop and learn and provides learning opportunities that support the intellectual, social, emotional and physical development of ~~the students~~ each learner.

42.1 Knowledge Components

42.1.1 Understands learning theory, including how students construct knowledge, acquire skills, and develop habits of mind

42.1.2 Understands human development, including the ranges of individual variation within each domain

42.1.3 Understands the interaction between student development and learning

42.2 Performance Indicators

42.2.1 Chooses developmentally appropriate instructional strategies that promote student learning

42.2.2 Develops concepts and principles at different levels of complexity so that they are meaningful to students at varying levels of development

4 3.0 Diverse Learners: The teacher understands how students differ and adapts instruction for diverse learners.

43.1 Knowledge Components

43.1.1 Understands how student learning is influenced by individual experiences, talents, and prior learning, as well as language, culture, gender, health, family, and community

43.1.2 Understands differences in approaches to learning and performance, including learning styles, multiple intelligences, and performance modes

43.1.3 Understands cultural diversity and how to incorporate multi-cultural experiences into instruction

43.1.4 Understands areas of exceptionality in learning, including talented and gifted and special needs, and how to access strategies to accommodate individual differences

43.1.5 Understands the process of second language acquisition and how to access strategies to support

learning for students whose first language is not English

43.1.6 Understands the needs of culturally and/or linguistically diverse students

43.1.7 Understands when and how to access appropriate resources or services to meet special learning needs

43.1.8 Understands the major principles and parameters of federal and state disability legislation and regulation.

43.2 Performance Indicators

43.2.1 Accepts and values all students

43.2.2 Treats all students equitably

43.2.3 Respects students as individuals with differing experiences, skills, talents, and interests

43.2.4 Uses cultural diversity and individual student experiences to enrich instruction

43.2.5 Designs instructional activities that address the range of student learning styles, multiple intelligences and performance modes

43.2.6 Makes appropriate provisions for individual students who have particular learning differences or needs

54.0 Communication: The teacher understands and uses effective communication.

54.1 Knowledge Components

54.1.1 ~~Understands communication theory and its application~~ Understands the general types of communication strategies and appropriate assistive technology that can be incorporated as a regular part of their instruction.

54.1.2 Understands effective oral, written, nonverbal, and media communication techniques

54.1.3 Understands the importance of audience and purpose when selecting ways to communicate ideas

54.1.4 ~~Understands how cultural and gender differences may affect communication in the classroom~~ Understands potential positive and negative effects of their verbal and non-verbal messages on students with cultural, gender and ability differences.

54.2 Performance Indicators

54.2.1 Uses a variety of communication techniques

54.2.2 Communicates effectively with diverse populations

54.2.3 Models accurate and grammatically correct language

54.2.4 Creates opportunities for students to learn effective communication

65.0 Learning Environment: The teacher understands individual and group behavior and creates a learning environment that fosters active engagement, self-motivation, and positive social interaction.

65.1 Knowledge Components

65.1.1 Understands principles of effective classroom management

65.1.2 understands factors that influence motivation and engagement and how to help students become self-motivated

65.1.3 Understands individual behavior and how individuals behave in groups

65.1.4 Understands group dynamics and how groups function within a community

65.1.5 Understands how to help students learn to participate effectively in group

65.2 Performance Indicators

65.2.1 Establishes and maintains a classroom environment with clear expectations and standards of behavior

65.2.2 Organizes, allocates, and manages time, materials, and physical space to support learning

65.2.3 Establishes classroom practices that promote a safe environment

65.2.4 Creates a learning community which respects individual differences

65.2.5 Establishes a classroom environment which promotes positive relationships, cooperation, and purposeful learning

65.2.6 Creates a classroom environment where student thoughts and ideas are a basis for exploring and developing understanding

65.2.7 Creates a learning community in which students work independently and collaboratively

65.2.8 Encourages students to assume responsibility for their own learning and behavior

76.0 Planning for Instruction: The teacher understands instructional planning and designs instruction based upon knowledge of the disciplines, students, the community, and Delaware's student content standards.

76.1 Knowledge Components

76.1.1 Understands how to incorporate learning theory, content, curriculum development, and assessment, and student development when planning

76.1.2 Understands that effective instructional planning includes the alignment of assessment and instruction prior to implementation

76.1.3 Understands how to develop short- and long-range plans consistent with curriculum goals, learner diversity, and learning theory

76.1.4 Understands how to make connections between student experiences and education goals

7.1.5 Understands how to maximize the participation and engagement of students with disabilities in a general or expanded curriculum.

76.2 Performance Indicators

76.2.1 Evaluates teaching resources and materials for accuracy and usefulness

76.2.2 Applies principles of scope and sequence when planning instruction

76.2.3 Creates approaches to learning that are interdisciplinary and that integrate multiple content areas

76.2.4 Creates and selects learning materials and learning experiences appropriate for the discipline and curriculum goals

76.2.5 Uses student prior knowledge and principles of effective instruction to plan learning activities relevant to students

76.2.6 Incorporates authentic experiences into instructional planning

76.2.7 Creates multiple learning activities that allow for student choice

76.2.8 Establishes and communicates expectations for student learning

76.2.9 Creates and adapts short- and long-range plans to achieve the expectations for student learning

76.2.10 Incorporates assessment components into instructional planning

87.0 Instructional Strategies: The teacher understands a variety of instructional approaches and uses them to promote student thinking, understanding, and application of knowledge.

87.1 Knowledge Components

87.1.1 Understands principles and techniques of a broad range of instructional approaches, including questioning, problem solving, discourse, activation of prior knowledge, and student reflection on learning

87.1.2 Understands the relationship between instructional approaches, assessment, and the types of learning promoted

87.1.3 Understands how instructional materials and educational technologies enhance learning

87.2 Performance Indicators

87.2.1 Uses a range of instructional approaches that allows students to explore concepts and develop an in-depth understanding of content

87.2.2 Designs lessons that routinely engage students in activities that develop problem solving and critical thinking skills

87.2.3 Designs instructional activities that provide opportunities for students to apply knowledge

87.2.4 Uses a variety of materials and educational technologies to enhance student thinking and further conceptual understanding

87.2.5 Assumes different roles in the instructional process based on the content and purposes of instruction

87.2.6 Uses a range of questioning techniques to promote different levels of understanding

87.2.7 Emphasizes communication as a vehicle for learning, through the use of discussion, listening,

collaboration, and responding to the ideas of others

87.2.8 Links new concepts to student prior knowledge

87.2.9 Promotes student awareness of their own thought processes and how to use reflection to build new understandings

87.2.10 Incorporates assessment components into instructional delivery

98.0 Assessment: The teacher understands multiple assessment strategies and uses them for the continuous development of students.

98.1 Knowledge Components

98.1.1 Understands measurement theory, including principles of testing and assessment (e.g., design, validity, reliability, and bias)

98.1.2 Understands assessment as a means of collecting information about student progress

98.1.3 Understands the purposes and characteristics of different kinds of assessments

98.1.4 Understands how to select, construct, and use assessment strategies and instruments for diagnosis and evaluation of learning

98.1.5 Understands how to use the results of assessment to reflect on and modify teaching

98.2 Performance Indicators

98.2.1 Uses assessment to diagnose student learning needs as a basis for designing instruction

98.2.2 Uses a variety of assessment modes and multiple measures to evaluate student learning

98.2.3 Uses both formal and informal assessment strategies to monitor and evaluate student understanding, progress, and performance

98.2.4 Aligns assessment with instruction

98.2.5 Maintains accurate records and communicates student progress

98.2.6 Involves students in self-assessment to help them become aware of their strengths and needs

98.2.7 Encourages students to establish personal goals for learning based on self-assessment and assessment results

98.2.8 Modifies instruction based on assessment results

109.0 Professional Growth: The teacher understands the importance of continuous learning and pursues opportunities to improve teaching.

109.1 Knowledge Components

109.1.1 Understands that reflection on teaching is an integral part of professional growth

109.1.2 Understands the implications of educational research for teaching

109.1.3 Understands methods of inquiry that provide for a variety of self-assessment and problem-solving

strategies for reflecting on practice

109.2 Performance Indicators

109.2.1 Engages in continuous learning

109.2.2 Participates in professional discourse about educational issues

109.2.3 Uses classroom observation, information about students, pedagogical knowledge, and research as sources for active reflection, evaluation, and revision of practice

109.2.4 Collaborates with other professionals as resources for problem-solving, generating new ideas, sharing experiences, and seeking and giving feedback

11+0.0 Professional Relationships: The teacher understands the role of the school in the community and collaborates with colleagues, parents/guardians, and other members of the community to support student learning and well-being.

11+0.1 Knowledge Components

11+0.1.1 Understands how schools are organized and operate

11+0.1.2 Understands schools as organizations within the larger community context

11+0.1.3 Understands the importance of community-school interaction

11+0.1.4 Understands the importance of collaboration in education

11+0.2 Performance Indicators

11+0.2.1 Cooperates with colleagues to develop an effective learning climate within the school

11+0.2.2 Collaborates with other professionals to solve problems and make decisions to promote student success

11+0.2.3 Develops relationships with parents and guardians to acquire an understanding of the students' lives outside of the school

11+0.2.4 Works effectively with parents/guardians and other members of the community to advocate for student need and to promote learning

11+0.2.5 Identifies and uses community resources to enhance student learning and to provide opportunities for students to explore career opportunities

12+1.0 Educational Technology: The teacher understands the role of educational technology in learning and uses educational technology as an instructional and management tool.

12+1.1 Knowledge Components

12+1.1.1 Understands how to use various educational technological tools to access and manage information

12+1.1.2 Understands how to integrate educational technology into classroom instruction

12+1.1.3 Understands how to review and evaluate

educational technologies to determine instructional value

12+1.1.4 Understands the uses of instructional technology to address student needs

12+1.2 Performance Indicators

12+1.2.1 Designs instruction to promote student skills in the use of educational technologies to access and manage information

12+1.2.2 Uses a wide range of instructional technologies to enhance student learning and problem-solving

12+1.2.3 Uses technological advances in communication to enrich discourse in the classroom

12+1.2.4 Uses appropriate educational technology to create and maintain data bases for monitoring student progress

13+2.0 Professional Conduct: The teacher understands and maintains standards of professional conduct guided by legal and ethical principles.

13+2.1 Knowledge Components

13+2.1.1 Understands school policies and procedures

13+2.1.2 Understands legal issues in education

13+2.1.3 Understands the codes of conduct of professional education organizations

13+2.2 Performance Indicators

13+2.2.1 Acts in the best interests of students

13+2.2.2 Follows school policies and procedures, respecting the boundaries of professional responsibilities, when working with students, colleagues, and families

13+2.2.3 Follows local, state, and federal law pertaining to educational and instructional issues, including regulations related to student rights and teacher responsibilities

13+2.2.4 Interacts with students, colleagues, parents, and others in a professional manner

13+2.2.5 Follows codes of professional conduct adopted by the Delaware Professional Standards Board.

~~13.0 "Alignment of Assessment": The ability to determine what students know and are able to do with respect to the curriculum is dependent upon how well the assessment methods and tasks are aligned with, or in agreement with, the curriculum. Assessments should be aligned with the content of the curriculum, consistent with the instructional approaches, and address the range of topics as weighted in the curriculum.~~

~~"Authentic Experiences": The use of performances, or "authentic activities", such as writing a letter, solving a real-world mathematics problem, or investigating a question in science, as a way to teach and to assess student learning.~~

~~"Culturally and/or Linguistically Diverse": Students and families who come to schools with cultural and/or language backgrounds that differ from the predominant experience of~~

monolingual English speakers. The term calls attention to the range of geographic background, cultural heritage, and level of English proficiency found among students in schools.

“Codes of Conduct”: Many professional educational organizations have adopted codes of conduct that establish the ethical parameters that guide professional behavior. The codes range from general guides for teachers (NEA) to more specific guidelines for teachers of certain subject area.

“Communication Theory”: An understanding of the principles of communication theory (e.g., productive and receptive communication, cultural context of language, metacommunication) as they apply in practice in the classroom.

“Community”: The school community includes: teachers, administrators, students, and parents and/or guardians. However, the schools are a part of a larger community (i.e., neighborhood, town, city) that supports the school and the students will live.

“Disciplines”: Academic disciplines include the arts, humanities, languages, mathematics, and natural and social sciences that provide the basis of the subjects taught in schools.

“Discourse”: Discourse refers to both the writing and speaking in the classroom that teachers and students engage in as they seek ways to represent ideas, concepts and their thinking. It is the ways in which they discuss agree and disagree, and explore the discipline.

“Diverse learners”: Students are individuals who differ in the ways in which they learn. They have different learning styles, modalities, interests, talents and personalities, all of which affect the ways in which teachers design instruction.

“Domains”: The broad areas of human development—intellectual, social, emotional, and physical—that influence learning.

“Educational Technology”: The use of any technology (e.g., word processing, data retrieval, electronic mail) as a set of skills that can be learned and used to support learning in the classroom.

“Habits of Mind”: Mental habits influence what students do and how they learn. The development of habits of mind, like perseverance, confidence, a willingness to explore new ideas and experiment, seeking feedback from others, valuing accuracy and precision, avoiding impulsivity, are a part of the teaching and learning process.

“Health”: Health issues that can affect learning range from cerebral palsy, Down's Syndrome, and other severe disabilities to less pronounced and not easily detected concerns such as diabetes or asthma or nutrition. An awareness of these conditions and how they affect learning furthers a teacher's ability to meet the needs of students.

“Instructional Technology”: The use of specific technologies that are integrated with content to enhance learning within the disciplines (e.g., graphing calculators in

mathematics, accounting or tax software in business, editing software for writing).

“Learning Theory”: An understanding of the principles of learning theory (e.g., behaviorism, constructivism, transmission of knowledge) as they apply in practice in the classroom.

“Meaningful (to students)”: Meaningful is intended to convey a sense of purpose to students for their learning. The content takes on significance because of the connections that are made between the learning and students' lives. It helps students make sense out of what they are learning.

“Measurement Theory”: An understanding of the principles of measurement theory (e.g., validity, reliability, bias in testing, test construction, interpretation of tests) as they apply in practice in the classroom.

“Media Communication”: The use of technologies that document events (e.g., audio tape, videotape, electronic transfer of information through computer programs) as a means of communicating information.

“Methods (Process) of Inquiry”: Inquiry is the process through which students make new discoveries, extend their knowledge, or deepen their understandings of things they already know. Students need to be able to create, observe, compare, question, record and interpret data, evaluate and revise, search resources, and share information.

“Multicultural”: The term multicultural is usually used as an adjective to describe the diverse cultural backgrounds of students and their families and school personnel, with an emphasis on their ethnicity, race, religion, gender, socio-economic status, and family structures. The term takes on importance in the development of teachers as they learn to recognize the importance of these factors in the education process.

“Multiple Assessments”: Decisions about what students know and are able to do should be based on an analysis of information obtained from a variety of sources of evidence. Assessments should be conducted in a variety of formats (e.g., written and oral tests, observations, performances) and address the full range of content.

“Multiple Intelligences”: Based on the writing of Howard Gardner, the identification of seven abilities (i.e., linguistic, logical-mathematical, spatial, musical, bodily-kinesthetic, inter-personal, intra-personal) that describe distinct aspects of “intelligent.”

“Nonverbal Communication”: Communication through means other than the use of words (e.g., facial expressions, body position, action).

“Pedagogical Knowledge”: Pedagogical knowledge is the knowledge of how to teach the knowledge of instructional methods.

“Performance”: Carrying out or completing an activity or production which displays a student's knowledge and ability through demonstration.

“Performance Modes”: The range of ways in which

students can demonstrate what they know and are able to do (e.g., writing, speaking, visual works, videotapes, enacting).

~~"Professional Growth": The process in which teachers examine the relationship between what they and their students are doing and what their students are learning. This process involves self-reflection and feedback from students and colleagues and an exploration of the findings from research, as well as the use of this information as the basis for improving personal practice in the future.~~

~~"Structures": The structures of disciplines provide the overall framework which both connect and transcend the skills and content of the discipline. The big picture or outline of the discipline helps students understand the commonalities and the interrelationships of concepts within a discipline. An understanding of the structure of a discipline allows students to see connections as they acquire new knowledge.~~

~~"Technology": The use of the word technology is meant to encompass both educational and instructional technology within this document unless one of these terms is used specifically.~~

~~"Theory": The knowledge of the principles and methods of a science (e.g., learning, measurement) as contrasted with its application.~~

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

Statutory Authority: 11 Delaware Code,
Chapter 85 (11 Del.C. Ch. 85)

ORDER

Regulations Governing the Adult Abuse Registry

Nature of the Proceedings:

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with 29 Delaware Code, Chapter 101 to amend the Regulations Governing the Adult Abuse Registry. On May 1, 2003 DLTCRP published proposed amendments to two regulations in the Register of Regulations and received written and verbal comments at a public hearing on June 4. DLTCRP evaluated the comments; and the evaluation of those comments is in the accompanying Summary of Evidence.

Findings of Fact:

The Department of Health and Social Services finds that the proposed amendments to the Regulations Governing the Adult Abuse Registry, as set forth in the attached copy, should be adopted as final regulations. Therefore, it is ordered that the proposed regulations are adopted effective July 10, 2003.

Vincent P. Meconi, Secretary, DHSS, 6/13/2003

Summary of Evidence:

Two identical sets of written comments were received. Both endorsed the amendments to the regulations.

Additionally, oral comments were received at the public hearing which addressed aspects of the Adult Abuse Registry. While those comments were noted, they did not pertain to the amendments which were the subject of the public hearing; and, therefore, are not relevant to the adoption of the amendments to the regulations.

Section I: Definitions

"Abuse" shall have the same meaning as contained in 16 Del. C., § 1131, and shall include mistreatment, neglect and financial exploitation as defined therein.

"Child Care Facility" means any child care facility which is required to be licensed by the Department of Services for Children, Youth and Their Families.

"Contractor" means an entity under contract to provide services for more than 20 hours per week (aggregate) and for more than six weeks in a twelve month period for a health care service provider, and whose employees have the opportunity for direct access to persons receiving care. For purposes of these regulations, contractor does not include construction contractors.

"Department" means the Department of Health and Social Services.

"Direct Access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

"Division" means the Division of Long Term Care Residents Protection.

"Health Care Service Provider" means any person or entity that provides services in a custodial or residential setting where health, nutritional or personal care is provided for persons receiving care, including but not limited to, hospitals, home health care agencies, adult care facilities, temporary employment agencies and contractors that place employees or otherwise provide services in custodial or residential settings for persons receiving care, and hospice agencies. Health Care Service Provider does not include any private individual who is seeking to hire a self-employed health caregiver in a private home.

"Nursing Facility and Similar Facility" means any facility required to be licensed under 16 Del. C., Ch. 11. This includes, but is not limited to, facilities commonly called nursing homes, assisted living facilities, intermediate care facilities for persons with mental retardation, neighborhood group homes, family care homes and rest residential care facilities. Also included are the Stockley Center, the Delaware Psychiatric Center and hospitals certified by the Department of Health and Social Services pursuant to 16 Del. C. § 5001 or 5136.

"Person Receiving Care" means any person who, because of his/her physical or mental condition, requires a level of care and services suitable to his/her needs to contribute to his/her health, comfort and welfare.

"Person Seeking Employment" means any person applying for employment with or in a health care service provider, nursing facility or similar facility that may afford direct access to persons receiving care at such facility, or a person applying for licensure to operate a child care facility. It shall also include a self-employed health caregiver who has direct access in any private home.

"Substantiated Pending Appeal" refers to a placement on the Registry based on an investigative finding prior to the subject exercising his/her right to appeal.

"Substantiated Abuse" means that, weighing the facts and circumstances, a reasonable person has concluded by a preponderance of evidence that the identified individual has committed adult abuse for the purpose of placement on the Adult Abuse Registry.

See 5 DE Reg. 1073 (11/1/01)

Section 2: Use of Registry

(A) No health care service provider, to include nursing and similar facilities, or child care facility shall hire any person seeking employment or retain any contractors without requesting and receiving an Adult Abuse Registry check for such person.

(1) Any employer who is required to request an Adult Abuse Registry check shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check. Said authorization shall include the following language: "I hereby release the indicated employer to obtain from the Division of Long Term Care Residents Protection any information concerning me which may be on the Adult Abuse Registry pursuant to 11 Del. C., § 8564."

(2) When exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check.

(3) The person shall be informed in writing, and shall acknowledge in writing, that his or her employment is

conditional, and contingent upon receipt of the Adult Abuse Registry check.

(B) Private individuals seeking to hire an individual to provide health care services in a private residence may request the Division to determine if the potential employee is listed on the Adult Abuse Registry. A short letter of request along with a release form signed by the prospective employee may be mailed or faxed to the Division of Long Term Care Residents Protection (DLTCRP) # 3 Mill Road, Suite 308, Wilmington, DE 19806, fax number (302) 577-6673.

See 5 DE Reg. 1073 (11/1/01)

Section 3: Investigation of Adult Abuse

(A) The Division shall investigate any individual against whom an allegation of adult abuse has been made in accordance with the time frames delineated in 16 Del. C., § 1134(d).

(B) If the investigation substantiates pending appeal that the alleged abuse occurred, the Division's Investigations Unit Chief shall enter on the Adult Abuse Registry, with a finding of "Substantiated Pending Appeal," the individual's name, date/time of the incident, a description of same and the length of time the finding shall remain on the Registry.

(C) The Division may accept preliminary investigations by a state agency or an entity contracted by a state agency. The Division will review and may revise the findings upon further investigation.

(D) Upon placement of a person on the Adult Abuse Registry, the Division will notify the facility from which the complaint originated as well as the current employer, if different, and the victim that the person is on the Registry as "Substantiated Pending Appeal."

See 5 DE Reg. 1073 (11/1/01)

Section 4: Administrative Hearings

(A) An individual against whom an allegation is substantiated pending appeal shall be notified by certified mail at his/her home address, to be followed by written notice in care of his/her current employer at the discretion of the Division, that his/her name has been entered on the Adult Abuse Registry and shall be offered a right to an administrative hearing. The burden of proof in such hearing shall be on the Division. Individuals shall be informed upon completion of the investigation of the following:

(1) The date and time of the incident if known.

(2) The name and type of facility where the incident occurred.

(3) A brief description of the incident.

(4) Length of time the finding remains on the Adult Abuse Registry.

(B) All requests for an administrative hearing must be received in writing, postmarked within 30 days of the date of the notice that a finding of abuse has been substantiated

pending appeal. The Director or his/her designee shall dismiss untimely requests for hearing except when the individual submits evidence of good cause.

(C) An individual who fails to request an administrative hearing as described above shall have his/her name and information regarding the incident changed from a finding of "Substantiated Pending Appeal" to a finding of "Substantiated Abuse" on the Adult Abuse Registry. At that time the Division shall notify the individual, the facility from which the complaint originated as well as the current employer, if different, and the victim that the individual is on the Registry with a finding of "Substantiated Abuse."

(D) An individual who has entered a plea or who has been convicted by a court of law of adult abuse a criminal offense based on the same conduct that resulted in placement on the Adult Abuse Registry shall have the right to an administrative hearing solely to challenge the proposed length of time of registration on the Adult Abuse Registry.

(E) The hearing officer shall have the power to compel the attendance of witnesses and the production of evidence. Under no circumstance shall the hearing officer order the release of the investigative report and documents attached thereto, provided however, the hearing officer may order the release of statements of witnesses.

(F) The hearing officer should receive requests for witnesses and/or the production of evidence no less than ten business days prior to the hearing date.

(G) The individual shall be afforded an opportunity to appear with or without an attorney, submit documentary evidence, present witnesses, and question any witness the Division presents. Limited continuances shall be granted for good cause.

(H) If, at the conclusion of the hearing, the hearing officer concludes by a preponderance of evidence, that the identified individual has committed adult abuse, for the purpose of placement on the Adult Abuse Registry, a notice of "Substantiated Abuse" shall be placed on the Adult Abuse Registry. If, at the conclusion of the hearing, the hearing officer concludes that the individual has not committed adult abuse, the finding of "Substantiated Pending Appeal" shall be removed from the Adult Abuse Registry.

(I) The hearing officer shall render a written decision within thirty working days of the hearing and will notify the individual, the Division, the facility and the victim of the decision. The notice will specify the reasons for the decision and, if the finding is substantiated, the length of time the finding of substantiated abuse shall remain on the Adult Abuse Registry.

(J) Any person placed on the Adult Abuse Registry shall have the right to appeal the decision within thirty days of the finding. The decision of the hearing officer may be appealed on the record to Superior Court.

See 5 DE Reg. 1073 (11/1/01)

Section 5: Length of Time on the Adult Abuse Registry

(A) The length of time on the Adult Abuse Registry shall be based on the seriousness of the incident and whether there exists a pattern of adult abuse. Evidence of mitigating circumstances may be considered.

(B) The names of registrants with findings of abuse, neglect or misappropriation entered on the Registry of Nurse Aides created pursuant to 42 CFR § 483 shall be entered on the Adult Abuse Registry with a finding of substantiated abuse. There shall be a right of appeal for findings entered on the Adult Abuse Registry under this section solely to challenge the proposed length of time of registration on the Adult Abuse Registry.

(C) Upon final disposition of the allegation, the Division shall notify, in writing, the victim, the facility where the incident occurred as well as the current employer of the individual, if different, of the final disposition.

See 5 DE Reg. 1073 (11/1/01)

Section 6: Removal of a Person from the Adult Abuse Registry

(A) The Department shall be authorized to remove a person from the Adult Abuse Registry before the expiration of his/her registration period when the Department deems that the person no longer poses a threat to any person receiving care in accordance with 11 Del. C., § 8564(g).

(B) A person whose name has been placed on the Adult Abuse Registry shall have the right to petition the Division, in writing, for the removal of his/her name from the Registry. Said petitioner must demonstrate:

(1) A minimum of twelve months has passed since his/her placement on the Registry.

(2) Affirmative steps have been taken to correct behavior that led to placement on the Registry, i.e. anger management counseling, drug/alcohol treatment, sensitivity training, etc.

(3) Demonstrated improved behavior through work references.

(C) The Division will evaluate the information provided by the petitioner and respond in writing within 60 days of receipt of all information provided by the petitioner. The Division is authorized to grant or deny the removal based on the review of the information presented. If the Division denies the request, the petitioner may request a hearing to appeal the denial, or reapply for the removal after 6 months or when the petitioner can produce evidence of performance of the affirmative steps listed above.

See 5 DE Reg. 1073 (11/1/01)

Section 7: Disclosure of Adult Abuse Registry Records

Except as otherwise provided in these regulations, the dissemination of information contained in the Adult Abuse Registry shall be limited as follows:

(A) Hearing Officer Opinions shall be released upon

request to the following:

- (1) The subject of the hearing.
- (2) A victim identified by name in the record or his/her legal representative.
- (3) Law enforcement officials pursuant to an official investigation.
- (4) The Long Term Care Ombudsman pursuant to a complaint from a victim identified in the record.
- (5) The Medicaid Fraud Control Unit of the Department of Justice.
- (6) The Division of Professional Regulation if a finding of substantiated abuse pertains to a licensed professional.

(B) Investigative files shall be released upon request to:

- (1) Law enforcement officials pursuant to an official investigation.
- (2) The Medicaid Fraud Control Unit of the Department of Justice.
- (3) Rights protection agencies otherwise entitled under applicable federal or state law.

See 5 DE Reg. 1073 (11/1/01)

ADDENDUM REPORTING TO NURSE AIDE REGISTRY

In accordance with 42 CFR § 483, the Division of Long Term Care Residents Protection will report findings of abuse to the Nurse Aide Registry under the following procedure:

1. When the Division has substantiated pending appeal a finding of abuse, neglect, mistreatment or financial exploitation against a certified nurse assistant, a determination will be made whether the substantiated findings meet the criteria required in the federal regulations or the criteria in state statute and regulations.

2. If the findings support the criteria for abuse, mistreatment or misappropriation of property in the federal regulations, the certified nurse assistant will be notified that his/her name is both reported to the Nurse Aide Registry and placed on the Adult Abuse Registry, and that he/she has a right to a hearing. The CNA will also be notified that, with regard to the Nurse Aide Registry, a substantiated finding will result in a lifetime prohibition against employment in a federally certified facility.

3. If the findings support the criteria for neglect in the federal regulations, the certified nurse assistant will be notified that his/her name is both reported to the Nurse Aide Registry and placed on the Adult Abuse Registry, and that he/she has a right to a hearing. The CNA will also be notified that, with regard to the Nurse Aide Registry, a substantiated finding of neglect will result in a lifetime prohibition against employment in a federally certified facility. However, the CNA will be further informed of his/her right to petition the Division to have the report removed from the Nurse Aide Registry in accordance with

§1819(g)(1)(D) of the Social Security Act.

4. The notice to the certified nurse assistant will include an explanation that the hearing described in the Adult Abuse Registry regulations will also consider the placement of the CNA on the Nurse Aide Registry. The CNA will be informed that if the evidence presented at a hearing does not warrant a finding of abuse, neglect, mistreatment or misappropriation of property under the federal regulations, the evidence will be considered to determine whether it meets the criteria for abuse, neglect, mistreatment or financial exploitation under the state Adult Abuse statute.

See 5 DE Reg. 1073 (11/1/01)

DIVISION OF PUBLIC HEALTH OFFICE OF EMERGENCY MEDICAL SERVICES

Statutory Authority: 16 Delaware Code,
Section 9706(h) (16 Del.C. §9706(h))

ORDER

Pre-Hospital Advanced Care Directive Regulations

Nature Of The Proceedings:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt State of Delaware Pre-Hospital Advanced Care Directive Regulations. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 97.

On November 1, 2002 (Volume 6, Issue 5), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December 1, 2002, or be presented at a public hearing on November 26, 2002, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations. During the public hearing it was announced that the public comment period would be extended to December 31, 2002, to allow additional time to review the proposed Pre-Hospital Advanced Care Directive form.

Verbal and written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Findings Of Fact:

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

The proposed regulations include modifications from those published in the November 1, 2002, Register of Regulations, based on comments received during the public comment period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Pre-Hospital Advanced Care Directive Regulations are adopted and shall become effective July 10, 2003, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary, 6/13/2003

Summary Of Evidence

A public hearing was held November 26, 2002 at 9:00 a.m., in the Conference Room of the Office of Emergency Medical Services, Blue Hen Corporate Center, Suite 4-H, 655 S. Bay Road, Dover, Delaware before David P. Walton, Hearing Officer, to discuss the proposed Department of Health and Social Services (DHSS) Pre-Hospital Advanced Care Directive Regulations. Announcements regarding the public hearing were published in the Delaware State News, The News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Andy Kloefer from the Office of Emergency Medical Services (OEMS) of the Division of Public Health (DPH) made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Testimony was given at the public hearing and six letters were received commenting on the proposed regulations during the public comment period (November 1, 2002 through December 31, 2002). Organizations that commented on the proposed regulations included:

- Delaware Health care Facility Association
- Christiana Care Hospital Services Ethics Committee
- Governor's Advisory Council for Exceptional Citizens
- State Council for Persons with Disabilities
- Courtland Manor Inc., Nursing and Convalescent Home
- Kent County Department of Public Safety, Emergency Medical Services Division

All public comments and the DHSS (Agency) responses are as follows:

- **Would emergency medical services (EMS) respect an Advanced Directive?**

Agency Response: The purpose for these regulations is to set the process whereby pre-hospital emergency medical service providers will know the wishes of a patient. Only Delaware Pre-Hospital Advanced Care Directive (PACD) forms authorized by these regulations will be recognized by pre-hospital emergency medical service providers.

- **In Delaware for an Advanced Directive to be valid for a resident in a nursing home we have to have a representative come into the office with them and sign as witnesses; would this be a requirement for the PACD form?**

Agency Response: No witnesses are needed, however a surrogate can complete the PACD form for a terminally ill person if the person is unable to do so. Physician signature is required on the PACD form.

- **Has there been any communication between the Office of Emergency Medical Services and the Division of Long Term Care Residents Protection through survey or anything of written regulation as to who is going to assume the responsibility of the protocols that are being followed?**

Agency Response: Long Term Care Resident Protection is not required to make this a survey issue. Electing to have a Pre-Hospital Advanced Care Directive is a self-determination and personal choice matter, not a mandated program.

- **Are the facilities that are going to be surveyed regarding these protocols going to be cited if there is a patient in their building that is terminal?**

Agency Response: This is not a mandated program. This is about a person with a terminal illness choosing to have a Pre-Hospital Advanced Care Directive for purposes of alerting pre-hospital emergency medical service providers of his or her treatment wishes.

- **Who has the responsibility for originating the request for the PACD form to be signed?**

Agency Response: This is a personal choice made by each individual.

- **Who is going to coordinate this information and educate health care system providers and**

physicians regarding this regulation and PACD form?

Agency Response: The Office of Emergency Medical Services will coordinate training for health care providers and physicians to include training in each county during the Summer of 2003.

- **Who is going to be held liable if the physician does not comply with the completion of the form?**

Agency Response: It is beyond the scope of these regulations to assign liability if a physician refuses to sign a patient's Pre-Hospital Advanced Care Directive form.

- **Does this form negate the need for a living will or power of attorney?**

Agency Response: No. The PACD form is different and has a different purpose than a living will or power of attorney. The PACD form is specifically designed for pre-hospital EMS providers to determine a terminally ill patient's treatment wishes.

- **If the person is terminal and they have this form (PACD) and they can think through the form, do they also need to have a living will or power of attorney?**

Agency Response: The living will, power of attorney and PACD form are separate documents used for different purposes. EMS and the Department will not require a living will or a power of attorney if the PACD form is properly completed and signed by a physician.

- **Does the PACD form supercede any other forms?**

Agency Response: The PACD form does not supercede any other forms. This is the first of its kind designed specifically for the pre-hospital EMS provider.

- **If a person has an Advanced Health Care Directive and is terminally ill, but has not completed a PACD form, will pre-hospital EMS providers ignore the Advanced Health Care Directive?**

Agency Response: If a person does not have a properly completed PACD form signed by a physician, pre-hospital EMS providers will follow established resuscitative medical protocols and follow hospital medical direction.

- **The "Purpose" section of the regulation includes some questionable representations. For example, it recites that living wills, powers of attorney, and other advance directives do not apply to the pre-hospital environment. To the contrary, the Health-Care Decisions chapter ostensibly includes paramedics under its definition of "health care provider", i.e., "an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession" [Title 16 Del.C. Sec. 2501(j)]. In general, "health care providers" are directed to comply with an "individual instruction" [Title 16 Del.C. Sec. 2508(d)]. Moreover, the above Sec. 9706(h) manifests a legislative expectation that EMS providers will recognize and honor directives consistent with regulatory standards. Although the Health-Care Decisions chapter also provides that "The initiation of emergency treatment shall be presumed to represent a suspension of an advance health-care directive while receiving such emergency treatment [Title 16 Del.C. Sec. 2504(f)], the effects of this provision is apparently limited by the later enacted Sec. 9706(h) and the presumption may arguably be rebutted by actual knowledge of the directive.**

Agency Response: In accordance with Title 16 Del.C. Sec. 9706(h), this regulation specifically applies to EMS providers certified by the Delaware State Fire Commission (Basic EMTs--Emergency Medical Technicians) or the Office of Emergency Medical Services (Paramedics). Additionally, this regulation provides a Delaware Prehospital Advanced Care Directive Form and defines pre-hospital advanced care directive procedures to be used by and for terminally ill patients only. The whole purpose of these regulations is to give a person with a terminal illness the choice as to what type of pre-hospital emergency treatment they desire. In the pre-hospital emergency environment, EMS providers will now have clear, verifiable, and readily recognizable guidance to follow by the presence of a properly executed Prehospital Advanced Care Directive Form. In the absence of a properly executed Prehospital Advanced Care Directive Form, the on-scene EMS provider will follow established emergency medical protocols and emergency medical direction. The Department's assigned Deputy Attorney General reviewed these Regulations in relationship to the Health-Care Decisions chapter of Title 16 Del.C. and found them to be legally adequate.

- **The definitions [Sec. 1.0] are generally derived verbatim from the statute, Title 16 Del.C. Sec.**

2501. However, the reference to “terminal illness” should preferably be amended to refer to “terminal condition”. This is the term used in the statute [Title 16 Del.C. Sec. 2501(r)]. Moreover, a “condition” is broader than “illness”.

Agency Response: In accordance with 16 Del.C. Sec. 9706(h)(1), “The regulation shall define pre-hospital advanced care directive procedures to be used for terminally ill patients only.” Based on this statute and advice from the Department’s Deputy Attorney General, terminal illness was used in the regulation.

- **Section 3.2 of the regulations is unduly restrictive in representing that blindness, illiteracy, or paralysis of one hand are examples of physical inability to sign a PACD. The Delaware Code [Title 1 Del.C. Sec. 302(23)] provides that a “mark” suffices as a signature if a person cannot write his or her name.**

Agency Response: The Department lists these conditions as examples of conditions that “may” prevent a person from being able to physically sign the PACD form. The word “may” was purposely used in this sentence to make this a not all-inclusive statement. Certainly if a person has the legal capacity and is physically able to sign or provides that person’s mark, no agent or surrogate would be necessary.

- **The liability limitation section (Sec. 10.0) omits the good faith standard of the statute, Title 16 Del.C. Sec. 2510(b). The regulatory immunity provision is narrower. For example, if an EMS provider made a good faith mistake and did not follow the letter of the Health Care Decisions Act, he would qualify for immunity under the statute but not the regulation.**

Agency Response: Section 10.1 of the regulation clearly acknowledges all immunity provided to EMS providers by 16 Del.C., Chapter 25 (Health-Care Decisions). Additionally, in the regulation the Department included immunity for EMS providers from the appropriate licensing, registering, or certifying authority as a result of withholding or withdrawing any health care under authorization obtained in accordance with the Health-Care Decisions chapter.

- **The reciprocity section [Sec. 12.0] provides that an out-of-state EMS DNR form approved by the Division of Public Health will be honored but categorically treated as authorizing only Option B supports [Sec. 4.1.2]. If the out-of-state form**

clearly requested Option A or Option C supports [Secs. 4.1.1 and 4.1.3], this should be honored. See Title 16 Del.C. Sec. 2517.

Agency Response: As result of this comment and after careful review of the law, the Reciprocity section of the regulation was amended to clarify that out-of-state EMS DNR forms that are approved by the Director of Public Health will be honored under the appropriate Prehospital Advanced Care Directive Option A, B or C.

- **The regulations do not seem to cover the statutory prohibition on withholding life sustaining procedures if an individual is pregnant. Compare Title 16 Del.C. Sec. 2503(j).**

Agency Response: Based on this comment and after careful review of the law, Section 8.0 of the Pre-Hospital Advanced Care Directive Regulations has been amended to include requirements per the statute indicated.

- **The regulations do not seem to cover the statutory authority of an EMS provider to decline to honor a directive based on conscience. Section 4.0 contemplates that the EMS provider will only provide services listed in the regulation, without exception. For example, Option C recites that no form of life saving efforts will be administered by EMS personnel under any circumstances. Under the statute, the EMS provider is authorized to decline to honor the directive based on conscience. Title 16 Del.C. Sec. 2508(e).**

Agency Response: Based on this comment and after careful review of the law, a paragraph addressing matters of conscience was added to Section 4.0 of the Pre-Hospital Advanced Care Directive Regulations.

- **It is very confusing and misleading to call these regulations and the subsequent form “Pre-Hospital Advance Care Directives” then continually follow that with.... (Do Not Resuscitate Orders). This is very confusing and could easily be remedied by simply calling the whole thing “State-wide Do Not Resuscitate Orders”.**

Agency Response: In accordance with 16 Del.C. Sec. 9706(h), pre-hospital advanced care directive is the only language authorized to identify the form a terminally ill person may execute to choose pre-hospital emergency treatment options. Additionally, 16 Del.C. Chapter 25, Health-Care Decisions, does not use Do Not Resuscitate

Orders terminology. As a result of this comment the words do not resuscitate orders were eliminated from both the Purpose and Definition section of the Regulations. The actual words “Do-Not-Resuscitate-Orders” are now only used twice in the Reciprocity section of the Regulations for clarification purposes. It is important to note that the letters “DNR” are used in the regulation and are assigned the meaning Do Not Resuscitate.

- **It is reasonable to have a three tiered approach from more intensive to less intensive life-sustaining interventions, but the descriptions on the Prehospital Advanced Care Directive form for option A, B, and C should be changed to read:**

Option A—Maximal restorative care before arrest, then DNR

(This would allow the use of intubation, IV drugs, pressors, cardioversion, but not CPR and defibrillation). The goal of care here is to do everything possible to stabilize the patient and prevent cardiopulmonary arrest.

Option B—Limited restorative care before arrest, then DNR

(This would allow ‘less invasive’ life sustaining care such as IV drugs, NIPPV, oxygen, but not intubation, pressors, cardioversion/defibrillation, or CPR. The goal of care here is to do less invasive life-sustaining care with more emphasis on palliative care and comfort.

Option C—Comfort care only

(This could include oxygen, oral airway, IV drugs aimed at relieving pain or distress such as morphine or lasik, positioning, or transport). The goal of care here is to relieve suffering and provide comfort and not to sustain life.

Agency Response: Under Option A, the full scope of the Delaware Statewide Advanced Life Support (ALS) treatment must be provided to the individual who has selected this option. Therefore, in addition to intubation, defibrillation and CPR would be required to be administered by the EMS field responder under the full scope of restorative interventions permissible under the Delaware Statewide ALS treatment protocol.

Currently, Option B as presented in section 4.0 of the PACD Regulations encompasses both limited care and comfort care for control of signs and symptoms. Additionally, the law uses very prescriptive language that states, “Option B (Basic Life Support) – Limited (Palliative) Care Only Before Arrest....”

Finally in addition to Option A and B above, it was

recommended by the Department of Health and Social Services Deputy Attorney General that “Option C (Do Not Resuscitate (DNR)) – No Care Administered of Any Kind” be included as an option for those terminally ill individuals who would want this option.

- **As written these regulations are fuzzy-feel good regulations with self contradicting provisions with an overall affect of restricting personal choice in health care.**

Agency Response: The proposed regulations were written in accordance with Delaware Code Title 16, Chapter 25, ‘Delaware Death with Dignity Act’. They were written solely for the intent of treatment by emergency medical services (EMS) personnel in the field responding to 911 calls. In accordance with the above referenced Code, the Regulations are specifically centered on those individuals with a terminal illness. The Regulations clearly outline the three optional methods a patient may request in conjunction with their primary physician, and which the EMS field responder personnel are allowed and required to follow and adhere to.

- **Section 3.1 clearly requires the diagnosis of a terminal illness before a PACD is effective, appears to allow the creation of a PACD in advance of such declaration. How will EMS personnel differentiate PACD which are effective from those which aren’t? Neither the form nor wallet card has any mention of terminal illness.**

Agency Response: In accordance with Delaware Code Title 16, Chapter 25, ‘Delaware Death with Dignity Act’, a Prehospital Advanced Care Directive (PACD) may and will only be issued to an individual by their primary care physician upon the diagnosis and prognosis of a terminal illness. EMS field responder personnel summoned by a 911 call will only honor the one PACD form. Any other similar type form (i.e. internal nursing facility forms, living wills etc....) will not be honored by the EMS field responder personnel. The form does indeed clearly indicate the acknowledgement of terminal illness. At the very top of the first page of the form in bold letters it states, “Pre-Hospital Advanced Care Directive (PACD) For Terminal Illness Only”. In addition, the first sentence of the form reads as follows: “ I, _____ (please print fill name), request the following emergency medical care in the event I am incapacitated due to my terminal illness, as herein described”. While it is true the proposed draft wallet identification card does not make mention of terminal illness, it must be signed by individual’s treating physician, and therefore is assumed that the terminal illness exists.

- **The wallet card is useless duplication and worse would give false belief that advanced directive would be met if you carry the card. In fact you must have the form alone or both form and wallet card for it to be honored. This is very confusing and a waste of time and effort.**

Agency Response: The use of a wallet card is a secondary protective method in conjunction with the signed PACD form to ensure the patient's wishes are carried out and adhered to. In certain circumstances, and EMS field responder could be alerted to the fact that a PACD form exists for an individual through the realization of an individual's wallet card or wrist bracelet.

- **In accepting other states EMS-DNR's as Option B, the terminal illness issues is circumvented as such a requirement is not necessarily in play elsewhere.**

Agency Response: It important to keep the proposed Regulations in perspective. Delaware law does not allow for a Do-Not-Resuscitated (DNR) order. And, the proposed PACD Regulations, in keeping with the law, only allows for individuals diagnosed with a terminal illness by a licensed physician to be able to obtain a PACD. Option B allows for the control of signs and symptoms (comfort care) before patient arrest. This method of treatment would still allow for an individual's out-of-state "DNR" order to be honored, but without violating Delaware law and regulation.

- **Acceptance of a Medic Alert Bracelet in lieu of the PACD both the terminal illness and physician declaration are by passed. While we favor this approach it does not in essence invalidate the entire regulation.**

Agency Response: The presence of a medical bracelet, be it Medic Alert or some other type of bracelet, falls into the same category as the wallet card. It is merely a secondary form of the individual's wishes, to be used in conjunction with; not in lieu of, the physician signed PACD form. Section 5.0, Methods of Identification, of the proposed PACD Regulations, clearly states: "Provided there is a signed PACD, or other approved Division of Public Health signed form, the following are acceptable for implementing the EMS PACD protocol". The bracelet and wallet card are not acceptable in lieu of the signed PACD form; they are acceptable in conjunction with the signed PACD form.

- **The regulation conflicts with the Federal Advance Directives Act which requires that any health care provider, who receives federal funding, abide by the Advanced Directives of the**

patient in whatever form and without regard to a diagnosis of a terminal condition. This regulation therefore puts providers in a position of violating Federal Law or simply not calling for emergency ambulance transport.

Agency Response: Currently, there are eight (8) states without any form of PACD/DNR laws on the books: Delaware, Iowa, Mississippi, Nebraska, North Dakota, Pennsylvania, South Dakota, and Vermont, as well as the District of Columbia. Federal laws of this type do not mandate each individual state's healthcare laws, as any Federal funding received by an individual state is not specifically mandated for PACD and DNR protocols. Therefore, it is not a violation of the law referenced in the comment. If a patient has a terminal illness, and does not in fact have a signed PACD form, an EMS field responder called to the individual's location via 911 dispatch will receive full Advanced Life Support.

- **Can inmates in prison elect to have a Pre-Hospital Advanced Care Directive?**

Agency Response: Any resident of Delaware (including those incarcerated) who has a terminal illness may request a Pre-Hospital Advanced Care Directive from their primary physician. As long as the form and wallet identification card are filled out and signed by both the patient and the physician, then EMS personnel must honor the patient's wishes.

- **In Option B it discusses some trauma type treatments. Historically EMS providers only looked at Do-Not-Resuscitate relating to medical conditions. Reading this, it implied that should a patient select Option B and was in a car crash the conditions would apply. Can this be clarified?**

Agency Response: Option B Pre-Hospital Advanced Care Directive provides for making the patient comfortable, while not providing any type of life-saving care or effort. If the terminally ill patient is in a car accident, then yes, the PACD form and option selected would need to be followed by the EMS personnel on the scene.

- **Are there 2 forms for PACD? It seemed from reading the Regulation that there could be one for the nursing homes and one for EMS providers.**

Agency Response: The law and regulation authorizes only one Pre-Hospital Advanced Care Directive (PACD) form that will be recognized and followed by emergency

medical service personnel in the pre-hospital emergency environment. Nursing homes may have other Advanced Care Directive forms in accordance with the Death with Dignity Act, but EMS personnel will only recognize the PACD form.

Additionally, minor grammatical, format and clarification changes were made to the proposed Regulations.

The public comment period was open from November 1, 2002 to December 31, 2002.

Verifying documents are attached to the Hearing Officer's record. The Regulations have been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

Pre-Hospital Advanced Care Directive Regulations

Authority: 16 Delaware Code, Chapter 97, Section 9706(h)

Purpose: There is a need to address the recognition of Pre-Hospital Advanced Care Directives [(Do Not Resuscitate Orders)] in conjunction with Advanced Care Directives as provided for in Delaware Code Title 16, Chapter 25, in the pre-hospital emergency environment. These regulations require the use of a specific form of individual identification that can be readily recognized and verified during a pre-hospital emergency. The regulations also detail the legislated immunity for certified providers honoring this order.

While such legal instruments serve individuals well in clinical settings such as hospitals and nursing homes, they pose practical problems in life-threatening situations when emergency medical services (EMS) individuals are called for assistance. Living wills, powers of attorney and other advance directives are often long and complex, can vary greatly in form and content, and do not apply to the pre-hospital environment. Many are hand-written and are impossible to verify on the scene of an emergency. Furthermore, in most states, if an EMS provider is called to a scene, they are legally required to perform life-saving techniques (CPR) even if the individual's heart has stopped and they are clinically expired. And, they cannot stop these efforts based on a living will or appointed proxy's request, because advance directives may not apply in EMS related medical emergencies. A Delaware Pre-Hospital Advanced Care Directive is a specific order initiated by the individual and signed by a physician stipulating a specific order for individual non-resuscitation.

A Pre-Hospital Advanced Care Directive regulation authorizes the Division of Public Health/Office of Emergency Medical Services in conjunction with the Board of Medical Practice, the Delaware Fire Prevention Commission, and other key groups within the State to develop and implement an EMS Pre-Hospital Advanced

Care Directive (PACD) protocol for EMS providers. This law and protocol standardize the legal advanced care directive documentation so EMS providers have a readily recognizable format upon which they may make a decision. This would also allow EMS providers to honor the individual's wishes to the greatest extent possible and grant the individual the dignity, humanity and compassion they deserve.

1.0 Definitions

"Advanced health care directive" shall mean an individual instruction or power of attorney for health care, or both.

"Agent" shall mean an individual designated in a power of attorney for health care to make a health care decision for the individual granting the power.

"Artificial nutrition and hydration" means supplying food and water through a conduit, such as a tube or intravenous line where the recipient is not required to chew or swallow voluntarily, including, but not limited to, nasogastric tubes, gastromstomies, jejunostomies and intravenous infusions. Artificial nutrition and hydration does not include assisted feeding, such as spoon or bottle-feeding.

"Capacity" shall mean an individual's ability to understand the significant benefits, risks and alternatives to proposed health care and to make and communicate a health care decision.

"Declarant" shall mean an individual who executes an advance health care directive.

"Division" shall mean the Division of Public Health.

"DNR" shall mean Do Not Resuscitate. ~~[A physician order in writing on forms approved by the Director of the Division of Public Health instructing EMS providers to withhold care as instructed on the order.]~~

"EMS prehospital advanced care directive order (PACD)" shall mean an advanced health care directive~~[do not resuscitate order as defined in paragraph 1.1.]~~ signed by the individual's physician on forms approved by the Director of the Division of Public Health.

"EMS PACD Program" shall mean the regulations and administrative guidelines promulgated by the Division of Public Health for the administration of this Act.

"Guardian" shall mean a judicially appointed guardian or conservator having authority to make health care decisions for an individual.

"Health care" shall mean any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

"Health care decision" shall mean a decision made by an individual or the individual's agent, surrogate or guardian regarding the individual's health care, including:

1. Selection and discharge of health care providers and institutions;
2. Acceptance or refusal of diagnostic tests,

surgical procedures, programs of medication and orders not to resuscitate; and

3. Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care.

“Health care institution” means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of profession.

“Emergency medical services (EMS) provider” shall mean individual providers certified by the Delaware State Fire Prevention Commission or the Office of EMS, or emergency medical dispatchers certified by the National Academy of Emergency Medical Dispatch.

“Emergency medical services (EMS) provider agency” shall mean a provider agency certified by the Delaware State Fire Prevention Commission or the Office of EMS, or an emergency medical dispatch center under contract with the Department of Public Safety.

“Individual” means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

“Individual instruction” means an individual’s direction concerning a health-care decision for the individual.

“Life-sustaining procedure” means:

Any medical procedure, treatment or intervention that:

1. Utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function; and

2. Is of such a nature as to afford an individual no reasonable expectation of recovery from a terminal illness.

3. Procedures that can include, but are not limited to, assisted ventilation, renal dialysis, surgical procedures, blood transfusions and the administration of drugs, antibiotics and artificial nutrition and hydration.

“Medically ineffective treatment” means that, to a reasonable degree of medical certainty, a medical procedure will not:

1. Prevent or reduce the deterioration of the health of an individual; or

2. Prevent the impending death of an individual.

“Office” shall mean the Office of Emergency Medical Services (EMS) within the Division of Public Health.

“PACD” means an EMS prehospital advanced care directive ~~for do not resuscitate order~~ signed by the individual and the individual’s physician, on forms approved by the Director of Public Health.

“Physician” means an individual licensed to practice medicine under Chapter 17 of Title 24 of the Delaware Code.

“Power of attorney for health care” means the designation of an agent to make health care decisions for the individual granting the power.

“Primary physician” or “attending physician” shall mean a physician designated by an individual or the individual’s agent, surrogate or guardian to have primary responsibility for the individual’s health care or, in the absence of a designation, or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

“Reasonably available” shall mean readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the individual’s health care needs.

“Supervising health care provider” shall mean the primary physician, or if there is no primary physician or the primary physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual’s health care.

“Surrogate” means an adult individual or individuals who (1) have capacity;(2) are reasonably available; (3) are willing to make health care decisions, including decisions to initiate, refuse to initiate, continue or discontinue the use of a life sustaining procedure on behalf of a individual who lacks capacity; and (4) are identified by the individual’s identification in accordance with this chapter as the individual or individuals who are to make those decisions in accordance with this chapter.

“Terminal illness” means any disease, illness or condition sustained by any human being for which there is no reasonable medical expectation of recovery and which, as a medical probability will result in the death of such human being regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life or the life processes.

2.0 Right to Self-Determination

2.1 An individual, legally adult, who is mentally competent, has the right to refuse medical or surgical treatment if such refusal is not contrary to existing public health laws.

3.0 Medical Prerequisites

3.1 Any individual with legal capacity may execute a Pre-Hospital Advanced Care Directive (PACD); however, this Directive will not become effective unless signed by a physician after diagnosis of a terminal illness.

3.2 Individual with legal capacity, who is able to communicate by some reliable, proven means (i.e. verbally, eye blink, finger tap) but is physically unable to sign, may execute a PACD through an agent or surrogate to be effective upon the diagnosis of a terminal illness from a physician in Delaware. Conditions that may prevent physical signing of the PACD include, but are not limited to:

3.2.1 Blindness or illiteracy

3.2.2 Severe arthritis

3.2.3 Amyotrophic lateral sclerosis (ALS or Lou

Gehrig's disease)

- 3.2.4 Quadriplegia
- 3.2.5 Paralysis of the writing hand
- 3.2.6 Amputation

3.3 Individual who no longer has capacity may be issued a PACD through an agent, guardian or surrogate and the individual's physician.

3.3.1 Conditions for which a PACD may be issued are:

- 3.3.1.1 Terminal Illness

4.0 Prehospital Advanced Care Directives

4.1 Prehospital Advanced Care Directive Options

4.1.1 Option A (Advanced Life Support) - "Maximal (Restorative) Care Before Arrest, Then DNR"

4.1.1.1 When this option is selected on an EMS PACD, the individual shall receive the full scope of restorative interventions permissible under the Delaware Statewide ALS treatment protocol (including intubation for respiratory distress, cardiac monitoring, synchronized cardioversion for pulse-present ventricular or supra ventricular tachycardia, cardiac pacing for pulse-present symptomatic bradycardia, insertion of IV's, and drug therapy), in an attempt to forestall cardiac or respiratory arrest (see Delaware Statewide ALS treatment protocol for full description of permissible interventions).

4.1.2 Option B (Basic Life Support) - "Limited (Palliative) Care Only Before Arrest, Then DNR"

4.1.2.1 Palliative care is defined as supportive care for control of signs and symptoms.

4.1.2.1.1 This includes opening the airway using non-invasive means (e.g. chin lift, jaw thrust, finger sweep, nasopharyngeal airway, oropharyngeal airway and abdominal thrust, O2 administration, suctioning, positioning for comfort, control of external bleeding using standard treatments (dressing, elevation, direct **pressure, pressure points, cold packs, tourniquets, etc.**), immobilize fractures, and family or other health care provider administered medications for pain control.

~~4.1.2.1.2 pressure, pressure points, cold packs, tourniquets, etc., immobilize fractures, and family or other health care provider administered medications for pain control.~~

4.1.2.1.2 Existing IV lines may be in place and, if so, shall be monitored to the extent possible according to the provider's level of certification and licensure.

4.1.2.2 Inappropriate Care for a Palliative Care Individual includes:

4.1.2.2.1 Pacing, cardioversion, and defibrillation

4.1.2.2.2 Initiation of IV therapy

4.1.2.2.3 EMS Initiated Medications -

Except passive oxygen

4.1.2.2.4 CPR

4.1.2.2.5 Intubation (EOA, endotracheal, nasotracheal, or gastric tube)

4.1.2.2.6 Pneumatic anti-shock garment (PASG)

4.1.2.2.7 Active ventilatory assistance, unless on an out individual ventilator.

4.1.3 Option C (Do Not Resuscitate) - "No Care Administered Of Any Kind".

4.1.3.1 This option permits an individual to reject care of any kind provided there is a signed order clearly stating this course of action. Where this option is in place, no form of life saving efforts, including but not limited to, the opening of the airway, the administration of oxygen, or any other form of life-saving efforts will be administered by EMS personnel under any circumstances, unless the individual provides some form of communication as indicated in Section ~~3.1.2A~~ 3.2]

[4.1.4 Nothing in this regulation will require an EMS provider to comply with a Pre-Hospital Advanced Care Directive for reasons of conscience.]

5.0 Methods of Identification

5.1 Provided there is a signed PACD, or other approved Division of Public Health signed form, the following are acceptable for implementing the EMS PACD protocol:

5.1.1 Delaware EMS PACD Form

5.1.2 Delaware EMS PACD Wallet Card

5.1.3 Wrist Bracelet to include Medic-Alert Bracelet or other bracelet approved by the Director of the Division of Public Health.

5.1.4 Other State EMS PACD Form

5.2 Even if a signed PACD, or other approved Division of Public Health signed form is present, the following **are not** acceptable for implementing the EMS PACD protocol:

5.2.1 Advance directives without an EMS PACD

5.2.2 Facility specific PACDs

5.2.3 Notes in medical records

5.2.4 Prescription pad orders

5.2.5 PACD stickers

5.2.6 Any oral request.

5.2.7 Any other device or instrument not listed above as acceptable.

5.3 The Delaware EMS PACD must be completed for all individuals on a standard form approved by the Division of Public Health, and the form must be present.

5.4 If any question exists as to the identity of the individual identified on the Delaware EMS PACD form, the EMS provider shall seek to identify the individual through another form of positive identification.

5.4.1 If in doubt as to the identification of the individual, the EMS provider shall initiate resuscitative efforts.

6.0 Revocation of PACD

6.1 An EMS PACD may be revoked at any time by:

6.1.1 A written cancellation signed by the individual.

6.1.2 An oral statement or gesture of any manner by the individual in the presence of two (2) witnesses, one of whom is a health care provider, requesting only palliative care or resuscitation. If the individual revokes an EMS PACD orally, the EMS PACD notification devices do not need to be destroyed. EMS providers should thoroughly document the circumstances of the revocation. An oral revocation by an individual is only good for the single response or transport for which it was issued.

6.2 During an emergency, when the authorized decision maker is not the individual, this individual cannot revoke an EMS PACD. Because of the difficulty in identifying authorized decision makers in emergent situations, it is incumbent upon an authorized decision maker who has authority to revoke an EMS PACD to do so prior to the emergency if they wish resuscitation for the individual. Under no circumstances, can a person or entity, other than the individual, revoke an EMS PACD during an emergency.

7.0 Section 2513(b) [of the Health Care Decision Act (Code of Delaware), Chapter 25, Title 16 of the Delaware Code] makes willful concealment, destruction, falsification or forging of an advance directive, without the individual's or authorized decision maker's consent, a class C felony.

8.0 Field Termination

8.1 Nothing in these regulations shall [affect effect] the power of EMS providers to do the paramedic field termination of resuscitation protocol as approved by the Delaware Board of Medical Practice.

[8.2 A life-sustaining procedure may not be withheld or withdrawn from a patient known to be pregnant, so long as it is probable that the fetus will develop to be viable outside the uterus with the continued application of a life-sustaining procedure. (70 Del. Laws, c.392, § 3.)]

9.0 Protocol

9.1 The Division of Public Health, in consultation with the Board of Medical Practice and the Delaware Fire Prevention Commission, shall develop and publish a protocol for EMS providers to comply with the requirements of this regulation.

10.0 Limitations of Liability

10.1 In addition to other immunity that may be provided for in law, Section 2510 of [the Health Care Decisions Act Title 16 of the Delaware Code] provides the specific immunity in cases involving the provision, withdrawal, or withholding of care which may be life sustaining in nature.

10.1.1 EMS providers are not subject to criminal prosecution or civil liability or deemed to have engaged in unprofessional conduct as determined by the appropriate licensing, registering, or certifying authority as a result of withholding or withdrawing any healthcare under authorization obtained in accordance with [the Health Decisions Act, Title 16, Chapter 25 of the Delaware Code.]

11.0 Data Collection/Program Evaluation

11.1 The Division of Public Health shall provide appropriate information, education and training on the EMS PACD Program to health care providers.

11.2 The Division of Public Health shall provide forms for Delaware licensed physicians and hospices, or other authorized health care providers.

11.3 The Division shall monitor the use of EMS PACDs as presented to EMS providers.

11.4 The Division shall take such measures as necessary to assure individual confidentiality.

12.0 Reciprocity

12.1 Standardized EMS-~~DNR Do Not Resuscitate (DNR) orders~~] from another State approved by the Director of the Division of Public Health shall be honored.

12.2 EMS providers shall treat out-of-state EMS ~~DNR's orders~~] as Limited (Palliative) Care Only Before Arrest PACD individuals, [unless otherwise specified by the out-of-state Do Not Resuscitate (DNR) order.]

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 122(3)(c) (16 Del.C. §122(3)(c))

ORDER

Regulations Governing Public Drinking Water Systems

Nature Of The Proceedings:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt Rules and Regulations Governing Public Drinking Water Systems. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code, Chapter 101 and authority as prescribed by 16 Delaware Code Chapter 1, Section 122 (3) c.

On March 1, 2003 (Volume 6, Issue 9), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code, Section 10115. It requested that written materials and suggestions from the public concerning the proposed

regulations be delivered to DHSS by April 4, 2003, or be presented at a public hearing on April 1, 2003, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations. The public comment period was extended to April 30, 2003, to allow additional time for comments.

Written comments were received and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Findings Of Fact:

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware. The proposed regulations include modifications from those published in the March 1, 2003, Register of Regulations, based on comments received during the public notice period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed Rules and Regulations Governing Public Drinking Water Systems are adopted and shall become effective July 10, 2003, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary, 6/13/2003

Summary Of Evidence

A public hearing were held on April 1, 2003, in the Emergency Preparedness Training Center, Suite 4-g, Blue Hen Corporate Center, 655 S. Bay Road, Dover, Delaware, before David P. Walton, Hearing Officer, to discuss the proposed amendments to the Delaware Rules and Regulations Governing Public Drinking Water Systems. The announcement regarding the public hearing was advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Mr. Edward Hallock, Administrator of the Office of Drinking Water, Division of Public Health, made the agency's presentation. Attendees were encouraged to discuss and ask questions regarding the proposed amendments. No comments were made during the public hearing and only two organizations (Artesian Water Company, Inc. and U.S. EPA) submitted written comments during the public comment period.

Comments and the DHSS (Agency) responses follow:

- **Section 22.214(B)(4): Will the Division of Public Health (DPH) notify water companies when a laboratory loses its certification?**

Agency Response: Annual lists of certified in-state

laboratories will be published July 1 of each year. Additionally, Section 22.214 (A) requires certified laboratories to be in compliance with the latest edition of the "Manual for the Certification of Laboratories Analyzing Drinking Water." This manual requires certified laboratories to notify its customers regarding their status, i.e., fully certified, provisionally certified or not certified.

- **Section 22.214(C)(1): Total coliform sample results are not referred to in this section. Was this an oversight, or is the laboratory not required to report positive total coliform results to the Office of Drinking Water (ODW)?**

Agency Response: Laboratories are not required to report total coliform positive results. They are only required to report *E. coli* or fecal positive results.

- **Section 22.215: Where is the term "Hazard Quotient" defined? While it is agreed that interim health-based standards are occasionally required to ensure protection of public health; it is suggested that some flexibility should be incorporated into the proposed regulation.**

Agency Response: As a result of this comment and further study, a definition of Hazard Quotient has been added to this section. Additionally, this section has been modified to include a range of values for interim health-based standards.

- **Section 22.302: Clarification is needed on "notification by the Division". Will the "45-day clock" begin after the physical completion of the sanitary survey or after the system receives the Sanitary Defect Letter?**

Agency Response: The 45-day clock will begin with receipt of the letter by the water system, not the day the sanitary survey is complete. However, when water systems are made aware of a problem at the same time of the sanitary survey we would expect them to begin corrective actions as soon as possible.

- **Section 22.607(C)(7): There is no mention of sampling frequency in this section.**

Agency Response: This section does in fact identify how to calculate "daily values" and therefore does indicate sampling frequency as daily.

- **Section 22.607(J)(1)(a)(8): It is requested that DPH be required to specify in writing if they want data prior to the end of a monitoring**

period and to provide written rationale for the request. Such a written record would serve to avoid possible errors and confusion.

Agency Response: The request for more frequent reporting requirement would only be made if the DPH had specific concerns regarding monitoring results from a water system. The increased reporting frequency would then be worked out with the water system and the rationale for the decision would be provided in writing.

- **Section 22.1012: Although this section is part of the Surface Water Treatment Rule, does it apply to ground water systems employing filtration (i.e. greensand, slow or rapid sand) that recycle backwash water?**

Agency Response: The recycle provisions do not apply to groundwater systems using filtration technology. The concern with recycled water in surface water systems is the potential build up of pathogens such as *Giardia* and *Cryptosporidium* in the recycled water. By requiring systems to recycle to the head of the plant it is felt that this will minimize the chances of these organisms “breaking through” to the finished water. Groundwater systems do not have the same concerns with these organisms.

There were other grammatical, formatting and citation corrections as a result of comments from the U.S. EPA. None of these corrections or the recommended changes herein are considered substantive in nature.

The public comment period was open from March 1, 2003 to April 4, 2003. The public comment period was extended till April 30 2003, to allow additional time for comments.

Verifying documents are attached to the Hearing Officer’s record. The Delaware Attorney General’s office and the Cabinet Secretary of DHSS have approved this regulation.

Summary of Changes from Proposed to Final Regulations Governing Public Drinking Water Systems

22.215 – A definition of Hazard Quotient was added to the end of this section.

22.413(A) – the citation for Tier 3 violations of the Inorganic Chemicals was changed to reflect the correct section.

22.413(G) and (H) – Sections added to clarify the responsibilities of operators of consecutive water supplies and that public notices may be issued to a portion of a distribution system if it is physically or hydraulically separated from the rest of the system.

22.601(A) – A minor clarification to the arsenic

standard was made to reflect EPA’s requirement that the standard is 0.010 mg/L, effective January 23, 2006.

22.602 – Moved language that sets detection limits for analytical methods in accordance with EPA requirements from 22.602(A)(4)(a).

22.602(C)(9) – added language to clarify when existing systems that add a new source of water must meet MCL requirements.

22.924(B)-(E) – Sections added to clarify analytical requirements under the radiological standards.

*** PLEASE NOTE: DUE TO THE SIZE OF THE FINAL REGULATION ONLY A SUMMARY IS BEING PRINTED HERE. THE FULL TEXT IS AVAILABLE FROM EITHER THE DIVISION OF PUBLIC HEALTH OR THE REGISTRAR’S OFFICE.**

ADOBE ACROBAT PDF VERSION:

DIVISION OF SOCIAL SERVICES

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

ORDER

Fair Hearing Practices and Procedures

Nature Of The Proceedings:

Delaware Health and Social Services (“Department”) / Division of Social Services (DSS) initiated proceedings to amend the Division of Social Services Manual (DSSM) to make several clarifying changes to DSS Fair Hearing Practices and Procedures. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the May 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary Of Proposed Revisions

DSSM 5100 Legal Base

The proposal removes references to some now repealed Titles of the Social Security Act and adds a reference to Title XXI of the Act, State Children’s Health Insurance Program

(SCHIP).

DSSM 5304 Jurisdiction

The proposal removes an ineffective reference to the "assignment of cases" into TANF (Temporary Assistance to Needy Families). This removal is needed because TANF is no longer a "demonstration program." Cases are no longer "assigned" into TANF.

DSSM 5312 Responses to Hearing Requests

The proposal adds a description of the "presenter's" role in a fair hearing and is proposed in order to clarify the pre-hearing role of the presenter (See §5407) at a fair hearing and to assure that the §5312 hearing summary will be able to be offered as evidence at the hearing by the maker of the document.

DSSM 5402 Hearings on Decisions

The proposal makes a change to a typographical error in the text.

DSSM 5403 Availability of Documents and Records

The proposal changes the responding party to a request for documents for a fair hearing from the hearing officer to the "office that maintains the records." This is needed because the Division of Social Services contracts some hearing officer services. The contractors do not have physical access to the records that may be requested. The office that maintains the records can respond to a request for a record more effectively than a contractor.

DSSM 5405 Fair Hearing Procedures

The proposal adds the statement that "Witnesses [at a fair hearing] may be sequestered with the approval of the hearing officer." The statement is being added to reflect the agency's current fair hearing practice.

Summary Of Comments Received With Agency Response And Explanation Of Changes

- **The Governor's Advisory Council For Exceptional Citizens (GACEC), the Delaware Developmental Disabilities Council (DDDC), and the State Council for Persons with Disabilities (SCPD) offered the following summarized observations:**

First, DSS clarifies the application of the regulations to disputes in the federal CHIP (Title XXI)/State Delaware Healthy Children Program context. This is desirable clarification and we endorse this clarification.

Agency Response: DSS thanks you for the endorsement.

- **Second, DSS intends to clarify the "presenter's role" to "assure that §5312 hearing summary will be offered as evidence". This is overbroad. Based on Third Circuit precedent [Ortiz v Eichler, 794 F.2d 889 (3rd Cir.1986)], hearsay is not admissible in the DSS fair hearings. See also In the matter of Lewis B.C., 1999 WL 692071 (Del. Fam. May 12, 1999) at 8-9 (summarizing Delaware caselaw holding contents of statutorily required reports subject to hearsay objection). A hearing summary may sometimes qualify for admission, in whole or in part, if it meets the standards of an exception to the hearsay rule (e.g. Business record). However, this must be made on a case-by-case basis by the hearing officer, if there is an objection to its admission, in whole or in part. For example, if a hearing summary submitted by an MCO contains double hearsay (e.g. MCO worker summarizes his version of telephone conversation with beneficiary's physician), this should not be routinely admitted. DSS cannot categorically authorize admission by regulation since this is proscribed by the Third Circuit.**

Agency Response: DSS finds the written comments on the role of the presenter to be instructive. However, that section is not the subject of the proposed rule. Since the role of the presenter is not the subject of the proposed rule, DSS has not made any changes in the presenter's role. The comment is noted and will be considered if and when that section of the rule is revised.

- **Third, DSS changes the recipient of requests for pre-hearing access to records. Requests are to be submitted to the "office that maintains the records" rather than the hearing officer. If the office does not produce the records "within a reasonable period of time", the appellant may ask the hearing officer for a directive to produce the records. See proposed §5403. We have no objection to changing the recipient of records requests to the "office that maintains the records". However, the "reasonable period of time" standard invites delay and problems. MCOs and DSS contractors do not uniformly comply with solicitations for access to records. As a practical matter, the agency must compile and organize its records in order to submit its hearing summary to the hearing officer within five (5) working days of the request for hearing. See §5312(4). The agency should be able to produce the records within the same time**

period, i.e., five (5) working days. This standard should be incorporated into §5403. By promoting prompt access to records based on a clear standard, the 5-business day benchmark would facilitate the timely and orderly administration of the fair hearing system by reducing the need for continuances (prompted by unreasonable delays) and applications to the hearing officer who must otherwise determine "reasonable time" on a case-by-case basis. MCOs will simply argue that a 20-30 business day is a reasonable time.

Agency Response: DSS has considered the comment and as a result, has revised or adopted time limits under §5403, §5312(4) and §5312(f)(b).

- **Fourth, we believe hearing officers forward the hearing summary to appellants when issuing the notice of hearing. However, this is not explicit in the final paragraph of §5312. It could be made explicit to mirror current practice. An even better approach would be to require the agency to submit the hearing summary to the appellant at the same time it is submitted to the hearing officer. This could be accomplished by amending Section 5312 (4) by inserting "and appellant or representative" after "Hearing officer" in the first sentence and amending Section 5312(f)(c) by adding "and appellant or representative" after "hearing office". This would facilitate settlements and prompt preparation of cases, reducing the prospects for continuances.**

Agency Response: DSS has adopted the suggestion that §5312 make explicit the practice of sending the hearing summary to appellants when the hearing is scheduled. DSS has not adopted the suggestion that the agency send the summary to appellants as well. DSS views sending hearing summaries twice as unnecessarily redundant.

Findings Of Fact:

The Department finds that the proposed changes as set forth in the May 2003 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend DSS Fair Hearing Practices and Procedures is adopted and shall be final effective July 10, 2003.

Vincent P. Meconi, Secretary, DHSS, 6/13/03

5100 Legal Base

Public Assistance benefits are authorized under the various categorical programs established under Title 31 of the Delaware Code, under the Food Stamp Act, as amended, and under Titles ~~IV—A, XVI, XIX, and XX, and XXI~~ of the Social Security Act and under regulations, not inconsistent with these laws promulgated by the State or federal governments.

5304 Jurisdiction

An opportunity for a hearing will be granted to any applicant who requests a hearing because his/her claim for economic or medical assistance or food stamp assistance is denied or is not acted upon with reasonable promptness and to any recipient who is aggrieved by any action of the Division of Social Services such as actions to reduce benefits or to assign Food Stamp Program recipients to a specific employment and training component.

To be considered, a request for a hearing must be a clear expression in writing by the appellant or his/her representative to the effect that (s)he wants the opportunity to present his/her case to higher authority.

Only issues described in the notice of action sent to the appellant or issues fairly presented in the appellant's request for a fair hearing or in the Division's response in its hearing summary may be presented for the hearing officer's review at the hearing.

Appellants of actions taken in the Food Stamp Program may request a fair hearing orally, and, if so, will be informed that it is advisable to perfect the request by reducing it to writing. The staff member receiving an oral request will initiate procedures to begin the hearing process.

The freedom to make a request for a hearing will not be limited or interfered with in any way. The Division may provide assistance to appellants such as providing translators or a non-English explanation of the hearing process when required by federal regulations.

Except in the Food Stamp Program, a hearing need not be granted when either State or federal law requires automatic grant adjustments for classes of recipients, unless the reason for an individual appeal is incorrect grant computation.

~~A hearing may not be granted on the assignment of cases into DELAWARE'S TEMPORARY ASSISTANCE FOR NEEDY FAMILIES program or the exclusion of cases from DELAWARE'S TEMPORARY ASSISTANCE FOR NEEDY FAMILIES program. The worker may respond to such requests by asking the hearing officer to dismiss the request when completing a hearing summary. (See §5312.)~~

5312 Responses to Hearing Requests

1) Upon receipt of a request for a hearing, either orally in the Food Stamp Program or in writing, a fair hearing summary will be prepared in response to the request. The

presenter (§5407) is expected to write and sign the Hearing Summary.

2) A fair hearing summary is a document prepared by the agency stating the factual and legal reason(s) for the action under appeal.

3) The purpose of the hearing summary is to state the position of the proponent of the action in order to provide the appellant with the necessary information to prepare his/her case.

4) Preparation of hearing summary - On receipt of a request for a fair hearing, the agency shall prepare and submit a hearing summary to the Hearing Office within five (5) working days. The document must be easily read and understood (abbreviations should be avoided). Actions in the matter being appealed should be explained in concise statements and include citations to the policy upon which the action is based. The names and addresses of persons that the agency expects to call to testify will be included in the hearing summary.

5) Format of the hearing summary - The fair hearing summary shall be labeled at the top and signed and dated at the bottom. It shall contain the following:

a) Identifying information - Give the client's name, the client's address, and the DCIS identification number.

b) Client's reason for appeal - This section shows the basis of the client's appeal (rejection, reduction, closure, amount of benefits etc...)

c) Action taken - This section is used to describe the specific action taken by the agency as well as the factual basis for its decision.

d) Has assistance continued? - This section identifies whether or not the appellant's assistance has been restored because the appellant filed a request for a hearing within the timely notice period.

e) Cite policy basis - This purpose of this section is to cite the specific State rules supporting the action taken.

f) Persons expected to testify - This section lists the names and addresses (if any) of persons that the agency expects to call to testify.

If completed by DSS, the worker will submit the case to his/her supervisor. The supervisor will:

a) Provide an adequate case review;

b) Correct any errors;

c) Forward request/summary together with any documents to be **[offered for admission ~~admitted~~]** at the hearing to the agency or DSS hearing office.

Note: If a section is not applicable, the designation "N/A" may be used.

As soon as the request/summary is received, it is recorded in an appeal calendar and immediately forwarded to the hearing officer. Upon review, the hearing officer will:

a) Set a prompt date for the hearing;

b) Send a notice conforming to the requirements of §5311. **[The notice will include the hearing summary.]**

c) Notify all parties, including witnesses, of the date, time, and place of the hearing.

5402 Hearings on Decisions

A hearings may encompass decisions concerning:

1) Eligibility for financial or medical assistance in both initial and subsequent determinations;

2) The amount of economic or medical assistance or a change in the amount of the benefits;

3) The manner or form of the benefit including restricted or protective benefits;

4) A denial of a request for restoration of food stamp benefits lost more than ninety (90) days but less than one year prior to the request;

5) A decision of an MCO or other contractor that a medical service, treatment or test is not medically or otherwise necessary.

In addition,

6) At any time within a certification period, a household may dispute its current level of food stamp benefits; and

7) Food Stamp Program households may appeal decisions concerning expedited service.

5403 Availability of Documents and Records

Prior to the hearing, the appellant and his/her representative will have adequate opportunity to examine all documents and records to be used by the State agency or its agent at the hearing and to examine the claimant's case records. Requests by the appellant or his/her authorized representative for records and documents between the request for a hearing and the hearing should be directed to the office that maintains the records, hearing officer. If the office does not produce the records within ~~a reasonable period of time~~ five working days], the requestor may ask the hearing officer to order the production of the records. There is no charge for copies of records and documents requested for a fair hearing. Documents relating to the case will be provided to a claimant or a household provided that confidential information is protected from release.

5405 Fair Hearing Procedures

1) Hearing Officer's Introduction

The hearing officer will appropriately introduce the purpose of the meeting, the individuals and roles of those in attendance, and generally "set the stage" to assure the appellant of his/her right to be heard. In addition, (s)he will administer an oath to all witnesses and parties presenting testimony at the hearing. The hearing officer may, in his/her

discretion, deal with any preliminary matters prior to beginning the case.

2) Manner of Proceeding

The hearing officer shall conduct the hearing in an informed fashion, consistent however with the procedural rights of the Department and the claimant to a courteous, fair, and fairly conducted hearing consistent with due process and the requirements of the federal regulation. Parties will be courteous to each other and the hearing officer at all times and will obey the orders and rulings of the hearing officer.

3) Order of Presentation

a) Opening Remarks.

At the discretion of the hearing officer, the Department and the claimant will each be given an opportunity to make brief opening statements. An opening statement shall advise the hearing officer of the issues a party contends are a part of the case and shall succinctly summarize how the party's case will be proven. The hearing officer may, however, terminate or limit any opening statement which is unduly lengthy, repetitive or irrelevant.

b) The State will present its case first, unless, in the discretion of the hearing officer, the burden of persuasion rests on the other party (the claimant). This shall include the presentation of all witnesses to give testimony and all documents and other evidence which is admissible to prove its case. The other party may cross-examine each witness and may raise any legal basis for exclusion of any evidence at appropriate times during the hearing. Witnesses may be sequestered with the approval of the hearing officer.

c) The other party may present any witnesses to give testimony (and may testify his/herself) and other evidence which is admissible to prove his/her/its case. However, such party need not present any evidence, but may rely upon the other party's failure to prove an essential element of his/her/its case. If evidence or testimony is presented, the other party shall have the opportunity to raise any legal basis for its exclusion and the opportunity to cross-examine witnesses at the appropriate time during the proceeding.

d) If the second party has presented any evidence, the first party may, in the discretion of the hearing officer, present rebuttal evidence.

e) Closing Remarks.

The parties will be given an opportunity to briefly summarize their cases in closing remarks. Such closing remarks may summarize evidence and present legal argument for the adoption of one position against the adoption of the other. However, the hearing officer may limit or terminate unduly lengthy, repetitive, or irrelevant closing remarks.

4) Role of Hearing Officer

The hearing officer is in charge of running the hearing. He/she shall make all rulings on the admissibility of evidence as to how the proceedings are conducted. The hearing officer may question witnesses or direct the parties to produce evidence which he/she determines to be necessary for him/her to render a decision in the case. However, other than ensuring that the hearing is conducted fairly, the hearing officer is not permitted to assist either party in the presentation of his/her/its case.

5) Decisions of the Hearing Officer

Decisions of the State hearing officer will be based exclusively on evidence introduced at the hearing. **[The decision of the hearing officer will be issued not more than 90 days from the date of the request for a fair hearing is filed or more than 30 days from the date the hearing is conducted.]** The decision of the hearing officer is the final decision of the agency. Judicial review, pursuant to 31 Del. C. 520, may be taken directly from the hearing officer's decision, within thirty (30) days of the decision.

DEPARTMENT OF INSURANCE

18 DE Admin Code 1310

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

ORDER

Regulation 1310

Standards For Prompt, Fair And Equitable Settlement Of Claims For Health Care Services

Public hearings were held on December 3, 2002, March 26, 2003 and May 28, 2003 to receive comments on proposed Regulation 1310 relating to the prompt payment of health claims. By my order of October 2, 2002, Kathy S. Gravell, Esquire, was appointed hearing officer to receive comments and testimony on the proposed regulation. Public notice of the hearing and publication of proposed Regulation 11 in the Register of Regulations and two newspapers of general circulation was in conformity with Delaware law.

The summary of the evidence and the information submitted as set forth in the Final Report and Recommendation of the Hearing Officer is incorporated into this Order. I adopt the findings of fact and recommendation of the hearing officer and find that Regulation 1310 should be amended by reducing the allowable time period in which an insurer shall be required to pay a clean claim, that the phrase "benefit due under the claim" be added to section 5.4 to clarify that the amount to be paid by the insurer on the

claim is consistent with the insurer's obligations under the policy and that the form of the regulation should be changed to conform to the format established by the Registrar of Regulations.

Decision And Effective Date

I hereby adopt Regulation 1310 as modified by the changes herein to be effective on August 1, 2003.

Text And Citation

The text of the proposed amendments to Regulation 10 last appeared in the Register of Regulations Vol. 6, Issue 11, pages 1465-7, May 1, 2003.

Donna Lee H. Williams, Insurance Commissioner,
June 13, 2003

Regulation 1310

Standards For Prompt, Fair And Equitable Settlement Of Claims For Health Care Services

1.0 Authority

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

2.0 Definitions

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

2.1 "Carrier" or "Health Insurer" shall have the same meaning applied to it by 18 Del. C. 3343(a)(1).

2.2 "Clean Claim" shall mean a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that substantially prevents timely payments from being made on the claim.

2.3 "Health Care Provider" shall mean any entity or individual licensed, certified or otherwise permitted by law pursuant to Titles 16 or 24 of the Delaware Code to provide health care services.

2.4 "Policyholder," "Insured" or "Subscriber" shall be a person covered under a health insurance policy or a representative designated by such person and entitled to make claims on his or her behalf.

3.0 Scope

3.1 This regulation shall apply to all health insurers as defined in Section 2, and shall apply to all plans or policies of health insurance or benefits delivered or issued for delivery in this State and which cover residents of this State

or employees of employers located in this State and their dependents. Exempted from the provisions of this regulation are policies of automobile and workers compensation insurance, hospital income and disability income insurance, Medicare supplement and long-term care insurance.

4.0 Purpose

4.1 The purpose of this regulation is to ensure that health insurers pay claims to policyholders and health care providers in a timely manner. This regulation will establish standards for both determining promptness in settling claims and determining the existence of a general business practice for failing to promptly settle such claims under 18 Del. C. 2304(16).

5.0 Prompt Payment of Claims

5.1 A health insurer shall pay the benefit due under a clean claim to a policyholder or covered person, or make payment to a health care provider no later than ~~45~~ 30 calendar days after receipt of an ~~electronically~~ clean claim for services. ~~and no later than 45 calendar days after receipt of a paper filed clean claim for services.~~

5.2 A claim is not a clean claim as defined in section 2.2 if any of the following circumstances exist:

5.2.1 Where the obligation of a health insurer to pay a claim or make a payment for health care services rendered is not reasonably clear due to a good faith dispute regarding the eligibility of a person for coverage, the liability of another insurer or corporation for all or part of a claim, the amount of the claim, the benefits covered under a contract or agreement, or the manner in which services were accessed or provided.

5.2.2 Where there exists a reasonable basis supported by specific information, available for review by the Department, that such claim was submitted fraudulently.

5.2.3 For claims properly disputed or litigated and subsequently paid.

5.3 In those cases covered by section 5.2.1, a health insurer shall pay all portions of a claim meeting the definition of clean claim in accordance with section 5.1. Additionally, a health insurer shall notify the policyholder in writing within 30 days of the receipt of the claim:

5.3.1 that such carrier is not obligated to pay the claim or make the medical payment, in whole or in part, stating the specific reasons why it is not liable; or

5.3.2 that additional information is needed and is being sought to determine liability to pay the claim or make the health care payment.

5.4 Upon receipt of the information required by section 5.3.2, or upon the administrative resolution of a dispute wherein the health insurer is deemed obligated to pay the benefit due under the claim or make medical payment, a health insurer shall make payment as required by section 5.1.

6.0 General Business Practice

6.1 Within a 36 month period, three instances of a health insurer's failure to pay a Claim or bill for services promptly, as defined in section 5 above, shall give rise to a rebuttable presumption that the insurer is in violation of 18 Del. C. 2304 (16)(f). In determining whether the presumption is rebutted the Commissioner may consider, among other things, whether the health insurer meets nationally recognized timeline standards for claims payments such as those applicable to the Medicare, Medicaid or Federal Employees Health Benefit Plan programs.

6.2 The 36 month time period established in section 6.1 shall be measured based upon the date the claims or bills became due. Each claim or bill, or portion of a claim or bill, pertaining to a single medical treatment or procedure provided to an individual policyholder that is processed in violation of this regulation shall constitute an "instance" as described in section 6.1.

7.0 Penalties

7.1 In addition to the imposition of penalties in accordance with 18 Del. C. 2312(b), the Commissioner may order the health insurer to pay to the health care provider or claimant, in full settlement of the claim or bill for health care services, the amount of the claim or bill plus interest at the maximum rate allowable to lenders under 6 Del. C. 2301(a). Such interest shall be computed from the date the claim or bill for services first became due.

8.0 Causes of Action

8.1 This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a health insurer or its representative based upon a violation of 18 Del. C. 2304 (16).

9.0 Separability

9.1 If any provision of this regulation or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

10.0 Effective Date

10.1 This regulation, as amended, shall become effective on ~~July~~ August 1, 2003.

Adopted and signed by the Commissioner June 13, 2003.

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER FORTY-FOUR**

**RE: CREATING PRINCIPLES FOR
RESPONSIBLE INDUSTRY IN DELAWARE**

WHEREAS, a healthy manufacturing sector is a vital part of Delaware's economy; and

WHEREAS, long-term sustainability of the manufacturing sector requires that manufacturers operate their facilities responsibly, protecting their workers, the local community and the environment; and

WHEREAS, Delaware does not currently have adequate guidance for manufacturing facilities as to what principles of operation are expected; and

WHEREAS, Delaware does not currently have a program for facilities to make public commitments to principles of operation;

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware do hereby declare and order as follows, this 20th day of May 2003:

1. The Principles for Responsible Industry in Delaware are hereby created for the purpose of providing guidance to the manufacturing facilities in Delaware as to the principles of operation expected of facilities in Delaware.

2. The Principles for Responsible Industry in Delaware are:

I. Managing through Systems Approaches

We are committed to the quality of our products and our operations. We will utilize systems approaches to the management of our facility, with the goals of continuous improvement in both quality and environmental management.

II. Community Involvement

We are committed to being part of the community in which we are located. We will regularly interact with the communities near our facility, both informing and seeking advice from our neighbors. We will notify, in a timely manner, everyone who may be affected by conditions caused by our company that may negatively affect health, safety or the environment.

III. Valuing and Protecting Our Workers

We are committed to the satisfaction, development and well being of our employees. We will enhance the development of and minimize the risks to our employees through use of safe technologies, training, operating procedures and by being prepared for emergencies.

IV. Protecting the Environment and the Community

We are committed to protecting the environment and communities. We will reduce and make continual progress toward eliminating the release of any substance that may cause health or environmental damage. We will reduce, and where possible eliminate wastes and releases through source reduction. All waste will be handled and disposed of safely and responsibly.

V. Conserving Energy

We are committed to reducing our energy consumption. We will conserve energy and improve energy efficiency of our operations and of the products we produce. We will make every effort to use environmentally safe and sustainable energy sources.

3. Adopting the Principles for Responsible Industry in Delaware is voluntary. Facilities that choose to sign on shall make commitments to specific actions implementing the Principles for Responsible Industry in Delaware and shall submit annual reports on their commitments. Commitment shall be made at the facility level, by the facility manager, although commitment from top corporate management is highly encouraged.

4. Benefits may be provided to companies that achieve substantial accomplishments under their commitments and maintain excellent compliance records. Benefits begin following submission and review of the first annual report by the facility. Benefits will be offered on a case-by-case basis depending upon the level of commitment and achievement and the company's compliance record. Benefits may be rescinded if a company does not maintain an excellent compliance record or fails to make progress under their commitments. Benefits may include such things as fast track and/or flexible permitting, reduced inspection schedules, awards and others.

Approved and Adopted, this 20th Day of May, 2003.

Ruth Ann Minner
Governor

Attest:
Harriet Smith Windsor
Secretary of State

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

Approved and Adopted, this 28th Day of May, 2003.

Ruth Ann Minner
Governor

**EXECUTIVE ORDER
NUMBER FORTY-FIVE**

Attest:
Harriet Smith Windsor
Secretary of State

**RE: AMENDMENT TO EXECUTIVE ORDER
NUMBER TWENTY REGARDING THE
STATE EMPLOYEES' CHARITABLE
CAMPAIGN**

WHEREAS, by Executive Order Number 20, dated September 13, 2001, I continued the Delaware State Employees' Charitable Campaign, and created procedures for the administration of the Campaign, including the establishment of a Steering Committee; and

WHEREAS, it is deemed beneficial and in the best interest of the State Employees' Charitable Campaign that the Steering Committee be expanded to include an additional four members, increasing the membership from eight to twelve persons, to ensure broad-based participation in and oversight of the Campaign.

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware do hereby declare and order the following:

1. Executive Order Number 20 is hereby amended, by striking Section III, Part A, in its entirety and replacing it with the following paragraph:

"A. The Steering Committee is hereby established and shall consist of twelve members who shall be state employees and who shall be appointed to serve at the pleasure of the Governor. Of the members appointed, there shall be at least one employee from each of the three counties. In addition, one of the appointees shall be an employee who is represented by one of the unions under which the employees of the State are organized; one shall be an employee of the Department of Finance recommended by the Secretary of Finance; one shall be a representative from the Governor's staff; and one shall be a representative of the Lieutenant Governor's staff."

2. Except as otherwise provided herein, all of the provisions of Executive Order Number 20 shall remain in full force and effect.

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Advisory Council to the Division of Developmental Disabilities Services	Ms. Cheryl A. Coffin	5/12/2006
	Mr. Hugh J. Kelly	5/12/2006
	Mr. Robert Osgood	5/12/2006
	Mr. Thomas E. Rust	5/12/2006
Board of Chiropractic	Mr. William T. Cowan, III	5/16/2006
	Mr. Raymond L. Moore, Sr.	4/11/2005
Board of Examiners for Nursing Home Administrators	Ms. Elizabeth Ann Happoldt	5/16/2006
	Ms. Lillie Mae Johnson	4/22/2005
	Ms. Mary Ann P. Stanley	5/16/2006
Board of Funeral Services	Mr. Lyle R. Dabson	5/12/2006
Board of Geologists	Mr. Steven M. Smailer	5/16/2006
	Mr. Stephen N. Williams	1/7/2005
Board of Landscape Architects	Ms. Lorene J. Athey	5/12/2006
Board of Medical Practice	Mr. John W. Banks	5/7/2005
Board of Nursing	Mr. Robert E. Lawson	5/16/2006
	Ms. Pamela C. Zickafoose	5/16/2006
Board of Occupational Therapy	Ms. December E. Hughes	5/12/2006
	Mr. Michael von Reider	5/12/2006
Board of Pharmacy	Mr. Joseph F. Gulla, III	7/1/2006
	Mr. Christopher J. Tigani	7/1/2006
Board of Professional Land Surveyors	Mr. Victor F. Kennedy	5/12/2006
Child Placement Review Board-Kent	Ms. Ellen W. Holler	5/12/2006
	Mr. Rodney C. Smith	5/12/2006
	Ms. Andrea M. Alston	5/12/2006
Child Placement Review Board-New Castle	Ms. Mary K. Field	5/12/2006
	Ms. Elaine Laudenslager	5/12/2006
	Ms. Jeanmarie Leonard	5/12/2006
	Ms. Pamela Meyer	5/12/2006
Commission on the Purchase of Products and Services for the Blind and Other Severely Handicapped Individuals	Ms. Mary Ann Kwiatkowski	5/12/2007
	Mr. Roger M. Levy	5/12/2007
	Mr. Dominic E. Scatasti, Sr.	5/12/2007
Commission on Veterans' Affairs	Mr. Gary M. Morris	5/16/2007
	Mr. Reese E. Phillips	5/16/2007
	Mr. Arthur G. Samuelsohn	5/16/2007
	Mr. George E. Webb	5/16/2007

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Committee on Employment of People with Disabilities	Ms. Margaret Rivera	5/16/2006
Committee to Review the Need for a Three Digit Number for Public Safety	Mr. Thomas M. Jarrett	
Council on Correction	Mr. James D. Burton	5/16/2006
	Mr. James C. Hardcastle	5/16/2006
	Reverend Tyrone C. Johnson	5/16/2006
	Mr. Roger M. Levy	5/16/2006
	Ms. Lois A. Myers	5/16/2006
	Mr. Richard D. Senato	5/16/2006
Council on Correction/Chair	Edward F. Crumlish, M.D.	Pleasure of the Governor
Council of Delaware Association of Professional Engineers	Mr. Paul E. Crawford	5/12/2007
Council on Forestry	Mr. George A. Barczewski	5/21/2006
Council on Real Estate Appraisers	Mr. Richard W. Bauermeister	5/12/2006
Council on Services for Aging and Adults with Physical Disabilities	Ms. Azalia S. Briggs	5/19/2006
Council on Soil and Water Conservation	Mr. H. Wallace Cook	6/2/2006
	Ms. Constance C. Holland	5/12/2006
	Mr. Harry E. Hunsicker, III	5/12/2006
	Hiram Lasher, DVM	5/12/2006
	Ms. Barbara J. Sapp	5/12/2006
Court of Common Pleas/Commissioner	The Honorable Arlene M. Coppadge	5/23/2007
	The Honorable Joseph W. Maybee	5/30/2007
Delaware Bicycle Council	Mr. Fred N. Breukelman	5/16/2006
Delaware College Investment Plan Board	Mr. William N. Spiker	5/23/2006
Delaware Gaming Control Board	Mr. John Mancus	6/2/2008
Delaware Health Care Commission	Jacquelyne W. Gorum, DSW	5/16/2007
	Mr. Robert F. Miller	5/16/2007
	Mr. A. Herbert Nehrling, Jr.	5/16/2007
Delaware Health Resources Board	Mr. Timothy J. Constantine	5/12/2006
	Ms. Linda S. Heller	5/12/2006
	Mr. A. Herbert Nehrling, Jr.	5/12/2006

GOVERNOR'S APPOINTMENTS

107

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Institute of Dental Education & Research/ Board of Directors	Ms. Melanie K. Sharp	5/12/2006
Delaware Nursing Home Residents Quality Assurance Commission	Ms. Thelma G. Mayer Mr. Brian L. Posey	5/12/2006 5/12/2006
Delaware River and Bay Authority	Mr. Thomas J. Cooper Mr. William E. Lowe, III Mr. F. Michael Parkowski	7/1/2007 7/1/2007 7/1/2006
Developmental Disabilities Council	Linda D. Barnett, Ph.D. Ms. Paula J. Burdette Ms. Bethel Chang Ms. Theda M. Ellis Ms. Karen Gallagher Mr. Brian Hartman Mr. Larry D. Henderson Ms. Brenda S. Kramer Mr. Matt Petke Ms. Helen C. Skinner Ms. Jamie L. Wolfe	5/16/2006 5/16/2006 5/16/2006 5/16/2006 5/19/2006 5/16/2006 5/16/2006 5/16/2006 5/16/2006 5/16/2006 5/16/2006
Diamond State Port Corporation Advisory Board	Mr. Ira W. Spencer	5/16/2005
Family Court/Chief Judge	The Honorable Chandlee J. Kuhn	6/4/2015
Family Court/Commissioner	The Honorable John R. Carrow The Honorable M. DeSales Haley The Honorable Carolee M. Grillo The Honorable Mary Ann Herlihy The Honorable Pamela D. Holloway The Honorable Frederic H. Kenney The Honorable Martha F. Sackovich The Honorable Patricia T. Stewart	5/15/2007 5/15/2007 5/15/2007 5/15/2007 5/21/2007 5/15/2007 5/15/2007 5/15/2007
Governor's Council on Agriculture	Mr. Dale J. Ockels Mr. Richard G. Papen Mr. Richard L. Sapp	5/16/2006 5/16/2006 5/16/2006
Governor's Task Force on School Libraries	The Honorable James P. Neal	Pleasure of the Governor
Human Relations Commission	Ms. Katharine V. Cropper Ms. Bernice M. Edwards Mr. Ralph A. Figueroa Ms. Marian L. Harris Ms. Shirley C. Horowitz Mr. Douglas T. James Ms. Christine L. Kraft	5/12/2007 5/12/2007 5/12/2007 5/12/2007 5/12/2007 5/12/2007 5/12/2007

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
New Castle County/Justice of the Peace	Ms. Susan E. Cline	6/4/2007
Organ and Tissue Donor Awareness Board	Ms. Linda L. Jones	5/12/2006
Partnership for the Delaware Estuary/Board of Directors	The Honorable John Hughes	Pleasure of the Governor
State Board of Examiners of Psychologists	Martha B. Boston, Ph.D.	5/12/2006
	Gordon J. DiRenzo, Ph.D.	5/12/2006
	Mr. Frank E. Szczuka, Jr.	5/12/2006
	Colonel Robert D. Welsh	5/12/2006
State Employee Benefits Advisory Council	Mr. Glenn C. Allen	5/16/2004
	Ms. Christine M. Long	5/16/2006
	Ms. Sandra A. Reyes	5/16/2005
	Mr. Edwin A. Tos	5/16/2006
State Rehabilitation Advisory Council	Mr. Mark A. Chamberlin	5/12/2006
Superior Court/Commissioner	The Honorable Andrea M. Freud	6/4/2007
	Ms. Alicia B. Howard	5/28/2007
	The Honorable Michael P. Reynolds	5/16/2007
Supreme Court Justice	The Honorable Jack B. Jacobs	6/4/2015
University of Delaware/Board of Trustees	H. Wesley Towers, Jr., VMD	5/8/2009
Workforce Investment Board	Mr. John N. Austin	Pleasure of the Governor
	Mr. Bruce C. Crouch	Pleasure of the Governor
	Ms. Stacy B. Griggs	Pleasure of the Governor
	Mr. Richard D. Howard	Pleasure of the Governor
	Mr. James D. Randall	Pleasure of the Governor
	Mr. Benjamin T. Shaw	Pleasure of the Governor

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY
PUBLIC NOTICE**

The Board issues these proposed rules pursuant to 24 *Del.C.* §105(1) and 29 *Del.C.* §10115. The Board will accept written comments from July 1, 2003 through July 30, 2003. The Board will hold a public hearing on the proposed amendments on July 23, 2003 at 8:30 a.m. in the second floor conference room in the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467. Written comments should be submitted to Sheila Wolfe, Administrative Specialist, Division of Professional Regulation, at the same above-listed address.

The Board proposes to amend the Rule 5.2 to delete the provision that currently permits a person to take the CPA examination if the applicant expects to meet the Board's education requirements within 120 days of taking the examination. The Board proposes a new Rule 11.8, Computer Based Examinations to provide the rules governing the administration of the computer based examination for the Uniform CPA examination including the period within which an applicant may sit for the examination and the provisions for conditional credit for persons previously taking the paper-and-pencil examination.

Michael F. McTaggart
Deputy Attorney General

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, July 17, 2003 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
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 with 42CFR §447.205, 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 / Medicaid/Medical Assistance

Program is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to establish the provisions relating to imposing and collecting copayments for pharmaceutical services from Medicaid/Medical Assistance clients.

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 19720-0906 by July 31, 2003.

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

**DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE**

**MEDICAID/MEDICAL ASSISTANCE STANDARDS
FOR PAYMENT OF RESERVED BEDS DURING
ABSENCE FROM LONG-TERM CARE FACILITIES**

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/Division of Social Services (DHSS/DSS) publishes this notice pursuant to federal law and regulations in 42 CFR §§447.40 and 447.205. Under Medicaid payment regulations in 42 CFR §447.40, federal financial participation (FFP) is available if a State plan includes provision for bed-reservation payments during a recipient's temporary absence from an inpatient facility.

Current state plan provision required Medicaid to make payments to long term care facilities to ensure a bed is reserved for a Medicaid recipient who is temporarily absent from the long-term care facility due to hospitalization or leave of absence. Bed reservation payments are limited to fourteen (14) days per hospitalization in any 30-day period. This notice is being given to provide information of public interest with respect to the intent of DSS to amend the Division of Social Services Manual (DSSM) and to submit to the Centers for Medicare and Medicaid Services (CMS) an amendment to the Title XIX Medicaid State Plan to reduce "bed hold days" from fourteen (14) to seven (7) days per hospitalization in any 30-day period, effective October 1, 2003.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this notice must submit same to Sharon

L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by July 31, 2003.

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

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

FOOD STAMP PROGRAM

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, 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 / Food Stamp Program is proposing to amend its policy as it relates to the food stamp benefits to certain qualified aliens. These mandatory provisions must be implemented on October 1, 2003, in accordance with Title IV of the Farm Security and Rural Investment Act of 2002.

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 19720-0906 by July 31, 2003.

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

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

FOOD STAMP PROGRAM

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, 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 / Food Stamp Program is proposing to amend its policies in the Division of Social Services Manual (DSSM) as it relates to anticipating income and reporting changes. These mandatory provisions will be

implemented on October 1, 2003.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by July 31, 2003.

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

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Transitional Medicaid Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the policy of the Transitional Medicaid Program in the Division of Social Services Manual (DSSM).

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 July 31, 2003.

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

HUMAN RELATIONS COMMISSION

PUBLIC NOTICE

The Human Relations Commission in accordance with 6 DeL.C. §4506 has proposed changes to Rule 10 and Rule 27 implemented under the Equal Accommodations Act. The changes clarify that a party or the Division of Human Relations can move to dismiss a complaint before a hearing when the Commission lacks jurisdiction or the complaint does not allege facts to state a claim under the statute. The dismissal order can be appealed to court.

In addition, the proposed changes toll the time for an appeal if there has been an application for reconsideration after a panel hearing. Tolling the appeal time is consistent with the rules of the courts and other administrative agencies.

A public hearing will be held at 7:00 p.m. on August 14, 2003 in Room 204 of the MBNA Building, Delaware State University, Rte.13, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Division of Human Relations at the Carvel State Building, 820 North French St., 4th Floor, Wilmington, DE 19802. Persons wishing to submit written comments may forward these to the Commission at the above address. The final date to receive written comments will be at the public hearing.

The Commission will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

The MERB also requests and will consider timely filed written submissions from interested individuals and groups concerning these proposed Merit Rule changes. The final date for any such written submission is the date set forth above for the public hearing. Any such submissions should be mailed or delivered to the MERB at the following address:

Merit Employee Relations Board
Margaret M. O'Neill Building, Suite 213
410 Federal Street, Box 4
Dover, DE 19901

PLEASE TAKE NOTE, pursuant to *Del. C.* §5914, the changes **as proposed by the Director** will/shall become final after the completion of the public hearing, unless rejected by a majority of the members appointed to the Board.

Anyone wishing to review the Director's written filing with MERB or to present oral comments at the hearing should call Ms. Jean Lee Turner in the Merit Employee Relations Board office at (302) 739-6772.

MERIT EMPLOYEE RELATIONS BOARD

PUBLIC NOTICE PROPOSED CHANGES TO STATE OF DELAWARE MERIT RULES

PLEASE TAKE NOTICE that on May 28, 2003, pursuant to 29 *Del.C.* §5914 and 29 *Del.C.* ch 101, extensive proposed changes to the Merit Rules of the State of Delaware have been transmitted to the Merit Employee Relations Board ("MERB") from the Director of the Office of State Personnel ("Director").

The proposed changes, which the Director indicates have been approved by both the Director and by the Statewide Labor-Management Committee, will significantly repeal many existing Merit Rules and substitute in their place new and revised Merit Rules.

This is a significant revision and restatement of the Merit Rules of the State of Delaware. Copies of the proposed deletions and new Merit Rules are available for public inspection by appointment in the MERB office. The proposed deletions and additions may also be viewed on the Internet by visiting the Delaware State Personnel Web Site. The direct link is: http://www.delawarepersonnel.com/employee/documents/mrules_merb1.pdf

On September 18, 2003, the MERB will conduct a Public Hearing concerning the proposed Merit Rule changes (both the proposed repeal and the new Rules) submitted by the Director. The hearing will begin at 9:00 a.m. in the 2nd Floor Conference Room of the Margaret M. O'Neill building, 410 Federal Street, Dover, Delaware.

SUBSCRIBE TO THE OFFICIAL SOURCE OF COMPLETE INFORMATION ON DELAWARE STATE REGULATIONS

THE DELAWARE REGISTER OF REGULATIONS



A single-source document for regulatory information, including proposed and adopted text of state regulations, all emergency regulations, Governors Executive Orders and Appointments, Attorney General Opinions, General Notices and notices of public hearings and open meetings of state agencies.

PUBLISHED MONTHLY - \$135.00 PER YEAR

YES, PLEASE ENTER MY SUBSCRIPTION FOR THE DELAWARE REGISTER AT \$135/YEAR.
You will be billed upon receipt of your order. Subscription period runs from January to December. Mid-year subscriptions will be prorated at \$12 per issue. Back issues are available at \$12 per issue. Subscription fees are non refundable.

NAME _____ ADDRESS _____

ORGANIZATION _____ CITY _____

PHONE _____ STATE _____ ZIP _____ EMAIL _____

Please clip and return to: **REGISTRAR OF REGULATIONS
LEGISLATIVE HALL, DOVER, DELAWARE 19903
FAX: 302-739-3895**

Visit The Delaware General Assembly On The Web!

142nd Delaware General Assembly

Legislative Hall, Dover, DE. 19901 Phone: (302) 744 4114



[Home](#) - [Contact Us](#) - [Permissions](#) - [Disclaimer](#) - [FAQs](#) - [Site Map](#) - [Related Links](#) - [Copyright](#)

State Senate

House of Representatives

Redistricting

Bill Tracking

Online Publications

General Information

Legislative Divisions

Contact Information

Meeting Notices & Agendas

Bill Tracking Archives

Delaware became the first state on December 7, 1787 by being the first state to ratify the new United States Constitution. Delaware's first constitution was adopted on September 20, 1776, with subsequent versions adopted in 1792, 1831 and the current version in 1897.



Delaware's lawmaking body, is comprised of a State House of Representatives, whose 41 members are elected for two-year terms, and a State Senate, whose 21 members are elected for four-year terms. Half of the Senate seats are contested in each general election.

COMMITTEE HEARINGS

WHAT'S NEW

The General Assembly Website features:

- Current legislative information
- Information on both the Senate and House of Representatives
- Access the Delaware Code
- Access to the Delaware Register of Regulations
- Information on the legislative process
- Various reports and publications

The General Assembly Website is located at:

<http://www.legis.state.de.us>



LEGISLATIVE BILL SUBSCRIPTION SERVICES

Order Form (please print or type)

NAME _____ ADDRESS _____

ORGANIZATION _____ CITY _____ FAX _____

PHONE _____ STATE _____ ZIP _____ EMAIL _____

Please check the specific service(s) to which you wish to subscribe :

<u>SERVICES</u>	<u>ANNUAL COST</u>
One copy of all legislation introduced:	
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$110.00
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$850.00
One copy of all legislation signed by the Governor:	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$215.00
One copy of House and Senate calendars:	
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$110.00
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$850.00
One copy of all Governor's Advisories:	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$30.00
Daily Legislative Agendas and weekly Standing Committee Notices:	
<input type="checkbox"/> Via Fax - - - - -	\$135.00

* Subscribers who choose to pick up their materials at Legislative Hall are requested to do so at least once a week, due to limited on-site file space. Thank you.

If you have any questions about our subscription services, please contact the Division of Research by dialing, toll-free, (800) 282-8545 (in state) or via E-Mail at jeffrey.hague@state.de.us. Please dial (302) 744-4114 if you are calling from outside Delaware.

Please return this order form to the Division of Research at P.O. Box 1401, Legislative Hall, Dover, Delaware, 19903, or fax it to (302) 739-3895 as soon as possible. (Don't forget to make a copy for your own files). You will be billed upon our receipt of your order. Your service(s) will begin, promptly, when payment is received and the General Assembly convenes. Thank you for using the Subscription Services of the Division of Research.

ACCESS THE DELAWARE CODE ON-LINE!



Online Delaware Code

- [The Delaware Constitution](#)
- [Title 1 - General Provisions](#)
- [Title 2 - Transportation](#)
- [Title 3 - Agriculture](#)
- [Title 4 - Alcoholic Liquors](#)
- [Title 5 - Banking](#)
- [Title 6 - Commerce and Trade](#)
- [Title 7 - Conservation](#)
- [Title 8 - Corporations](#)
- [Title 9 - Counties](#)
- [Title 10 - Courts and Judicial Procedures](#)
- [Title 11 - Crimes and Criminal Procedure](#)
- [Title 12 - Decedents' Estates and Fiduciary Relations](#)
- [Title 13 - Domestic Relations](#)
- [Title 14 - Education](#)
- [Title 15 - Elections](#)
- [Title 16 - Health and Safety](#)
- [Title 17 - Highways](#)
- [Title 18 - Insurance Code](#)
- [Title 19 - Labor](#)
- [Title 20 - Military and Civil Defense](#)
- [Title 21 - Motor Vehicles](#)
- [Title 22 - Municipalities](#)
- [Title 23 - Navigation and Waters](#)
- [Title 24 - Professions and Occupations](#)
- [Title 25 - Property](#)
- [Title 26 - Public Utilities](#)
- [Title 27 - Religion](#)
- [Title 28 - Sports and Amusements](#)
- [Title 29 - State Government](#)
- [Title 30 - State Taxes](#)
- [Title 31 - Welfare](#)

Find in the section label

- Up-to-date version of the Code reflecting recent legislative enactments
- Comprehensive full text search capabilities.

Visit the Delaware Code On-Line at:

<http://www.delcode.state.de.us/>