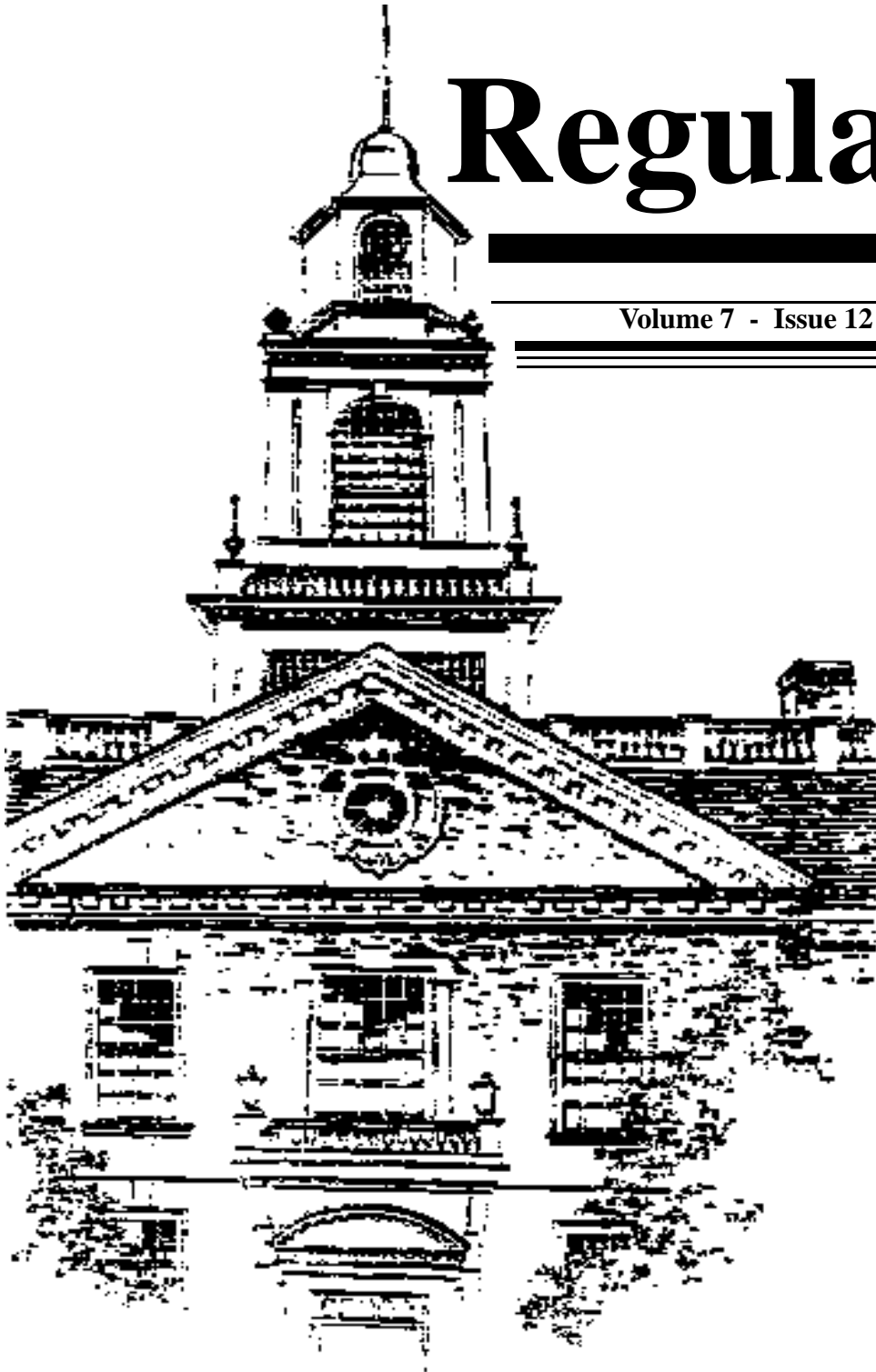

Delaware Register of Regulations



Issue Date: June 1, 2004

Volume 7 - Issue 12

Pages 1594 - 1795

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Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before May 15, 2004.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

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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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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
JULY 1	JUNE 15	4:30 P.M.
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 16	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.

DIVISION OF RESEARCH STAFF:

Deborah A. Porter, Interim Supervisor; **Rochelle Yerkes**, Administrative Specialist II.; **Sandra F. Clark**, Administrative Specialist II; **Kathleen Morris**, Unit Operations Support Specialist; **Jeffrey W. Hague**, Registrar of Regulations; **Victoria Schultes**, Administrative Specialist II; **Rhonda McGuigan**, Administrative Specialist I; **Ruth Ann Melson**, Legislative Librarian; **Lisa Schieffert**, Research Analyst; **Judi Abbott**, Administrative Specialist I; **Alice W. Stark**, Legislative Attorney; **Ted Segletes**, Paralegal; **Deborah J. Messina**, Print Shop Supervisor; **Marvin L. Stayton**, Printer; **Don Sellers**, Printer.

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE**HARNESS RACING COMMISSION**

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

PUBLIC NOTICE

The Delaware Harness Racing Commission proposes amendments to Commission rules pursuant to 3 **Del.C.** §10005 and 29 **Del.C.** §10115. The Commission will accept written comments from June 1, 2004 through August 17, 2004. The Commission will hold a public hearing on the proposed rule amendments on August 18, 2004 at 10:15 a.m. at Harrington Raceway, Harrington, DE. Written comments should be submitted to John Wayne, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

The Commission proposes to amend its Rules as follows: 1) enact a new rule 5.1.8.16 setting forth requirements for maintaining the confidentiality of test reports for the human drug testing program; and 2) delete rule 8.4.3.2.1 which currently provides that buckets and water shall be furnished by the State Veterinarian in the detention area where the specimens are collected from the horses.

5.0 Licensees**5.1 General Provisions****5.1.1 Licenses Required**

5.1.1.1 A person shall not participate in pari-mutuel racing under the jurisdiction of the Commission without a valid license issued by the Commission. License categories shall include the following and others as may be

established by the Commission:

5.1.1.1.1 racing participants and personnel (including owner, authorized agent, trainer, assistant trainer, driver, veterinarian, veterinary assistant, horseshoer and stable employees);

5.1.1.1.2 racing officials (including the State Steward, judges, racing secretary, paddock judge, horse identifier and equipment checker, clerk of the course official starter, official charter, official timer, photo finish technician, patrol judge, program director, State veterinarian and Lasix veterinarian);

5.1.1.1.3 persons employed by the association, or employed by a person or concern contracting with or approved by the association or Commission to provide a service or commodity, which requires their presence in a restricted area; and

5.1.1.1.4 all Commission employees.

5.1.1.2 Persons required to be licensed shall submit a completed application on forms furnished by the Commission and accompanied by the required fee, which shall be determined by the Commission.

5.1.1.3 License applicants may be required to furnish to the Commission a set(s) of fingerprints and a recent photograph and may be required to be re-fingerprinted or re-photographed periodically as determined by the Commission.

5.1.2 Licensing Reciprocity

The Commission may license persons holding valid permanent (not temporary) licenses issued by Association of Racing Commissioners International (RCI) member racing jurisdictions in North America. The licensee must be in good standing; have cleared a Federal Bureau of Investigation (FBI) or Royal Canadian Mounted Police

(RCMP) fingerprint check within the previous 36 months, or such other period as is required by the Commission; file an application and/or affidavit as may be required by the Commission; and pay the required fees prior to participating in racing.

5.1.2.1 The Commission may recognize the issuance of racing licenses from RCI member jurisdictions in North America for purposes of issuance of licenses in this jurisdiction.

5.1.2.2 Only permanent licenses in good standing shall be considered. Temporary or probationary licenses shall not be considered.

5.1.2.3 An applicant must be in good standing in each jurisdiction where they hold or have held a racing license.

5.1.2.4 The applicant must have submitted fingerprints within the past 36 months, or such other period as is required by this jurisdiction, for the purpose of a criminal records check by the FBI or RCMP. The applicant shall provide this jurisdiction with proof of licensure from another RCI member jurisdiction to which fingerprints were submitted.

5.1.2.5 The applicant shall submit the license application form and license fee required by this jurisdiction.

5.1.2.6 Provided the above requirements have been met, this jurisdiction may issue either a license and/or a validation sticker. The validation sticker shall be affixed to either a license issued by this jurisdiction or a valid license issued by another RCI member jurisdiction. This Commission shall determine the period of time that such license shall be valid in Delaware.

5.1.2.7 In the event the licensee is absent from this jurisdiction, and upon payment of the applicable fees, a receipt shall be mailed to the licensee's permanent address. The receipt may then be presented at the Commission office by the licensee so that a Commission representative may affix the proper validation sticker to the racing license badge.

5.1.3 Multi-State Licensing Information

In lieu of a license application from this jurisdiction, the Commission shall accept an RCI Multi-State License and Information form.

5.1.4 Age Requirement

Applicants for licensing shall be a minimum of 14 years of age unless otherwise specified in these rules. An applicant may be required to submit a certified copy of his/her birth certificate. Persons under the age of 18 may be required to show evidence of active participation in a certified educational program or have a high school diploma or equivalent.

5.1.5 Consent to Investigation

The filing of an application for license shall authorize the Commission to investigate criminal and employment records, to engage in interviews to determine

applicant's character and qualifications and to verify information provided by the applicant.

5.1.6 Consent to Search and Seizure

By acceptance of a license, a licensee consents to search and inspection by the Commission or its agents and to the seizure of any prohibited medication, drugs, paraphernalia or devices in accordance with state/provincial and federal law. Any drugs, medication or other materials seized may be forwarded by the Commission to the official chemist for analysis.

5.1.7 Licensees' Obligation to Protect Horses

Each person licensed by the Commission shall do all that is reasonable and within his/her power and scope of duty to guard against and prevent the administration of any drug, medication or other substance, including permissible medication in excess of the maximum allowable level, to any horse entered or to be entered in an official workout or race, as prohibited by these rules.

5.1.8 Substance Abuse/Addiction

5.1.8.1 All licensees shall be deemed to be exercising the privileges of their license, and to be subject to the requirements of these rules, when engaged in activities that could affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.

5.1.8.2 It shall be a violation to exercise the privileges granted by a license from this Commission if the licensee:

5.1.8.2.1 Is engaged in the illegal sale or distribution of alcohol or a controlled substance;

5.1.8.2.2 Possesses, without a valid prescription, a controlled substance;

5.1.8.2.3 Is intoxicated or under the influence of alcohol or a controlled substance;

5.1.8.2.4 Is addicted, having been determined to be so by a professional evaluation, to alcohol or other drugs and not engaged in an abstinence-based program of recovery acceptable to the Commission;

5.1.8.2.5 Has in his/her possession within the enclosure any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled dangerous substance;

5.1.8.2.6 Refuses to submit to urine or drug testing, when notified that such testing is based on a random drug testing procedure, is based on reasonable suspicion that the person is using drugs or alcohol or is based on the licensee's acting as if in an impaired condition; or

5.1.8.2.7 Presently has drugs (controlled substances) or alcohol in his or her body. With regard to alcohol, the results of a breathalyzer test showing a

reading of more than .05 percent of alcohol in the blood shall be the criterion for a finding of alcohol present in the body; provided, however, that with respect to licensees under the age of 21, the presence of any measurable level of alcohol in the blood shall constitute a violation. With regard to other controlled substances, presence of the drug in any quantity measured by the testing instrument establishes the presence of the drug for purposes of this paragraph.

5.1.8.3 At its discretion, the Commission may conduct random or episodic random drug testing, as well as testing based on reasonable suspicion, in order to ensure safety on the racetrack.

5.1.8.4 When conducted, random drug testing shall apply equally to all licensees who are, at the time of the random testing, exercising the privileges of their license in such ways as may affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.

5.1.8.5 No notice need be given as to onset or cessation of random testing.

5.1.8.6 For licensees who are tested under the provisions in this chapter, and whose urine testing shows the presence of drugs (controlled substances) or alcohol, any field screening test results shall be confirmed by a laboratory acceptable to the Commission which shall include Gas Chromatography/Mass Spectrometry (GC/MS) procedures.

5.1.8.7 When the sample quantity permits, each test sample may be divided into portions so that one portion may be used for the confirmation procedure and another portion may be utilized to obtain an independent analysis of the urine sample.

5.1.8.8 The Commission shall provide for a secure chain of custody for the sample.

5.1.8.9 Assuming that laboratory procedures confirm the field screening test results, all costs for the transportation and testing of the sample, including the costs of the independent analysis of the divided portion of the sample, shall be the financial responsibility of the licensee.

5.1.8.10 Payment shall be due from the requesting person immediately upon receipt of notice of the costs.

5.1.8.11 A licensee penalized or restricted pursuant to this chapter shall retain rights of due process with respect to any determination of alleged violations which may adversely affect the right to hold a license.

5.1.8.12 If there has been a violation, as specified in 5.1.8.2 above, the following procedures will be followed:

5.1.8.12.1 The Commission or State Steward may, at its or his/her discretion, order the licensee to obtain a professional assessment to determine whether there is a substantial probability that the licensee is dependent on, or abuses, alcohol or other drugs or the Commission or State Steward may act on the information at hand.

5.1.8.12.2 Actions in the case of first violators may include revocation of the license, suspension of the license for up to six months, placing the violator on probation for up to 90 days or ordering formal assessment and treatment.

5.1.8.12.3 Treatment or assessment, if ordered, must meet the conditions set forth below.

5.1.8.12.4 The license of the person may be revoked or suspended for a period of up to one year or a professional assessment of the person may be ordered by the Commission or State Steward.

5.1.8.12.5 If a professional assessment indicates presence of a problem of alcohol or other drug abuse that is not treatable within the reasonably foreseeable future (360 days) the license may be suspended for a period of up to one year.

5.1.8.12.6 If a professional assessment indicates presence of a treatable problem of alcohol or other drug abuse or dependence, the Commission or State Steward may order the licensee to undergo treatment as a condition of continuing licensure. Such treatment will be through a program or by a practitioner, acceptable to the licensee and the Commission or State Steward. Required features of any program or practitioner acceptable to the Commission will be:

5.1.8.12.6.1 Accreditation or licensure by an appropriate government agency, if required by Delaware law;

5.1.8.12.6.2 A minimum of one year follow-up of formal treatment; and

5.1.8.12.6.3 A formal contract indicating the elements of the treatment and follow up program that will be completed by the licensee and, upon completion, certified to the Commission or State Steward as completed. To effect the contract, the licensee will authorize release of information by the treating agency, hospital or individual.

5.1.8.12.7 For third-time violators, the violator's license may be revoked and the violator may be deemed ineligible for licensure for up to five years.

5.1.8.13 Although relapse (failure to maintain abstinence) is not inevitable, it is common for relapse to occur in recovery from alcoholism or other substance dependence. Therefore, a licensee who is engaged in a formal program of recovery, and is compliant with all provisions other than abstinence, will not be regarded automatically as having committed a new violation.

5.1.8.14 When a licensee is determined to have failed in maintaining abstinence, the licensee shall furnish to the Commission or State Steward an assessment by the treating agency, hospital or individual practitioner indicating whether the licensee was compliant with the agreed upon program of recovery, and an opinion as to whether a "new violation" occurred.

5.1.8.15 The Commission or State Steward will determine whether a new violation has occurred in each instance. If a new violation has occurred, the Commission or State Steward will proceed under 5.1.8.12.1 - 5.1.8.12.3 above or 5.1.8.12.4 - 5.1.8.12.6 above. Otherwise, the licensee shall continue in the agreed upon program of recovery.

5.1.8.16 Reporting Requirements - Confidentiality

5.1.8.16.1 It shall be the obligation of the individual conducting the test to report, in writing, to the Chairman of the Commission or the Chairman's designee. The individual conducting the test shall immediately report any test indicating the presence of alcohol or controlled substances to the Chairman or the Chairman's designee. In addition, on a schedule to be set by the Commission, the individual conducting the test shall make written report to the Commission the number of people tested each day, the names of the individuals tested each week, the number of tests which were found "positive" in any field screening test and the number confirmed to be "positive" by laboratory testing.

5.1.8.16.2 Any information received and records retained in the process of obtaining a test sample including, but not limited to, medical information, information regarding the lawful use of prescription medication, the results of any tests and any reports filed as a result of attending any approved treatment program shall be treated as confidential, except for their use in a ruling issued pursuant to these rules, or any administrative or judicial hearing with respect to such a ruling. Access to the information received and/or reports generated shall be limited to the Commissioners of the Delaware Harness Racing Commission, the Commission's designee, the Secretary of the Department of Agriculture and employees of the office of the Attorney General.

5.1.8.16.3 Information received and reports generated pursuant to this rule shall be stored in the office of the Chairman of the Commission for a period of three (3) years. After three (3) years, they may be destroyed at the discretion of the Commission. The Commission may maintain information received and reports on individuals violating this rule for the purposes of recording the number of violations and results of treatment programs, should future violations occur.

5.1.9 Approval or Recommendations by State Steward or Presiding Judge

The Commission may designate categories of licenses which shall require State Steward's or Presiding Judge's prior approval or recommendation.

5.1.10 Employer Responsibility

5.1.10.1 The employment or harboring of any unlicensed person at facilities under the jurisdiction of the Commission is prohibited.

5.1.10.2 With respect to personnel actions based on a violation of any rule of the Commission relating to racing or pari-mutuel wagering, every employer shall report the discharge of any licensed employee in writing to the Commission or its designee, including the person's name, occupation and reason for the discharge.

5.1.11 Employer Endorsement of License Applications

The license application of an employee shall be signed by the employer.

5.1.12 Workers' Compensation

Licensed employers shall carry workers' compensation insurance covering their employees as required by Delaware law.

5.1.13 Financial Responsibility

Applicants for a license may be required to submit evidence of financial responsibility and shall maintain financial responsibility during the period for which the license is issued.

5.1.14 License Refusal

The Commission or its designee may refuse to issue a license and give the applicant the option of withdrawal of an application without prejudice. If an applicant is refused, the applicant may reapply for a license.

5.1.15 License Denial

The Commission may formally deny an application in accordance with these rules. An application denied shall be reported in writing to the applicant stating the reasons for denial, the date when a reapplication may be submitted, and shall be reported to the United States Trotting Association, which shall then advise other racing jurisdictions.

5.1.16 Grounds for Refusal, Denial, Suspension or Revocation of License

5.1.16.1 The Commission or its designee may refuse to issue or may deny a license to an applicant, or may suspend or revoke a license issued, or may order disciplinary measures, if the applicant:

5.1.16.1.1 has been convicted of a felony;

5.1.16.1.2 has been convicted of violating any law regarding gambling or a controlled dangerous substance;

5.1.16.1.3 has pending criminal charges; or

5.1.16.1.4 is unqualified to perform the duties required of the applicant;

5.1.16.1.5 has failed to disclose or states falsely any information required in the application;

5.1.16.1.6 has been found in violation of statutes or rules governing racing in this state or other jurisdictions;

5.1.16.1.7 has racing disciplinary charges pending in this state or other jurisdictions;

5.1.16.1.8 has been or is currently excluded from association grounds by a recognized racing jurisdiction;

5.1.16.1.9 has had a license denied, suspended or revoked by any racing jurisdiction;

5.1.16.1.10 is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting;

5.1.16.1.11 demonstrates financial irresponsibility by accumulating unpaid obligations, defaulting in obligations or issuing drafts or checks that are dishonored or payment refused;

5.1.16.1.12 is ineligible for employment pursuant to federal or state law because of age or citizenship; or

5.1.16.1.13 has violated any of the alcohol or substance abuse provisions outlined in these rules.

5.1.16.2 A license suspension or revocation shall be reported in writing to the applicant and the United States Trotting Association whereby other racing jurisdictions shall be advised.

5.1.17 License Restrictions, Limitations and Conditions

The Commission or its designee, for cause, may restrict, limit or place conditions on any license.

5.1.18 Duration of License

5.1.18.1 Licenses are valid for such other period as permitted by the Commission.

5.1.18.2 A license is valid only under the condition that the licensee remains eligible to hold such license.

5.1.19 Changes in Application Information

During the period for which a license has been issued, the licensee shall report to the Commission changes in information provided on the license applications as to current legal name, marital status, permanent address, criminal convictions, license suspensions of 10 days or more or license revocations or fines of \$500 or more in other jurisdictions.

5.1.20 Temporary Licenses

The Commission may establish provisions for temporary licenses or may permit applicants to participate in racing pending action on an application.

5.1.21 More Than One License

More than one license to participate in horse racing may be granted to a person except when prohibited by these rules due to a potential conflict of interest.

5.1.22 Conflict of Interest

5.1.22.1 The Commission or its designee shall refuse, deny, suspend or revoke the license of a person whose spouse holds a license and which the Commission, State Steward or judges find to be a conflict of interest.

5.1.22.2 A commissioner or Commission

employee or racing official shall not be an owner of a horse entered to race, and shall not accept breeder awards at, a race meeting where the Commission has jurisdiction.

5.1.22.3 A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official with respect to that race.

5.1.22.4 A person who is licensed as an owner or trainer, or has any financial interest in a horse registered for racing at a race meeting in Delaware shall not be employed or licensed at that race meeting as a racing official; racetrack managing employee; photo finish operator; racing chemist or testing laboratory employee; provided, further, that a racing official who is the parent, child or sibling of such person shall not officiate on any day when the horse owned or trained, or in which the person has any financial interest, is entered to race at association grounds; provided, however, that a parent, child or sibling acting as a groom for such a horse shall not be deemed to pose a conflict of interest for an official.

5.1.23 License Presentation

5.1.23.1 A person shall present an appropriate license to enter a restricted area.

5.1.23.2 The State Steward or Presiding Judge may require visible display of a license in a restricted area.

5.1.23.3 A license may only be used by the person to whom it is issued.

5.1.24 Visitor's Pass

Track security may authorize unlicensed persons temporary access to restricted areas. Such persons shall be identified and their purpose and credentials verified and approved in writing by track security. A copy of the written approval shall be filed with the Commission or its designee within 48 hours. Such authorization or credential may only be used by the person to whom it is issued.

5.1.25 Safety Helmets

5.1.25.1 A protective helmet, meeting the Snell Foundation standards for protective harness racing headwear, securely fastened under the chin, must be worn at all times on association grounds when:

5.1.25.1.1 racing, parading or warming up a horse prior to racing; or

5.1.25.1.2 jogging, training or exercising a horse at any time.

5.1.25.2 A violation of this rule shall result in a suspension or fine and the participant may be referred to the Commission.

5.1.26 Knowledge of Rules

5.1.26.1 A licensee shall be knowledgeable of the rules of the Commission; and by acceptance of the license, agrees to abide by the rules.

5.1.26.2 A licensee shall report to track security or to the State Steward or judges any knowledge he/she has that a violation of these rules has occurred or may occur.

5.1.27 Standards of Conduct

5.1.27.1 No licensee shall use improper language to any race official, or be guilty of any improper conduct toward such officials or persons serving under their orders, such improper language or conduct having reference to the administration of the course, or of any race.

5.1.27.2 No licensee shall commit an assault, or an assault and battery, upon any driver, trainer, groom, racing official or Commission appointee on the grounds of a racing association, or upon a racing official or Commission appointee who is in the performance of his official duties, nor shall any licensee threaten to do bodily or other injury to any driver, trainer, groom, racing official or Commission appointee, nor shall any licensee address to any such person language which is outrageously insulting.

5.1.27.3 If any licensee shall threaten, or join with others in threatening, not to race, or not to declare in, because of the entry of a certain horse or horses, or of a particular stable, thereby compelling or trying to compel the Racing Secretary to reject certain eligible entries, it shall be reported immediately to the State Steward, and the offending parties may be suspended by the State Steward pending a hearing before the Commission.

5.1.27.4 No owner, agent, trainer or driver who has entered a horse shall thereafter demand of the association a bonus of money or other special award or consideration as a condition for starting the horse.

5.1.27.5 No owner, trainer or driver of a horse shall bet or cause any other person to bet on his behalf on any other horse in any race in which there shall be a horse owned, trained or driven by him, or which he in anywise represents or handles or in which he has an interest; provided, however, that such a person may participate in multiple pool wagering on a race in which his/her horse is included in the wager only in the first (winning) position.

5.1.27.6 If any licensee shall be approached with any offer or promise of a bribe, or a wager or with a request or suggestion for a bribe, or for any improper, corrupt or fraudulent act in relation to racing, or that any race shall be conducted otherwise than fairly and honestly, it shall be the duty of such licensee to report the details thereof immediately to the Presiding Judge or State Steward.

5.1.27.7 Any misconduct on the part of a licensee or patron, fraudulent in its nature or injurious to racing, although not specified in these rules, is forbidden. Any licensee or other person who, individually or in concert with one another, shall fraudulently and corruptly, by any means, affect the outcome of any race or affect a false registration, or commit any other act injurious to racing, shall be guilty of a violation of these rules.

5.1.27.8 If two or more persons combine and confederate together, in any manner, regardless of where the said persons may be located, for the purpose of violating any of the Rules and Regulations of the Commission, and shall

commit some act in furtherance of the said purpose or plan, it shall constitute a conspiracy and a violation of these rules.

5.1.27.9 In any case where an oath is administered by the judges, by the State Steward, by the Commission or by a hearing officer thereof, under these rules, or by a Notary Public and any other person legally authorized to administer oaths, if the party knowingly swears falsely or withholds information pertinent to the investigation, he shall be fined, suspended, or both, or expelled.

5.1.27.10 The Commission may impose a fine or suspension on, or may refuse to license, any person subject to the jurisdiction of the Commission if the Commission finds that such person:

5.1.27.10.1 Is associating, consorting or negotiating with bookmakers, touts or other persons of similar pursuits; or

5.1.27.10.2 Is associating, consorting or negotiating with persons who have been convicted of a crime; or

5.1.27.10.3 Is guilty of fraud or has attempted any fraud or misrepresentation in connection with racing, breeding or otherwise; or

5.1.27.10.4 Has violated any law, rule or regulation with respect to racing in any jurisdiction; or

5.1.27.10.5 Has violated any rule, regulation or order of the Commission; or

5.1.27.10.6 Is of such experience, character or general unfitness that the person's participation in harness racing or related activities would be inconsistent with the public interest, convenience or necessity, or with the best interests of racing generally.

5.1.27.11 The Commission may refuse admission to race meeting grounds, and/or may eject from the enclosure of a race track operated by any association, any person whose presence there is, in the judgment of the Commission, inconsistent with the orderly or proper conduct of a race meeting, or whose presence or conduct is deemed detrimental to the best interests of harness racing.

5.1.27.12 Any person, whether a licensee or a patron, may be expelled from the enclosure of a race track operated by any association for any violation of Rule 5.1.27.

5.1.27.13 All licensees, officials and appointees of the Commission, and all employees of any association, are required to conduct themselves in a forthright and courteous manner at all times while on or near the premises of an association during the operation of a licensed harness race meeting. The Commission at any time may require the removal of any licensee, official, appointee or employee whose conduct does not comport with this requirement.

5.1.27.14 Licensees tampering with eligibility certificates may be fined, or their licenses may be suspended or revoked. Further, any winnings of such

licensees in races in which a horse was entered whose eligibility certificate was tampered with by such licensee may be ordered forfeited.

5.2 Owners

5.2.1 Licensing Requirements for Owners

5.2.1.1 Each person who has an ownership or beneficial interest in a horse is required to be licensed.

5.2.1.2 An applicant for an owner's license shall own or lease a horse which is eligible to race, registered with the racing secretary and under the care of a trainer licensed by the Commission. An owner shall notify the stewards/judges of a change in trainer of his/her horse. A horse shall not be transferred to a new trainer after entry.

5.2.1.3 The provisions of 5.1.4 notwithstanding, a person younger than 14 years of age may apply for an owner's license, provided that no licensed owner younger than 14 years of age will be permitted paddock access at any licensed association. If younger than 18 years of age, an applicant for an owner's license shall submit a notarized affidavit from his/her parent or legal guardian stating that the parent or legal guardian expressly assumes responsibility for the applicant's financial, contractual and other obligations relating to the applicant's participation in racing.

5.2.1.4 If the Commission or its designee has reason to doubt the financial responsibility of an applicant for an owner's license, the applicant may be required to complete a verified financial statement.

5.2.1.5 Horses not under lease must race in the name of the bona fide owner. Each owner shall comply with all licensing requirements.

5.2.1.6 The Commission or its designee may refuse, deny, suspend or revoke an owner's license for the spouse or member of the immediate family or household of a person ineligible to be licensed as an owner, unless there is a showing on the part of the applicant or licensed owner, and the Commission determines that participation in racing will not permit a person to serve as a substitute for an ineligible person. The transfer of a horse to circumvent the intent of a Commission rule or ruling is prohibited.

5.2.2 Licensing Requirements for Multiple Owners

5.2.2.1 If the legal owner of any horse is a partnership, corporation, limited liability company, syndicate or other association or entity, each shareholder, member or partner shall be licensed as required in 5.1.1 of this section.

5.2.2.2 Each partnership, corporation, limited liability company, syndicate or other association or entity shall disclose to the Commission all owners holding a five percent or greater beneficial interest, unless otherwise required by the Commission.

5.2.2.3 Each partnership, corporation, limited liability company, syndicate or other association or entity which includes an owner with less than a five percent

ownership or beneficial interest shall file with the Commission an affidavit which attests that, to the best of their knowledge, every owner, regardless of their ownership or beneficial interest, is not presently ineligible for licensing or suspended in any racing jurisdiction.

5.2.2.4 To obtain an owner's license, an owner with less than a five percent ownership or beneficial interest in a horse shall establish a bona fide need for the license and the issuance of such license shall be approved by the Commission.

5.2.2.5 Application for joint ownership shall include a designation of a managing owner and a business address. Receipt of any correspondence, notice or order at such address shall constitute official notice to all persons involved in the ownership of such horse.

5.2.2.6 The written appointment of a managing owner or authorized agent shall be filed with the United State Trotting Association or Canadian Trotting Association and with the Commission.

5.2.3 Lease Agreements

A horse may be raced under lease provided a completed breed registry or other lease form acceptable to the Commission is attached to the certificate of registration and on file with the Commission. The lessor and lessee shall be licensed as horse owners. For purposes of issuance of eligibility certificates and/or transfers of ownership, a lease for an indefinite term shall be considered terminable at the will of either party unless extended or reduced to a term certain by written documentation executed by both lessor and lessee.

5.2.4 Racing Colors

Drivers must wear distinguishing colors, and shall not be permitted to drive in a race or other public performance unless, in the opinion of the judges/stewards, they are properly dressed, their driving outfits are clean and they are well groomed. During inclement weather conditions, drivers must wear rain suits in either of their colors or made of a transparent material through which their colors can be distinguished.

5.3 Trainers

5.3.1 Eligibility

5.3.1.1 A person shall not train horses, or be programmed as trainer of record at extended meetings, without first having obtained a trainer license valid for the current year by meeting the standards for trainers, as laid down by the United State Trotting Association, and being licensed by the Commission. The "trainer of record" shall be any individual who receives compensation for training the horse. The holder of a driver's license issued by the United States Trotting Association is entitled to all privileges of a trainer and is subject to all rules respecting trainers.

5.3.1.2 Valid categories of licenses are:

5.3.1.2.1 "A," a full license valid for all meetings and permitting operation of a public stable.; and

5.3.1.2.2 "L," a license restricted to the training of horses while owned by the holder and/or his or her immediate family at all race meetings.

5.3.1.3 If more than one person receives any form of compensation, directly or indirectly, for training the horse, then the principal trainer or trainers must be listed as "trainer of record". It shall be a violation for the principal trainer or trainers of a horse not to be listed as "trainer of record", and, if such unlisted principal trainer or trainers are licensees of the Commission, then he, she or they shall be subject to a fine and/or suspension for such violation. In addition, it shall be a violation for a person who is not the principal trainer of the horse to be listed as "trainer of record", and such person shall be subject to a fine and/or suspension for such violation. Principal trainers and programmed trainers shall be equally liable for all rule violations. For purposes of this rule, the Steward and judges shall use the following criteria in determining the identity of the principal trainer or trainers of a horse:

5.3.1.3.1 The identity of the person who is responsible for the business decisions regarding the horse, including, but not limited to, business arrangements with and any payments to or from owners or other trainers, licensed or otherwise, veterinarians, feed companies, hiring and firing of employees, obtaining workers' compensation or proof of adequate insurance coverage, payroll, horsemen's bookkeeper, etc.;

5.3.1.3.2 The identity of the person responsible for communicating, or who in fact does communicate, with the racing secretary's office, stall manager, association and track management, owners, etc. regarding racing schedules and other matters pertaining to the entry, shipping and racing of the horse;

5.3.1.3.3 The identity of the person responsible for the principal conditioning of the horse;

5.3.1.3.4 The identity of the person responsible for race day preparation including, but not limited to, accompanying the horse to the paddock or ship-in barn, selection of equipment, authority to warm up the horse before the public, discussion with the driver of race strategy, etc.; and

5.3.1.3.5 The identity of the person who communicates on behalf of the owner with the Steward, judges and other Commission personnel regarding the horse, including regarding any questions concerning the location or condition of the horse, racing or medication violations, etc.

5.3.2 Trainer Responsibility

5.3.2.1 A trainer is responsible for the condition of horses entered in an official race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the

maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible. Whenever a trainer of a horse names a substitute trainer for program purposes due to his or her inability to be in attendance with the horse on the day of the race, or for any other reason, both trainers shall be responsible for the condition of the horse should the horse test positive.

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

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

5.3.3 Other Responsibilities

A trainer is responsible for:

5.3.3.1 the condition and contents of stalls, tack rooms, feed rooms, sleeping rooms and other areas which have been assigned by the association;

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

5.3.3.3 ensuring that fire prevention rules are strictly observed in the assigned stable area;

5.3.3.4 providing a list to the Commission of the trainer's employees on association grounds and any other area under the jurisdiction of the Commission. The list shall include each employee's name, occupation, social security number and occupational license number. The Commission shall be notified by the trainer, in writing, within 24 hours of any change;

5.3.3.5 the proper identity, custody, care, health, condition and safety of horses in his/her charge;

5.3.3.6 disclosure of the true and entire ownership of each horse in his/her care, custody or control;

5.3.3.8 registering with the racing secretary each horse in his/her charge within 24 hours of the horse's arrival on association grounds;

5.3.3.9 ensuring that, at the time of arrival at a licensed racetrack, each horse in his/her care is accompanied by a valid health certificate which shall be filed with the racing secretary;

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

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

5.3.3.12 immediately reporting the alteration of the sex of a horse in his/her care to the horse identifier and the racing secretary, whose office shall note

such alteration on the certificate of registration;

5.3.3.13 promptly reporting to the Presiding Judge, racing secretary and the State veterinarian any horse on which a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is designated on its certificate of registration;

5.3.3.14 promptly notifying the State veterinarian of any reportable disease and any unusual incidence of a communicable illness of any horse in his/her charge;

5.3.3.15 promptly reporting the death of any horse in his/her care on association grounds to the State Steward or judges and the State veterinarian and compliance with the rules in Chapter 8 governing post-mortem examinations;

5.3.3.16 maintaining a knowledge of the medication record and status of all horses in his/her care;

5.3.3.17 immediately reporting to the State Steward and the State veterinarian if he/she knows, or has cause to believe, that a horse in his/her custody, care or control has received any prohibited drugs or medication;

5.3.3.18 representing an owner in making entries and scratches and in all other matters pertaining to racing;

5.3.3.19 horses entered as to eligibility and allowances claimed;

5.3.3.20 ensuring the fitness of a horse to perform creditably at the distance entered;

5.3.3.21 ensuring that his/her horses are properly prepared and equipped;

5.3.3.22 presenting his/her horse in the paddock at a time prescribed by the Presiding Judge before the race in which the horse is entered;

5.3.3.23 personally attending to his/her horses in the paddock and supervising the preparation thereof, unless excused by the Paddock Judge;

5.3.3.24 attending the collection of a urine or blood sample from the horse in his/her charge or delegating a licensed employee or the owner of the horse to do so; and

5.3.3.25 notifying horse owners upon the revocation or suspension of his/her trainer's license. Upon application by the owner, the State Steward may approve the transfer of such horses to the care of another licensed trainer, and upon such approved transfer, such horses may be entered to race.

5.3.4 Restrictions on Wagering

A trainer shall only be allowed to wager on his/her horse or entries to win or finish first in combination with other horses.

5.3.5 Substitute Trainers

If any licensed trainer is to be absent from the association grounds where his/her horse is programmed to race the Presiding Judge shall be immediately notified and at

that time a licensed substitute trainer, acceptable to the Presiding Judge, shall be appointed to assume responsibility for the horse(s) racing during the absence of the regular trainer. The name of the substitute trainer shall appear on the program if possible.

5.4 Owners' Authorized Agents

5.4.1 Licenses Required

5.4.1.1 An authorized agent shall obtain a license from the Commission.

5.4.1.2 Application for license shall be filed for each owner represented.

5.4.1.3 A written instrument signed by the owner shall accompany the application and shall clearly set forth the delegated powers of the authorized agent. The owner's signature on the written instrument shall be acknowledged before a notary public.

5.4.1.4 If the written instrument is a power of attorney it shall be filed with the Commission and attached to the regular application form.

5.4.1.5 Any changes shall be made in writing and filed as provided in 5.4.1.3 above.

5.4.1.6 The authorized agent's appointment may be terminated by the owner, in writing, acknowledged before a notary public and filed with the Commission whereupon the license shall not be valid.

5.4.2 Powers and Duties

5.4.2.1 A licensed authorized agent may perform on behalf of the licensed owner-principal all acts as relate to racing, as specified in the agency appointment, that could be performed by the principal if such principal were present.

5.4.2.2 In executing any document on behalf of the principal, the authorized agent shall clearly identify the authorized agent and the owner-principal.

5.4.2.3 When an authorized agent enters a claim for the account of a principal, the name of the licensed owner for whom the claim is being made and the name of the authorized agent shall appear on the claim slip or card.

5.4.2.4 Authorized Agents are responsible for disclosure of the true and entire ownership of each horse for which they have authority at a race meeting. Any change in ownership shall be reported immediately to, and approved by, the stewards/judges and recorded by the United States Trotting Association.

5.5 Drivers

5.5.1 A person shall not drive a horse in any race or performance against time, other than an exhibition race, without having first obtained a driver license valid for the current year by meeting the standards as established by the United States Trotting Association and being licensed by the Commission. The driver license shall be presented to the judges prior to participating for the first time at any race meeting.

5.5.2 The judges may review the performance of

a driver at any time and may take the following actions:

- 5.5.2.1 amend the license category;
- 5.5.2.2 revoke the license;
- 5.5.2.3 apply conditions to the license; or
- 5.5.2.4 require the driver to re-qualify for his/her license in accordance with the United States Trotting Association regulations.

5.5.3 Drivers must report to the Paddock Judge at least one hour before post time of any race in which they are programmed to drive, unless excused by the Presiding Judge.

5.5.4 Where advanced wagering takes place on any feature betting race, drivers programmed to drive in such races must make their presence known to the Paddock Judge prior to commencement of the advanced wagering.

5.5.5 A driver cannot decline to be substituted by the judges. Any driver who refuses shall be suspended and may be fined.

5.5.6 Once a driver reports to the paddock he/she shall not enter the public stands or the betting area until his/her driving duties for the day have been completed and upon completion of driving duties the driver shall not enter the public stands until he/she has replaced his/her driving outfit with ordinary clothing.

5.5.7 The State Steward or judges may remove a driver at any time if, in his or their opinion, his/her driving would not be in the best interests of harness racing.

5.5.8 A driver shall not drive for any other person in a race in which one of the horses he/she trains or owns has been declared into race, except where such horses are coupled as an entry.

5.5.9 Drivers shall fulfil all engagements, unless excused by the judges.

See 1 DE Reg. 502 (11/01/97)

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

8.0 Veterinary Practices, Equine Health Medication

8.1 General Provisions

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

8.2 Veterinary Practices

8.2.1 Veterinarians Under Authority of Commission Veterinarian

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

8.2.2 Treatment Restrictions

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

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

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

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

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

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

8.3 Medications and Foreign Substances

Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the State Steward or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International and shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation

misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The State Steward may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

8.3.1 Uniform Classification Guidelines

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

8.3.1.1 Class 1

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

8.3.1.2 Class 2

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

8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;

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

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

8.3.1.2.4 Drugs with prominent CNS depressant action;

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

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

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

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

agents.

8.3.1.3 Class 3

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

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

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

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

8.3.1.3.4 Primary vasodilating/hypotensive agents; and

8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

8.3.1.4 Class 4

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

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

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

8.3.1.4.2.1 Drugs used solely as topical vasoconstrictors or decongestants

8.3.1.4.2.2 Drugs used as gastrointestinal antispasmodics

8.3.1.4.2.3 Drugs used to void the urinary bladder

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

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

8.3.1.4.4 Mineralocorticoid drugs;

8.3.1.4.5 Skeletal muscle relaxants;

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

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

8.3.1.4.6.2 Corticosteroids (glucocorticoids); and

8.3.1.4.6.3 Miscellaneous anti-inflammatory agents.

8.3.1.4.7 Anabolic and/or androgenic steroids and other drugs;

8.3.1.4.8 Less potent diuretics;

8.3.1.4.9 Cardiac glycosides and antiarrhythmics including:

8.3.1.4.9.1 Cardiac glycosides;

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

8.3.1.4.9.3 Miscellaneous cardiotoxic drugs.

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

8.3.1.4.11 Antidiarrheal agents; and

8.3.1.4.12 Miscellaneous drugs including:

8.3.1.4.12.1 Expectorants with little or no other pharmacologic action;

8.3.1.4.12.2 Stomachics; and

8.3.1.4.12.3 Mucolytic agents.

8.3.1.5 Class 5

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

8.3.2 Penalty Recommendations

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

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

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

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

8.3.2.4 Class 4 - in the absence of extraordinary circumstances, a minimum license revocation

of thirty days, and a minimum fine of \$2,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for the cost of the drug testing.

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

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

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

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

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

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

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

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

8.3.2.7.1 With respect to Class 1, 2 and 3 drugs detect in a urine sample but not in a blood

sample, and in addition to the foregoing factors, in determining the length of a suspension and/or the amount of a fine, or both, the State Steward or judges may take in consideration, without limitation, whether the drug has any equine therapeutic use, the time and method of administration, if determined, whether more than one foreign substance was detected in the sample, and any other appropriate aggravating or mitigating factors.

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

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

8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

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

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

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

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

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

Commission.

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

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

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

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

8.3.4 Medical Labeling

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

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

8.3.4.2.1 the name of the product;

8.3.4.2.2 the name, address and

telephone number of the veterinarian prescribing or dispensing the product;

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

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

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

8.3.5 Furosemide (Salix) and Aminocaproic Acid (Amicar)

8.3.5.1 General

Furosemide (Salix) and Aminocaproic Acid (Amicar)

may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. Furosemide or Furosemide with Aminocaproic Acid shall be permitted only after the Commission Veterinarian has placed the horse on the Bleeder List or to facilitate the collection of a pot-race urine sample.

8.3.5.2 Method of Administration

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

8.3.5.3 Dosage

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

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

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

8.3.5.4 Timing of Administration

Horses must be presented at their assigned

stalls in the paddock for Aminocaproic Acid treatment. Aminocaproic Acid will be administered not more than 90 minutes (1 1/2 hours) and not less than 60 minutes (1 hour) prior to post time of their respective races and must be treated prior to going on the track the first time. Failure to meet this time frame will result in scratching the horse and the trainer may be fined. Horses must be presented at the Furosemide stall in the paddock, and the Furosemide administered, not more than three hours and 30 minutes (3-1/2 hours) nor less than three hours (three hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined.

8.3.5.5 Veterinary Charges

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

8.3.5.6 Restrictions

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

8.3.5.7 Post-Race Quantification

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

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

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

8.3.5.7.1.1 Was administered intramuscularly as provided in 8.3.5.2; or

8.3.5.7.1.2 Exceeded 500 milligrams as provided in 8.3.5.3.1.

8.3.5.7.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of less than 1.01, and provided that the dosage of furosemide was not administered intramuscularly as provided in 8.3.5.2 or exceeded 500 milligrams as provided in 8.3.5.3.1, then a penalty shall be imposed as follows:

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

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

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

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

8.3.5.8 Reports

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

8.3.5.8.2 The written certification shall be delivered to a Commission representative designated by the Judges within one (1) hour of the last scheduled race for that day.

8.3.5.9 Bleeder List

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

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

8.3.5.9.1.1.1 during a race;

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

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

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

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

identification of bleeders are satisfactory to the Commission Veterinarian.

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

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

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

8.3.5.9.4.1 1st time - 10 days;

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

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

8.3.5.9.4.4 4th time - barred for life.

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

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

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

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

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

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

8.3.5.10 Medication Program Entries

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

8.3.6 Phenylbutazone (Bute)

8.3.6.1 General

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

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

8.3.6.1.3 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone,

then a penalty shall be imposed as follows:

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

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

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

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

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

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

8.4 Testing

8.4.1 Reporting to the Test Barn

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

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

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

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

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

8.4.2 Sample Collection

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

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

approved by the Commission.

8.4.3 Procedure for Taking Specimens

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

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

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

8.4.3.2.2 1 If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the Commission Veterinarian.

8.4.3.2.3 2A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission Veterinarian.

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

8.4.3.3.1 The owner;

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

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4

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

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

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

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

8.4.3.5.2 The Commission Veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

8.4.3.5.2.2 Document the race and

day, verified by the witness; and

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

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

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

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

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

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

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

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

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

8.4.3.5.10.1 If testing of the

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

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

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

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

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

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

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

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

8.5 Trainer Responsibility

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

8.5.1 The trainer is responsible for the condition of horses entered in an official workout or race and is

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

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

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

8.5.4 The trainer is responsible for:

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

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

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

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

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

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

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

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

8.5.5.6 promptly reporting to the racing secretary and the Commission Veterinarian when a posterior

digital neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration;

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

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

8.5.5.9 maintaining a knowledge of the medication record and status;

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

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

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

8.5.5.13 ensuring proper bandages, equipment and shoes;

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

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

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

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

8.6 Physical Inspection of Horses

8.6.1 Veterinarian's List

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

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

8.6.2 Postmortem Examination

8.6.2.1 The Commission may conduct a postmortem examination of any horse that is injured in this

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

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

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

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

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

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

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

3 DE Reg 1520 (5/1/00)

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

4 DE Reg 336 (8/1/00)

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

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

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

7 DE Reg. 1512 (5/1/04)

DELAWARE STANDARDBRED BREEDERS' FUND PROGRAM

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

NOTICE

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund (herein "the Fund") hereby gives notice of its intention to adopt amended regulations concerning its enforcement procedures pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 **Del.C.** §4815(b)(3)b.2.D and in

compliance with Delaware's Administrative Procedures Act, 29 Del.C. §10115. The proposed amended regulations constitute a substantial revision of its regulations and more specifically set forth the powers and duties of the Fund's Administrator, eliminate the Delaware Harness Racing Commission from the hearing process that currently exists for resolving disputes between horse owners and the Fund's Administrator substituting in its stead a public hearing before the Fund, and allowing for appeals to the Superior Court of the State of Delaware from decisions by the Fund.

The Fund requests, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*.

Any such submissions should be mailed or delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901.

1.0 Introduction

1.1 These regulations are authorized pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") for:

1.1.1 Standardbred horses;

1.1.2 that are bred in a manner prescribed in Section 2.0 ~~herein~~;

1.1.3 that are the product of a registered Delaware stallion;

1.1.4 ~~who~~ that are registered, and whose sire is registered, with the Administrator of the Program ~~as such~~; and,

1.1.5 listed in their registry books.

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

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

1.3.1 Classes and divisions of races, eligibility of horses and owners therefor and purses and bonuses to be awarded;

1.3.2 Nominating, sustaining and entry fees on horses and races;

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

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

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

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

1.5 Races ~~for in~~ the Program shall be contested at each licensed harness track in the State of Delaware. ~~Said races and purses and awards awarded, therefore, for program races,~~ shall be ~~pursuant to~~ in compliance with the rules and regulations of the Board ~~hereunder~~, and the Delaware Harness Racing Commission.

1.6 The Board can propose to amend these regulations ~~through a~~ by the affirmative vote of ~~2/3 majority of the entire board~~ eight of its eleven members. Changes to the rules of eligibility for the Program will be effective at the beginning of the next breeding season and the corresponding racing season.

2.0 Definitions.

The following words and terms, when used in this part for ~~the~~ purposes of the Delaware Standardbred Breeder's Fund Program, have the following meanings, unless the context clearly indicates otherwise. Such definitions shall not affect the use of that term by the Delaware Harness Racing Commission for purposes other than for the Breeder's Fund Program.

"**Bred**" means any form of insemination inside the State of Delaware by a Delaware sire, including insemination using semen transported within the State of Delaware, provided that such semen is not frozen or desiccated in any way or at any time. Bred shall also refer to foals of mares bred outside the State of Delaware by a

Delaware sire through interstate semen transportation when such semen is not frozen or desiccated in any way or at any time, provided that owners of mares that produce foals from Delaware sires eligible for this program that are bred through interstate semen transportation shall not be eligible for bonuses paid to owners of mares under the Delaware Standardbred Breeder's Program set forth in Section 4.0 herein. A foal conceived through embryo transplantation is not eligible for nomination to the Delaware Standardbred Breeder's Program under any circumstances.

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

"Breeding Season" is the season during which reproduction occurs and which runs from February 1st to August 1st of the calendar year.

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

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

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

"Private Treaty" No stallion participating in the Program may be offered for service under private treaty. Each stallion registered in the Program must make public the ~~maximum possible~~ breeding fee.

~~Such definitions shall not affect the use of that term by the Delaware Harness Racing Commission for purposes other than for the Program.~~

"Registrant" is a horse owner, the horse owner's agent of record or trainer of record, or the lessee of a horse.

6 DE Reg. 1497 (5/1/03)

3.0 Eligibility for Delaware-bred races.

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

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

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

4.0 Eligibility of breeders for bonus payments.

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

allocated toward the payment of bonus payments.

5.0 Eligibility of owners of Delaware sires for awards.

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

6.0 Records of registration.

Foals and sires eligible for registration shall be registered on official registration forms approved by the ~~Harness Racing Commission and~~ maintained by the Administrator of the Program. The ~~registrar~~ Administrator shall certify thereon the name and address of the Owner, breeder, farm where mare was inseminated, farm on which this horse was foaled, owner of stallion at time the mare was inseminated, owner of the mare at the time of breeding, notice of semen transfer, stallion by which the mare was inseminated following the birth of the Standardbred to be registered, breeder social security or tax identification number, United State Trotting Association registration number, name of foal, color and sex of foal, date of foaling, sire, dam, sire of the dam, signature of the owner, or breeder or authorized representative and the date of application. The registration record shall be maintained at the Administrator of the Program and be open to public inspection during normal business days and hours at the State Department of Agriculture. Immediately upon completion and filing of the form, the Administrator of the Program shall cause a correct copy of it to be filed with the offices of the State Department of Agriculture. or agent, social security number and or tax id number. If registration is made by an agent, the name and address of the owner and social security number and or tax id number shall also be provided. Breeding information must include name, color, sex, gait, sire, and dam. For sires, the address and contact information for the breeding farm where the stallion will be collected, and current phone number, address and contact information for where the stallion actually resides, if different from where semen collection occurs. The registration records shall be maintained by the Administrator of the Program and be open to public inspection during normal business days and hours at the State Department of Agriculture. Immediately upon completion and filing of the form, the Administrator of the Program shall cause a correct copy of it to be filed with the offices of the State Department of Agriculture.

7.0 Appeals Duties and Powers of the Fund Administrator; Public Hearings; Appeals.

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

7.1 In addition to the duties of the Fund's Administrator that are set forth elsewhere in these regulations, the Administrator is charged with receiving and reviewing for compliance with all rules and regulations of the Fund, information submitted by registrants who are seeking to register or renew the registration of horses for participation in the Program.

7.2 If, after performing the review set forth in the immediately preceding section, the Administrator determines, in his or her sole discretion, that the information supplied by a registrant is incomplete or false, the Administrator has the power to: deny any application for registration; deny an application to renew an existing registration; and to suspend or revoke an existing registration.

7.3 The Administrator must provide the registrant with a written decision explaining the reason(s) why the registration, or application for renewal of registration, has been denied, suspended or revoked. Such written decision shall inform the registrant of the right to file a request for an administrative hearing before the Fund. Such a request for a hearing shall be considered timely filed with the Fund if it is received by the Fund within ten (10) days of the date the Administrator mails his or her written decision to the registrant. Such a request for a hearing challenging the Administrator's written decision must state with specificity the ground(s) upon which the Administrator's written decision is being contested.

7.4 No more than thirty (30) days after receiving a registrant's request a public hearing before the Fund will be scheduled and at which the registrant will be permitted to subpoena, call and cross-examine witnesses, and to introduce documentary evidence challenging the

Administrator's decision. The formal rules of evidence will not apply to such proceeding. The proceeding will be conducted in such a way as to allow for the creation of a verbatim transcript of the proceeding should either party wish to obtain one, the cost of such a transcript to be born by the requestor.

7.5 The Fund will, after considering all the evidence, and within thirty (30) days from the close of the public hearing, mail a written decision to the Administrator of the Fund and to the registrant stating its Findings of Fact and Conclusions of Law. An appeal from the decision by the Fund will be to the Superior Court of the State of Delaware on the record made before the Fund.

8.0 Records of expenses.

The Administrator of the Breeder's Program shall maintain a complete record of reasonable and necessary expenses and will submit quarterly estimates to the Board and the Secretary of Agriculture, on the basis of which the Secretary may disburse advances. The quarterly estimated statements of expenses and advances shall be reconciled annually with a certified statement of expenses to be prepared by an auditor approved in advance by the Board. The Board may thereafter review them and after approval of allowable items shall then reimburse the Administrator of the Program for the expenses the Board finds reasonable and appropriate to this program. If advances on account of expenses exceed actual expenses as approved at the end of a given year, the excess shall be deemed disbursed on account of the ensuing year's expenses. bills to the Department of Agriculture following the normal procedures of the State of Delaware as set forth by the Finance Department within the Department of Agriculture. The Secretary of Agriculture has the responsibility to authorize all travel and major purchases.

9.0 Purses and Bonus Awards

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

9.2 Administrator of the Program shall compile awards bonus payments earned by breeders and owners of Delaware Sires and Dams and maintain a separate ledger of them. A certified report of awards earned shall be forwarded to the

Commission on a monthly basis during the racing season. The list of awards will be forwarded to Administrator of the Program who shall ensure payment to the awardees subject to approval by the Commission. Bonus payments will be paid out at the end of the racing year. For race years 2003 and thereafter, bonus payments shall not exceed \$70,000 per crop of foals. In the event such payments would exceed these limits, owners eligible for bonus payments shall receive a prorated share of those monies allocated toward the payment of bonus payments.

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

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

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

10.0 Responsibilities-Owners or lessees of standardbred stallions and mares

10.1 An owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Program, shall register the stallion by December 1st of the approaching breeding season with the Delaware Harness Racing Commission and Administrator of the Program or by January 1st of the approaching breeding season with an additional supplemental fee equal to the standard registration fee. For breeding season 1999 and 2000, an owner or lessee of a Standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Program, shall register the stallion by March 1, 2000. Unless the stallion is contracted to stand at stud in the southern hemisphere, the stallion shall stand in the State of Delaware for the remainder of the breeding season. If a stallion is contracted to stand at stud in the southern hemisphere, a copy of said contract must be provided to the Administrator of the Program and the Harness Racing Commission at the time of application for eligibility registration in the Program, in the event the contract is entered into at a subsequent date, within ten (10) days of entering into the contract. A virgin Standardbred stallion

entering stud service for the first time shall be registered prior to his first breeding and shall stand in the State of Delaware the remainder of the breeding season, unless he is contracted to stand at stud in the southern hemisphere. A stallion shall be registered on an application for ~~Standardbred stallion certificate for eligibility~~ established by the Administrator of the Program. ~~in consultation with the Harness Racing Commission.~~

10.2 An owner or lessee of a standardbred stallion eligible for the Program shall designate a resident of Delaware as the authorized agent who shall be responsible for the registrations and records ~~of the farm; of the stallion and the records of the breeding farm;~~ and complying with the requirements of the Program. The "Authorized Agent" ~~form shall be filed with information shall be incorporated into the Stallion registration form and filed as such.~~

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

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

11.0 Sire Registration Fees

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

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

11.3 Registration fees for the Program are non-refundable.

11.4 Sire registration fee for a Standardbred stallion shall be \$500.00. ~~Sire registration for those sires standing in the State of Delaware and registering for breeding seasons prior to 2001 in accordance with these regulations shall be charged a single fee of \$250. The supplemental registration fee shall be \$1,000.00.~~

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

11.6 ~~The annual stallion registration fee may be used to offset reasonable expenses related to administering~~

~~and promoting the Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Program. An owner of a Standardbred stallion registered with the Administrator and Commission shall submit by December 1st of each year the stallion registration fee, or January 1st with the supplemental fee provided in section 10 above and a report for each stallion that states each mare bred by said stallion during the preceding twelve (12) months. For breeding seasons prior to breeding season 2001, an owner of a Standardbred stallion registered with the Administrator and Commission shall submit by March 1, 2000 the stallion registration fee of \$250 and any other documentation required by the Administrator and Commission to verify where the stallion stood during the period for which the stallion or its progeny seek to register. An owner of a Standardbred stallion registered with the Administrator shall submit by September 1st after the breeding season which the stallion serviced mares a copy of the USTA "Mares Bred Report."~~

12.0 Sire Renewal Fees

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

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

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

13.0 Penalties and Suspension from the Program

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

~~13.1.1 Suspend or deny the registration of the stallion; and~~

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

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

13.1.2.1.1 Suspend the registration; or
13.1.2.1.2 Rescind its suspension of the registration; or
13.1.2.1.3 Deny or revoke the registration; or
13.1.2.1.4 Deny or revoke the registration; and bar from further registration, horses owned by the person who executed the application containing false or misleading information.

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

13.1.2.2.1 Suspend or deny the registration of the stallion; and

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

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

13.1.2.3.1 Rescind its suspension or denial of the registration; or

13.1.2.3.2 Suspend, deny, or revoke the registration; or

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

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

13.1.2.4.1 Shall suspend or deny the registration of the stallion;

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

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

13.2 Appeals

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

14.0 13.0 Races

~~14.1~~ 13.1 The purses for all races, ~~including walkovers~~, under this Breeder's Program shall be distributed on the following percentage basis: 50-25-12-8-5. Walkovers receive 50 % of the purse. Points to qualify for the finals shall be distributed on the same percentage basis. In fields with more than five horses, places six through ~~nine~~ eight shall receive 4-3-2-1 points, respectively.

~~14.2~~ 13.2 In the case of dead heats, points for the two positions shall be divided equally among those horses finishing in a dead heat. For example, if two horses finish in a dead heat for second, those horses would divide 25 plus 12 points to receive 18.5 percent of the purse or 18.5 qualifying points each. In the case of a tie in points, the fastest time in either elimination shall determine the horse eligible to enter the final. In the case of horses tied in points that have recorded identical times, the amount of the horses' lifetime earnings will decide the horse eligible to enter the final. In the case where points, times, and lifetime earnings are equal, the eligible horse shall be drawn by lot. All horses must start in one elimination in order to start in the final. All horses shall be on the gate in eliminations and the final.

~~14.3~~ 13.3 The percentage basis established by subsection (1) of this section shall apply at each of the associations licensed by the Delaware Harness Racing Commission.

~~14.4~~ 13.4 If circumstances prevent the racing of an event, and the race is not drawn, all stake payments shall be refunded to the purse account of the Program.

~~14.5~~ 13.5 The monies provided for purses and bonus payments shall be distributed evenly between the races of each:

~~14.5.1~~ 13.5.1 Age:

~~14.5.2~~ 13.5.2 Sex: and

~~14.5.3~~ 13.5.3 Gait.

~~14.6~~ 13.6 The minimum purses for elimination races for both pacers and trotters shall be \$5,000. The minimum purses for finals shall be \$30,000. Beginning in 2004, the minimum purse for elimination races for 2 and 3-year old trotters and pacers shall be \$15,000.00 and the finals shall be \$100,000.00. The Board of the Program, pursuant to a recommendation from the Administrator of the Program may agree to increase purses should funds and other conditions permit, or decrease purses in the event of insufficient funds.

~~14.7~~ 13.7 No horse is eligible to declare unless it has at least one charted satisfactory performance line within 30 days of declaration and must meet the following qualifying standards:

2 Year-Olds	3 Year-Olds
Pacers Trotters	Pacers Trotters
2:10 2:14	2:06 2:12

~~14.8~~ 13.8 Horses that meet the qualifying standards for a preliminary leg at each racetrack are qualified for subsequent legs and the final at that racetrack.

~~14.9~~ 13.9 The Administrator of the Program shall be responsible for races conducted under the Program and shall ensure that:

~~14.9.1~~ 13.9.1 each track declares the time specified for races under this program by proper notice and racing dates are issued for sires stakes after the track's race dates are set.

~~14.9.2~~ 13.9.2 entry for races run under the Program is required to be received by the Racing Office ~~by noon three days in advance of the scheduled race date in a box designated for this purpose.~~ at the date and time published on the track's condition sheet.

~~14.9.3~~ 13.9.3 The eligibility and class of all horses ~~running participating~~ in races is carefully screened.

~~14.9.4~~ 13.9.4 The Administrator, or his/her designee, is present for the ~~Judge's race draw by the Judges~~ for all races conducted under the Program.

6 DE Reg. 1497 (5/1/03)

~~14.10~~ Beginning in 2004, the minimum purse for elimination races for 2-year old trotters and pacers shall be \$7,500.00 and minimum purse for finals shall be \$75,000.

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

7 DE Reg. 497 (10/01/03)

7 DE Reg. 497 (10/01/03)

~~15.0~~ 14.0 Nomination and Sustaining Payments

~~15.1~~ 14.1 Nomination and sustaining payments shall be made to the Program in U.S. Funds.

~~15.2~~ 14.2 A fee payment required by this section shall be postmarked no later than the date due that is specified for the fee by this section. If the date due is on a Sunday and/or a legal federal holiday which falls on a Saturday, payment is due by the following Monday. If the date due falls on a Monday that is a legal holiday, such payment is due on Tuesday. Payments made by commercial delivery services shall be treated the same as those made by letters bearing a postmark.

~~15.3~~ 14.3 Beginning with the yearlings of 2001, the yearling nomination fee shall be:

~~15.3.1~~ 14.3.1 Forty (40) dollars each; and

~~15.3.2~~ 14.3.2 Due by May 15th of the yearling year.

~~15.4~~ 14.4 A nomination shall be accompanied by a photocopy of the USTA registration certificate. Supplemental fees of \$25 shall be assessed if the USTA registration certificate does not accompany the nomination. No nomination shall be accepted where a USTA registration certificate is not obtained and submitted within 60 days of nomination to the Program.

~~15.5~~ 14.5 If the May 15th deadline to nominate a

yearling is missed, a late supplemental payment of \$350 shall be required. The late supplemental payment shall be accepted if ~~(a) it is received by April 1~~ March 15th of the two (2) year old year; ~~and (b) the two (2) year old Mareth 15th payment has been made.~~ This payment is in addition to the regular sustaining payment due on March 15th.

~~15.6~~ 14.6 Sustaining payments shall be as follows:

~~15.6.1~~ 14.6.1 Two(2) Year Old payments

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

May 15th-\$200.00;

Declaration Fee (for each track) \$500.00

~~15.6.2~~ 14.6.2 Three (3) Year Old payments.

March 15th-\$300.00

Declaration Fee (for each track) \$500.00

6 DE Reg. 1497 (5/1/03)

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

~~16.0~~ 15.0 Investment Plan and Use of Fees

~~16.1~~ 15.1 All proceeds received pursuant to §4815(b)(3)b.2.D of Title 29 of the Delaware Code, which established in the State of Delaware, a Delaware Standardbred Breeders' Program and any interest earned on these monies shall be invested in an endowment account until race year 2002.

~~16.2~~ 15.2 For race year 2002, five hundred thousand dollars (\$500,000) of the proceeds received pursuant to §4815(b)(3)b.2.D of Title 29 of the Delaware Code, which established in the State of Delaware, the Program and any interest earned on the endowment fund in the preceding (12) twelve months shall be deposited in a separate purse account for purses and bonuses for that race year. For race year 2002, one million five hundred thousand dollars (\$1,500,000) of the proceeds pursuant to §4815(b)(3)b.2.D of Title 29 of the Delaware Code, which established in the State of Delaware, the Program shall be deposited in the endowment account.

~~16.3~~ 15.3 For race year 2003, two million dollars (\$2,000,000) of the proceeds received pursuant to §4815(b)(3)b.2.D of Title 29 of the Delaware Code, which established in the State of Delaware, the Program and any interest earned on the endowment fund in the preceding (12) twelve months shall be deposited in a separate purse account for purses and bonuses for that race year.

~~16.5~~ 15.4 For race year 2004 and each race year thereafter, ~~two three~~ million dollars (\$3,000,000) of the proceeds received pursuant to §4815(b)(3)b.2.D of Title 29 of the Delaware Code, which established in the State of Delaware, the Program and any interest earned on ~~that money~~ the endowment fund in the preceding (12) twelve months shall be deposited in a separate purse account for purses and bonuses for ~~race year 2004 and for each year thereafter~~ that race year.

~~16.4~~ 15.5 Any monies from the purse account for the Program at the end of the race year shall revert to the endowment account of the Program.

DEPARTMENT OF EDUCATION

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

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

879 School Safety Audit

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 **DE Admin. Code 879 School Safety Audit** by requiring that a corrective plan of action be developed within sixty (60) days of conducting the School Safety Audit and that the plan be made available to the Department's Quality Review Team at the time of their visit. The reference to Alternative Schools has been changed more appropriately to Alternative Program sites and the number assigned to the regulation has been changed to 618 in order to place it in the School Climate and Discipline section of the regulations.

C. Impact Criteria

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

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

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is about the issue of student safety in Delaware public schools.

4. Will the regulation help to ensure that all students' legal rights are respected? The amended regulation does address students' legal rights as part of the safety issue.

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

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision

makers at the local board and school levels? The amended regulation will require some additional reporting on the part of the decision makers at the local board and school levels.

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? Some cost in staff time may be required to conduct the safety audit and follow up meetings.

~~879~~ 618 School Safety Audit

1.0 Each school year every Delaware public school including Charter Schools and Alternative ~~Schools~~ Program sites shall conduct a School Safety Audit. Such audit shall be conducted using guidelines provided by the Department of Education. Districts and heads of charter schools shall ensure that a corrective plan of action to address identified needs is developed within sixty (60) days of the School Safety Audit. The corrective plan of action shall be made available to the Department of Education's Quality Review Team at the time of their visit.

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

880 School Crisis Response Plans

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 14 **DE Admin. Code 880 School Crisis Response Plans**. The amendment requires a meeting following practice drills to

assess the readiness and effectiveness of the plan. The plan must also be made available to the Department's Quality Review Team when they visit the school. The reference to Alternative Schools has been changed more appropriately to Alternative Program sites and the number assigned to the regulation has been changed to 620 in order to place it in the School Climate and Discipline section of the regulations.

C. Impact Criteria

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses School Crisis Response Plans not student achievement.

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

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

4. Will the regulation help to ensure that all students' legal rights are respected? The amended regulation addresses students' legal rights as part of the School Crisis Response Plan.

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

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation may require additional reporting by the decision makers at the local board and school levels.

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be

additional costs in staff time associated with compliance with this regulation.

880-620 School Crisis Response Plans

1.0 Every Delaware public school including Charter Schools and Alternative ~~Schools~~ Program sites shall develop a School Crisis Response Plan and shall conduct at least one practice drill annually. Following practice drills, the districts and heads of charter schools shall ensure that the school safety teams conduct meetings to assess readiness and determine the effectiveness of the existing plans. Such plan School Crisis Response Plans shall be developed using guidelines provided by the Department of Education and shall be made available to the Department of Education's Quality Review Team at the time of their visit.

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

885 Safe Management and Disposal of Surplus Chemicals in the Delaware Public School System

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 14 **DE Admin. Code** 885 Safe Management and Disposal of Surplus Chemicals in the Delaware Public School System. The amendments include a statement in 1.0 that no mercury or mercury compounds may be used in Delaware public schools, an explanation of the use of the word "surplus" in the regulation in 4.0 and the inclusion of charter schools in the regulation. In addition, the word "surplus" has been removed from the title.

C. Impact Criteria

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses chemicals and chemical storage and disposal not student achievement.

2. Will the regulation help ensure that all students receive an equitable education? The amended regulation addresses chemicals and chemical storage and disposal not equity issues.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses health and safety issues for students using chemicals for educational purposes in Delaware public schools.

4. Will the regulation help to ensure that all students'

legal rights are respected? The amended regulation protects students legal rights concerning safety.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The requirement to ban Mercury and Mercury compounds from public school science labs has to be regulated.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are some additional costs to the local school districts and charter schools for the disposal of the chemicals on a yearly basis.

885 Safe Management and Disposal of Surplus Chemicals in the Delaware Public School System

This policy was developed with the assistance of the Department of Natural Resources and Environmental Control, the Delaware Solid Waste Authority, the Bureau of Environmental Health, Delaware Department of Transportation, and the Advisory Committee on Science/Environmental Education.

~~1.0 The storage of all chemicals shall conform to the specifications stated in Safety First: Guidelines for Safety in the Science or Science Related Classrooms.~~

~~2.0 All laboratories and science storage in the Delaware public schools shall be inventoried each year during the month of March. The inventory of chemicals both hazardous~~

~~and non-hazardous should contain the following information:~~

- ~~2.1 Who may handle the chemical and/or use it;~~
- ~~2.2 The name of the chemical;~~
- ~~2.3 The amount on hand;~~
- ~~2.4 The location where the chemical is stored;~~
- ~~2.5 The date purchased; and~~
- ~~2.6 The date discarded.~~

~~3.0 A list of the chemicals shall be kept by the school principal.~~

~~4.0 Each district shall prepare a list of surplus chemicals and send a copy to the Education Associate, Science/Environmental Education by April 15 of each year. These lists will be duplicated and disseminated to school districts so that they may negotiate, trade or exchange their surplus chemicals.~~

~~5.0 Disposal of surplus non-hazardous chemicals shall be carried out within the school district in accordance with procedures outlined in the Flinn Chemical Catalog/Reference Manual, using trained staff. Direct any questions regarding these procedures to the Education Associate for Science/Environmental Education.~~

~~6.0 Each district shall prepare a list of Transportable Surplus Hazardous chemicals and submit it to the Education Associate for Science/Environmental Education by May 15 of each year. These Transportable Surplus Hazardous chemicals, from all districts, will be brought to a central facility by district personnel. The location of this facility and date of aggregation will be announced annually by the Education Associate for Science/Environmental Education. Arrangements will be made for a licensed waste hauler to take the chemicals to a proper waste facility for disposal. Cost of disposal will be prorated among the districts and will be based upon the weight of the hazardous materials.~~

~~7.0 Non-transportable hazardous chemicals such as diethyl ether, picric acid, benzoyl peroxide and other materials listed in Safety First: Guidelines for Safety in the Science or Science Related Classrooms, must be disposed of in a prompt manner through the use of a licensed waste hauler. It is the school district's responsibility to contact a licensed waste hauler and to pay the cost for removal and disposal.~~

~~See 4 DE Reg. 1255 (2/1/01)~~

1.0 Mercury and Mercury Compounds

1.1 Mercury and mercury compounds, both organic and inorganic shall not be used in the science classrooms in the public schools in Delaware no later than January 1, 2005. Instruments which contain mercury such as thermometers, hydrometers, barometers, etc. shall be replaced at all grade

levels in order to guard against spillage.

2.0 Storage of Chemicals

2.1 The storage of all chemicals shall conform to the specifications stated in Safety First: Guidelines for Safety in the Science or Science Related Classrooms.

3.0 Inventory of Chemicals, Hazardous and Nonhazardous

3.1 All laboratories and science storage in the Delaware public schools shall be inventoried each year during the month of March. The list of the chemicals shall be kept by the school principal. The inventory of chemicals both hazardous and non-hazardous shall contain the following information:

- 3.2 Who may handle the chemical and/or use it;
- 3.3 The name of the chemical;
- 3.4 The amount on hand;
- 3.5 The location where the chemical is stored;
- 3.6 The date purchased; and
- 3.7 The date discarded.

4.0 For purposes of this regulation, surplus shall refer to chemicals which are no longer usable or needed

5.0 Inventory of Surplus Chemicals

5.1 Each district and charter school shall prepare a list of surplus chemicals and send a copy to the Education Associate, Science/ Environmental Education by April 15 of each year. The Department shall duplicate and disseminate these lists to school districts and charter schools so that they may negotiate, trade or exchange their surplus chemicals.

6.0 Disposal of Surplus Nonhazardous Chemicals

6.1 Disposal of surplus non-hazardous chemicals shall be carried out by the school district and charter school in accordance with procedures outlined in the Flinn Chemical Catalog/ Reference Manual, using trained staff.

7.0 Disposal of Surplus Transportable Hazardous Chemicals

7.1 Each district and charter school shall prepare a list of surplus transportable hazardous chemicals and submit it to the Education Associate for Science/Environmental Education by May 15 of each year. These surplus transportable hazardous chemicals, from all districts and charter schools shall be brought to a central facility by district and charter school personnel. The location of this facility and date of aggregation shall be announced annually by the Education Associate for Science/Environmental Education. The Department shall arrange for a licensed waste hauler to take the chemicals to a proper waste facility for disposal. The cost of disposal shall be prorated among the districts and charter schools based upon the weight of the hazardous materials.

8.0 Disposal of Surplus Non-transportable Hazardous Chemicals

8.1 Surplus non-transportable hazardous chemicals such as diethyl ether, picric acid, benzoyl peroxide and other materials that are listed in Safety First: Guidelines for Safety in the Science or Science Related Classrooms, must be disposed of in a prompt manner through the use of a licensed waste hauler. It is the responsibility of the school districts and charter schools to contact a licensed waste hauler and to pay the cost for removal and disposal.

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

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

1502 Educator Mentoring

A. Type Of Regulatory Action Requested
New Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to adopt 14 **DE Admin. Code** §1502 Educator Mentoring. It is necessary to adopt this regulation in order to fully implement educator mentoring, pursuant to 14 **Del.C.** §1210(c) and 14 **Del.C.** §1305(o). This regulation concerns the duties and responsibilities of educator lead mentors, mentors, and new educators. All educators serving on an Initial License must successfully participate in educator mentoring in order to be eligible for a Continuing License. In addition, educators new to Delaware or new to roles or districts within the state must participate in mentoring activities.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses student achievement by establishing standards for educator mentoring with the goal of ensuring that new educators possess the necessary skills and knowledge to provide effective instruction to students.
2. Will the new regulation help ensure that all students receive an equitable education? The new regulation addresses educator mentoring, not equitable education for all students.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses educator mentoring, 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 mentoring, 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 subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration 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.

1502 Educator Mentoring

1.0 Content.

1.1 This regulation shall apply to mentoring activities required of (1) all educators who hold an Initial License and (2) all educators who hold a Standard or Professional Status Certificate issued prior to August 1, 2003, or a Continuing, or Advanced License, who are new to the State of Delaware, new to an employing authority, or who move from one category of position to another (i.e., teacher to

administrator), pursuant to 14 **Del.C.** §1210(c).

2.0 Definitions.

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

“Department” means the Delaware Department of Education.

“Educator” means a public school employee who holds a license issued under the provisions of 14 **Del.C.** Ch. 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 **Del.C.** §1203, but does not include substitute teachers. For the purposes of this regulation, licensed and certified charter school teachers, and teachers or specialists who are employed on temporary contracts of 91 days or longer duration shall be included under the term “educator”.

“Employing Authority” means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, or management companies.

“Experienced Educator” is an educator who holds a Continuing or Advanced License, or an educator who holds a Standard or Professional Status Certificate issued prior to August 1, 2003, and a Standard Certificate in the area assigned, and who has satisfactory DPAS evaluations.

“Lead Mentor” means a teacher, specialist, or administrator who holds a Standard or Professional Status Certificate issued prior to August 1, 2003, or a Continuing or Advanced License, who has participated in the training specified for lead mentors and who is employed by an employing authority as a lead mentor and performs the duties and responsibilities assigned that position. Educators serving as lead mentors must have satisfactory DPAS evaluations, and may not be on a DPAS improvement plan.

“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“Mentor” means a teacher, specialist, or administrator who holds a Standard or Professional Status Certificate issued prior to August 1, 2003, or a Continuing or Advanced License, who has participated in the training for mentors specified by the Department and the employing authority. Educators serving as mentors must have satisfactory DPAS evaluations, and may not be on a DPAS Improvement Plan.

“Mentoring” means activities prescribed by the Department or other employing authority in which a holder of an Initial License must engage during the three-year term of the Initial License. Mentoring also means activities prescribed by the Department or other employing authority for educators who are new to Delaware or who move from one category of position to another, such as from teacher to specialist or from teacher or specialist to administrator.

regardless of the level of the license held.

“NASSP” means the National Association of Secondary School Principals.

“New Educator” means an educator who holds an Initial License.

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

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

3.0 New Educator Mentoring.

3.1 In accordance with 14 Del.C. §1210(c), educators who are new to the profession and who hold an Initial License shall participate in mentoring activities prescribed by the Department. Each new educator will be assigned a mentor for his or her first year in the profession, with continuing support in years two and three, who will assist the new educator in becoming acclimated to the role, the school or other setting, and Delaware content standards and Delaware Professional Teaching Standards, applicable national specialist standards, or Delaware Administrator Standards. The new educator will meet with his or her mentor at least 30 documented hours, which may include a combination of in-school and after-school time, during the first year of employment. The assignment of a mentor beyond the first year of employment in Delaware is at the discretion of the employing authority, based upon a review of the educator’s performance.

3.2 The new educator shall, during the three-year term of the Initial License, attend such activities as are planned by the Department as part of the New Educator Mentoring Program and offered in individual employing authorities.

3.3 The new educator shall participate in workshops and other activities offered for new educators as part of the New Educator Mentoring Program by the employing authority.

3.4 The new educator shall complete the requirements of the New Educator Mentoring Program, which shall consist of no more than 60 hours, inclusive of meetings between the mentor and the new educator.

3.4.1 The New Educator Mentoring Program shall be aligned with Danielson’s (1996) “A Framework for Teaching” and shall include training and support in the components of the Delaware Performance Appraisal System, including descriptive, non-evaluative feedback.

3.5 Failure by a new educator to complete the requirements of the New Educator Mentoring Program shall result in the denial of a Continuing License.

4.0 Experienced Educators New to the State of Delaware.

4.1 Experienced teachers and specialists new to the State of Delaware who hold an Initial License shall participate in mentoring activities prescribed by the

Department. Each teacher or specialist shall be assigned a mentor for the first year of employment in the State. The mentor will assist the new teacher or specialist in becoming acclimated to the role, the school or other setting, and Delaware content and teacher or specialist standards. The teacher or specialist will meet with his or her mentor at least 30 documented hours, which may include a combination of in-school and after-school time, during the first year of employment. The assignment of a mentor beyond the first year of employment in Delaware is at the discretion of the employing authority, based upon a review of the teacher’s or specialist’s performance.

4.1.1 The teacher or specialist shall, during the three-year term of the Initial License, attend such activities as are planned by the Department and offered by individual employing authorities.

4.1.2 The teacher or specialist shall also participate in workshops and other activities concerning employing authority specific practices offered for new teachers and specialists by the employing authority.

4.2 Experienced teachers and specialists new to the State of Delaware who hold a Continuing or Advanced License shall, within the first year of employment, participate in, and successfully complete, a Department-sponsored mentoring program which focuses on current best practices in curriculum, instruction and assessment aligned to state standards.

4.3 Experienced educators new to the State who are employed as school administrators shall participate in mentoring activities specified by the Department, as well as in mentoring activities required by the employing authority.

4.4 Experienced teachers and specialists new to the State of Delaware who hold Initial Licenses shall complete the requirements of the New Educator Mentoring Program, which shall consist of no more than 60 hours, inclusive of meetings between the mentor and the experienced teachers and specialists.

4.4.1 The New Educator Mentoring Program shall be aligned with Danielson’s (1996) “A Framework for Teaching” and shall include training and support in the components of the Delaware Performance Appraisal System, including descriptive, non-evaluative feedback.

4.5 Failure by an experienced teacher or specialist new to the State of Delaware to complete the requirements of the New Educator Mentoring Program shall result in the denial of a Continuing License.

5.0 Experienced Delaware Educators New to an Employing Authority.

5.1 Experienced Delaware educators who hold a Continuing or Advanced License, or a Standard or Professional Status Certificate issued prior to August 1, 2003, who move to a different employing authority shall, within the first year of employment, participate in, and

complete, an employing authority sponsored mentoring program which focuses on current best practices in curriculum, instruction and assessment aligned to state standards.

5.2 Experienced Delaware administrators moving to a new employing authority shall participate in that employing authority's designated mentoring program during the first year of employment.

6.0 Experienced Delaware Educators New to a Category of Employment.

6.1 Experienced Delaware educators who move from a teacher, specialist, or administrative category to any other category, whether within the same or a different employing authority, shall participate in mentoring activities specified by the Department, as well as in mentoring activities required by the employing authority.

7.0 Duties and Responsibilities of Mentors.

7.1 Lead Mentors.

7.1.1 Teacher lead mentors must:

7.1.1.1 Satisfactorily complete training in mentoring and coaching development provided by the Department for lead mentors; and

7.1.1.2 Work a minimum of 45 documented hours per year in Lead Mentor Activities. Lead Mentor activities may include, but are not limited to, a combination of in-school and after-school time, per year in the program in a leadership position, planning mentor training, providing two-day mentor training to aspiring mentors, assisting mentors with specific issues, and other responsibilities as directed by the site coordinator.

7.1.2 Administrative lead mentors must:

7.1.2.1 Satisfactorily complete training in mentoring and coaching development provided by the NASSP Leadership Development and Assessment Program.

7.1.2.2 Satisfactorily complete training in the mentoring and coaching facilitator development provided by the NASSP Leadership Development and Assessment Program or Assessor Training for the Developmental Assessment Center provided by the NASSP Leadership Development and Assessment Program;

7.1.2.3 Work a minimum of 45 documented hours per year in Administrative Lead Mentor activities. Administrative Lead Mentor activities may include, but are not limited to, a combination of in-school and after-school time, in the program in a leadership position, planning mentor training, providing two-day mentor training as prescribed by NASSP to aspiring mentors, assisting mentors with specific issues, and other responsibilities as directed by the program coordinator; and

7.1.2.4 Serve on the administrative mentoring program advisory committee.

7.2 Mentors.

7.2.1 Teacher mentors must:

7.2.1.1 Satisfactorily complete training in mentoring and coaching development provided by the Lead Mentors;

7.2.1.2 Attend structured meetings concerning the mentoring program as directed by the district;

7.2.1.3 Facilitate 30 documented contact hours, which may include a combination of in-school and after-school time, with their protégées annually which are designed to help the new teacher acquire additional skills and knowledge appropriate to their specific positions; and

7.2.1.4 Submit contact log documentation to site coordinator January 15 and May 15. This documentation must be forwarded to the Department by May 30.

7.2.2 Administrative mentors must:

7.2.2.1 Satisfactorily complete training in Mentoring and Coaching Development provided by the NASSP Leadership Development and Assessment Program;

7.2.2.2 Attend a minimum of three (3) structured meetings with protégées;

7.2.2.3 Facilitate 30 documented contact hours annually in Administrative mentoring activities. Administrative mentoring activities may include, but are not limited to, a combination of in-school and after-school activities which are designed to help the new administrator link school leadership theory and on the job practice;

7.2.2.4 Submit contact log documentation to program coordinator January 15 and May 15. This documentation must be forwarded to the Department by May 30.

8.0 Mentors and lead mentors who are paid in accordance with the provisions of 14 Del.C. §1305 shall be paid an extra responsibility salary supplement annually, upon documentation of satisfactory fulfillment of duties and responsibilities, in accordance with the schedule adopted annually by the Standards Board, with concurrence of the State Board.

DEPARTMENT OF FINANCE DIVISION OF REVENUE

PUBLIC NOTICE

Technical Information Memorandum 2004-2 Internet Retail Sale Of Any Tobacco Product

House Bill 153 of the 142nd General Assembly amended

Chapter 53 of Title 30 of the Delaware Code by inserting a new subchapter entitled: **Subchapter VI. Delivery Sale of Cigarettes**. This new subchapter will allow Internet retail sales of cigarettes and other tobacco products under certain terms and conditions.

Prior to initiating Internet retail sales of cigarettes or other tobacco products from a business location within or without Delaware or mailing, shipping, or otherwise delivering cigarettes or other tobacco products to customers within Delaware, every Internet retailer shall complete and file with the Delaware Division of Revenue the Delaware Form CRA (Combined Registration Application) to register the Internet retailer's name, trade name and address of the principal place of business and any other place of business. Internet retailers selling, mailing, shipping, or otherwise delivering cigarettes or other tobacco products to customers within Delaware from a business location outside of Delaware must complete only Part A of the Delaware Form CRA. Internet retailers selling, mailing, shipping, or otherwise delivering cigarettes or other tobacco products to customers within Delaware from a business location within Delaware must complete Parts A, B and C of Delaware Form CRA. When completing Part C of Delaware Form CRA, the Internet retailer shall be required to apply for a General Retailer license in accordance with Section 2905 of 30 **Del.C.** and a Cigarette Retailer license in accordance with Section 5308(b) of 30 **Del. C.**

Every Internet retailer accepting a purchase order for any sale of cigarettes or other tobacco products to a consumer in this State where either (i) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or (ii) the cigarettes or other tobacco products are delivered by use of the mails or any person engaged in the commercial delivery of letters, packages, or other containers shall collect and remit to the Delaware Division of Revenue all cigarette or other tobacco product taxes imposed by this State with respect to such delivery sale. Such collection and remission shall not be required to the extent that the Internet retailer sells and ships to the Delaware consumer packages of cigarettes affixed with the Delaware tax stamp or has otherwise obtained proof that such taxes already have been paid to the State. A sale of cigarettes or other tobacco products not for personal consumption to a person who is a distributor or a retail dealer shall not be considered a delivery sale.

On or before the 10th day of each calendar month, every Internet retailer that has made a delivery sale or mailed, shipped, or otherwise delivered cigarettes or other tobacco products, either without a stamp or affixed with any state stamp, to a customer within Delaware from a business location either within or without Delaware must, in

connection with any such sale during the previous calendar month, file a completed Delaware Form 5367 C and Schedule 5367 C-A for sales of cigarettes and Delaware Form 5367- OTP and Schedule 5367 OTP-A for sales of all other tobacco products (copies attached) with the Delaware Division of Revenue. Form 5367 C is filed to remit all collected Delaware cigarette tax not previously paid before the sale and Delaware Schedule 5367 C-A is filed to individually identify all Internet retail sales for which a delivery sale has been made to a Delaware customer. Form 5367 OTP is filed to remit Delaware other tobacco products tax not previously paid before the sale and Schedule 5367 OTP-A is filed to individually identify all Internet retail sales for which a delivery sale has been made to a Delaware customer. The filing of Forms 5367 C & 5367 OTP and Schedules 5367 C-A & 5367 OTP-A are in addition to the filing requirements of a General Retailer contained in Section 2905(b)(1) of 30, **Del. C.**

Chapter 53 of Title 30 requires that the first vendor who has possession of unstamped tobacco products in this State for sale in this State shall be deemed an affixing agent. Any Internet seller of cigarettes, who is not located in Delaware, does not need to become an affixing agent. However, the Internet seller must either become an affixing agent in order to purchase and affix Delaware cigarette stamps or remit the tax using Form 5367 C. The Other Tobacco Products Tax is 15% of the wholesale cost of the tobacco products sold and the tax must be remitted on Form 5367 OTP. Information concerning becoming an affixing agent may be found at: http://www.state.de.us/revenue/obt/taxtips/tt-cigarette_other_tobacco_products.htm

House Bill 153 with House Amendment #1 was signed on June 30, 2003 and was effective on that date. Reports, returns and payment for the period beginning June 30, 2003 through May 31, 2004 are due on or before June 30, 2004. Thereafter, reports, returns and payments are due on or before the 10th day of the month following the month during which any tobacco product was delivered in this State.

Please contact Jeanne Davis, 302-577-8448, or by email at jeanne.davis@state.de.us, if you have any questions concerning Internet cigarette retail sales.

Patrick T. Carter, Director of Revenue

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES****DIVISION OF SOCIAL SERVICES**

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

Public Notice**Fair Hearing Practices and Procedures**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / is proposing to amend the Division of Social Services Manual (DSSM) as it relates to fair hearing practices and procedures.

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 June 30, 2004.

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

Summary Of Proposed Change

DSSM 5311, Notification of Time and Place of Hearing. The change adds language to clarify that the ten day advance notice period in this rule refers to the date the fair hearing scheduling letter is mailed and not to the date the letter is received by certified mail.

5311 Notification of Time and Place of Hearing

The time, date, and place of the hearing will be arranged so that the hearing is accessible to the appellant. At least ten (10) days before the hearing, advance written notice will be provided by mailing the notice to all parties involved to permit adequate preparation of the case. An appellant may request less notice in order to expedite the scheduling of the hearing. Notices to appellants are sent by certified mail. The notice will:

- 1) Advise the appellant or representative of the name, address, and phone number of the person to notify in the event it is not possible for the appellant to attend the scheduled hearing;
- 2) Stipulate that the hearing request will be dismissed if the appellant or his/her representative fails to appear for the hearing without good cause (i.e., death in family, personal illness, unexpected emergency);

3) Include the hearing procedures and any other information that would provide the appellant with an understanding of the proceedings that would contribute to the effective presentation of the household's case and will include fair hearing summary and documents filed for the hearing;

4) Explain that the appellant has the right to bring an attorney or other representative to his/her hearing;

5) Explain that the appellant may present any information that (s)he desires at the hearing;

6) Explain that the appellant or representative may examine the record prior to the hearing.

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

Statutory Authority: 7 Delaware Code,
Chapters 60 and 63 (7 Del.C. Ch. 60 and 63)

REGISTER NOTICE**1. Title Of The Regulations:**

Delaware *Regulations Governing Hazardous Waste* (DRGHW)

2. Brief Synopsis Of The Subject, Substance And Issues:

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State regularly amends the DRGHW by adopting amendments previously promulgated by EPA. In addition, the State will be proposing to make miscellaneous changes to the DRGHW that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations.

3. Possible Terms Of The Agency Action:

None

4. Statutory Basis Or Legal Authority To Act:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 and 63.

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice Of Public Comment:

The public hearing on the proposed amendments to DRGHW will be held on Wednesday June 23, 2004 starting at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

7. Prepared By:

Donald K. Short, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-3689

**2004 AMENDMENTS TO
DELAWARE REGULATIONS GOVERNING
HAZARDOUS WASTE**

SYNOPSIS

This synopsis presents a brief description of the 2004 amendments to Delaware's *Regulations Governing Hazardous Waste* (DRGHW) and a list of those sections generally affected by the amendments. This synopsis is provided solely for the convenience of the reader.

These changes incorporate certain RCRA amendments promulgated by U. S. EPA into Delaware's hazardous waste management program. The State is required to adopt these amendments in order to maintain its hazardous waste program delegation and remain current with the Federal RCRA hazardous waste program.

The State is also making miscellaneous changes to the existing regulations for the purpose of correcting errors and to add consistency or clarification to the existing regulations. Some amendments are being made to the existing regulations in order to improve or enhance the performance of the hazardous waste management program.

A description of the regulatory amendments is shown below and organized by EPA's promulgating **Federal Register** notice. For additional information, please contact the Solid and Hazardous Waste Management Branch at (302) 739-3689.

Title: Treatment Variance for Radioactively Contaminated Batteries

EPA Federal Register Reference: 67 FR 62618-62624
Federal Promulgation Date: October 7, 2002

Summary: The October 7, 2002 Federal Rule grants a national treatability variance from the Land Disposal Restrictions (LDR) treatment standards for radioactively contaminated cadmium-, mercury-, and silver-containing batteries by designating new treatment subcategories for

these wastes. The current treatment standards of thermal recovery for cadmium batteries and of roasting and retorting for mercury batteries are technically inappropriate, because any recovered metals would likely contain residual radioactive contamination and not be usable. The current numerical treatment standard for silver batteries is also inappropriate because of the potential increase in radiation exposure to workers associated with manually segregating silver-containing batteries for the purpose of treatment. Macroencapsulation is designated as the required treatment prior to land disposal for the new waste subcategories.

Sections of the DRGHW affected by this amendment: Part 268, §268.40, the Table, "Treatment Standards for Hazardous Wastes."

2. Title: Miscellaneous Changes

Summary: Proposed miscellaneous changes to DRGHW include non-substantive corrections for typographical or grammatical errors.

Proposed miscellaneous changes will also: Reinsert missing hazardous waste codes that were erroneously deleted from §261.32, and Part 262, Appendix VIII in a previous edition of the DRGHW; revise the timeframe in §263.103(d) for a transporter to submit an application to replace an expiring permit; add new section 264.1050(h) regarding purged coatings and solvents from surface coating operations; add a sentence in §265.55 regarding annual training of a facility's emergency coordinator; add new section 265.1050(g) regarding purged coatings and solvents from surface coating operations.

Sections of the DRGHW affected by this amendment: §261.32; Part 261, Appendix VIII; §263.103(d), §264.1050(h), §265.1050(g), and §265.55.

DIVISION OF FISH & WILDLIFE

Statutory Authority: 7 Delaware Code,
Section 103(a)(1) and (b),
(7 Del.C. 103(a)(1) and (b))

**REGISTER NOTICE
SAN # 2004-03**

1. Title Of The Regulations:

Delaware Wildlife Regulations

2. Brief Synopsis Of The Subject, Substance And Issues:

To provide additional shotgun hunting days for deer in October and add 1 day to the October muzzleloader deer season. To increase the general bag limit for deer from 2 to 4 antlerless deer. To allow squirrel hunting during deer gun hunting days in October. To require that deer checked using the automated system be tagged with the hunters name, date of birth, date of kill and the deer registration number.

3. Possible Terms Of The Agency Action:

N/A

4. Statutory Basis Or Legal Authority To Act:

Title 7. Conservation. Chapter 1, Section 103

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice Of Public Comment:

A public hearing will be held on June 30, 2004 in the DNREC Richardson and Robbins Building auditorium, 89 Kings Highway, Dover, DE starting at 7:00 p.m. Written comments for the record will be accepted for 30 days following publication of the amendments in the Delaware Register of Regulations. Written comments should be sent to The Delaware Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 Attention: Kenneth Reynolds

7. Prepared By:

Kenneth M. Reynolds
(302) 653-2883 May 6, 2004

4.0 Seasons (Formerly WR-4)

(Penalty Section 7 Del.C. 1304)

4.1 Season Dates. Hunting and trapping season dates will be published each year in an annual publication entitled "Delaware Hunting and Trapping Guide."

4.2 General. It shall be unlawful for any person to hunt those species of wildlife for which a season is designated at any time other than during that season.

4.3 Protected Wildlife.

4.3.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt any species of protected wildlife.

4.3.2 It shall be unlawful for any person to sell, transport or possess any species of protected wildlife, except when:

4.3.2.1 Otherwise provided by law or regulation of the Department; or

4.3.2.2 The wildlife was lawfully taken outside of this State in accordance with the laws or regulations of the state or nation where the wildlife was taken.

4.4 Beaver.

4.4.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt or trap beaver during any period of the year, however, from December 1 through March 20, landowners (or their agents) may take up to eight beavers from their property without a permit, provided the beavers are causing crop or property damage.

4.4.2 Beaver hides and the meat of lawfully taken beaver harvested anywhere within or outside of Delaware may be sold.

4.5 Bullfrogs.

4.5.1 Season. Bullfrogs may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bullfrogs: from May 1 through September 30.

4.5.2 Limit. It shall be unlawful for any person to take more than twenty-four (24) bullfrogs in any one day.

4.5.3 License. A hunting or fishing license is required to take bullfrogs.

4.6 Crows.

It shall be unlawful for any person to hunt common crows during any period of the year, except Thursdays, Fridays and Saturdays between and including the fourth Thursday of June and the last Saturday of March, unless said person holds a valid depredation permit. The hunting of common crows is restricted only by the provisions of federal regulations pertaining to the taking of common crows. Crows may be taken without a permit when committing damage or about to commit damage.

4.7 Gray Squirrel.

4.7.1 Season. Gray squirrel may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of gray squirrel: from September 15 (September 14, if September 15 is a Sunday) through the first Saturday in November; and from the Monday that immediately precedes Thanksgiving through the day that precedes the January shotgun deer season. Squirrel hunting shall be unlawful during any period and in any area when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, when squirrel season overlaps with an October firearms deer season, squirrel may be hunted when hunter orange is displayed in accordance with §718 of Title 7.

4.7.2 Limit. It shall be unlawful for any person to take more than four gray squirrels in any one day.

4.8 Opossum.

The opossum may only be hunted or trapped during the lawful season to hunt or trap raccoons.

4.9 Pheasant.

4.9.1 Season. Male pheasant may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of pheasant: from the Monday that immediately precedes Thanksgiving through the day that precedes the January shotgun deer season,

except that no pheasant hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, pheasant may be hunted during the December firearm deer season when hunter orange is displayed in accordance with § 718 of Title 7.

4.9.2 Female Pheasant. It shall be unlawful for any person to hunt or possess any female pheasant at any time, except as permitted on game preserves, by licensed game breeders or as otherwise permitted by law.

4.9.3 Male Pheasant Limit. It shall be unlawful for any person to hunt or possess more than two (2) male pheasants in any one day during the pheasant season, except as permitted by law.

4.9.4 Scientific or Propagating Purposes. It shall be unlawful for any person to possess pheasants for scientific and propagating purposes without a valid permit from the Director.

4.9.5 Game Preserves. Nothing in this regulation shall be construed so as to limit the number or sex of pheasants that may be harvested by any one person on licensed game preserves.

4.10 Quail.

4.10.1 Season. Bobwhite quail may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bobwhite quail: from the Monday that immediately precedes Thanksgiving through the first Saturday of February, except that no quail hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, quail may be hunted during the December or January firearm deer seasons when hunter orange is displayed in accordance with § 718 of Title 7.

4.10.2 Limit. It shall be unlawful for any person to take more than six (6) quail in any one day.

4.11 Rabbit.

4.11.1 Season. Rabbits may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of rabbits: from the Monday that immediately precedes Thanksgiving through the first Saturday in February, except that no rabbit hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, rabbit may be hunted during the December or January firearm deer seasons when hunter orange is displayed in accordance with § 718 of Title 7.

4.11.2 Limit. It shall be unlawful for any person to take more than four (4) rabbits in any one day.

4.12 Raccoon.

4.12.1 Trapping Season. Raccoon may be trapped in accordance with the statutes and regulations of the State of Delaware governing the trapping of raccoon: from December 1 through March 10 (March 20 on embanked meadows) in New Castle County; and from December 15 through March 15 in Kent and Sussex counties. The season

is open throughout the year on private land, except on Sundays, in eastern New Castle and Kent counties pursuant to § 786 of Title 7 and Section 4(b) of WR-2.

4.12.2 Hunting Season. Raccoon may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of raccoon: from September 1 (September 2, if September 1 is a Sunday) through October 31 for chase only whereby it shall be unlawful to kill raccoon and opossum; from November 1 through the last day of February; and from March 1 through March 31 for chase only whereby it shall be unlawful to kill raccoon and opossum. The season is open throughout the year on private land in eastern New Castle and Kent counties, except on Sundays, pursuant to § 786 of Title 7.

4.12.3 Notwithstanding subsection 4.3.2 of this section, it shall be unlawful for any person to hunt raccoon or opossum during any period when it is lawful to hunt deer with a firearm, except that it shall be lawful to hunt raccoon from 7:00 p.m. until midnight during the December and January firearm deer seasons.

4.13 Red Fox.

Red fox may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of red fox: from October 1 through April 30 for chase only whereby it shall be unlawful to kill red fox, except no red fox hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, red foxes may be killed in accordance with Section 8 of WR-2 and § 788 of Title 7.

4.14 Ruffed Grouse.

It shall be unlawful for any person to hunt for ruffed grouse during any period of the year.

4.15 Snapping Turtles.

4.15.1 Season. It shall be unlawful for any person to hunt for snapping turtles during any period of the year, except between and including June 15 and May 15.

4.15.2 Size. It shall be unlawful for any person to sell, offer for sale or kill any snapping turtle with a carapace length of less than eight inches, measured on the curvature.

4.16 Terrapin.

4.16.1 Season. It shall be unlawful for any person to hunt for diamondback terrapin during any period of the year, except between and including September 1 and November 15.

4.16.2 Limit. It shall be unlawful for any person to take more than four (4) diamondback terrapin in any one day.

See 3 DE Reg. 289 (8/1/99)

See 3 DE Reg. 1738 (6/1/00)

See 6 DE Reg. 536 (10/1/02)

7.0 Deer (Formerly WR-7)

(Penalty Section 7 Del.C. 1304)

7.1 Limit.

7.1.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to:

7.1.1.1 Kill or take or attempt to kill or take more than ~~two~~ four antlerless deer in any license year;

7.1.1.2 Kill or take ~~two~~ four antlerless deer in any license year without at least ~~one~~ two of the ~~two~~ four deer being ~~an antlerless female~~ deer; or

7.1.1.3 Possess or transport any deer that was unlawfully killed.

7.1.1.4 Kill any antlered deer without first purchasing a Delaware Resident Hunter's Choice Deer Tag or a Delaware Non Resident Antlered Deer Tag, except that persons exempt from purchasing a hunting license shall be entitled to take one Hunter's Choice deer at no cost.

7.1.2 For the purposes of this section, a person "driving deer" and not in possession of any weapon or firearm shall not be treated as if they are hunting deer, provided they are assisting lawful hunters.

7.1.3 It shall be unlawful for any person to purchase, sell, expose for sale, transport or possess with the intent to sell, any deer or any part of such deer at any time, except that hides from deer lawfully killed and checked may be sold when tagged with a non-transferable tag issued by the Division. Said tag must remain attached to the hide until it leaves the State or is commercially processed into leather. This subsection shall not apply to venison approved for sale by the United States Department of Agriculture and imported into Delaware.

7.1.4 Notwithstanding subsection 7.1 of this section, a person may purchase ~~an~~ Antlerless Deer Tag ~~Tags~~ for \$10 each to kill or take ~~an~~ additional antlerless deer during the open season. ~~provided:~~

~~7.1.4.1 The tag is valid for the season in which it is used; and~~

~~7.1.4.2 The tag is valid in the deer management zone from which the deer is taken.~~ Hunters may take additional antlerless deer on Antlerless Deer Damage Tags at no cost.

7.1.5 Notwithstanding subsection 7.1.1 of this section, a person may use one Quality Buck tag to take an antlered deer with a minimum outside antler spread of fifteen inches, provided the tag is valid for the season in which it is used. Hunters exempt from the requirement to purchase a hunting license must purchase a Quality Buck tag in order to take a second antlered deer in any one license year.

7.2 Tagging and Designated Checking Stations.

7.2.1 Attaching Tags. – Each licensed person who hunts and kills a deer shall, immediately after the killing and before removing the deer from the location of the killing, attach an approved tag to the deer. An approved tag

shall mean an Antlerless Deer Tag or Doe Tag received with the hunting license, a Delaware Resident Quality Buck Deer Tag, a Delaware Resident Hunter's Choice Deer Tag, a Delaware Non Resident Quality Buck Deer Tag, a Delaware Non Resident Antlered Deer Tag, an Antlerless Deer Damage Tag, a Sportsmen Against Hunger tag or an Antlerless Tag purchased in addition to the hunting license tags. a tag detached from a Delaware hunting license. Any unlicensed person not required to secure a license shall make and attach a tag to the deer that contains the person's name, address and reason for not having a valid Delaware hunting license.

7.2.2 this section shall remain attached to the deer until the deer is presented to an official checking station for examination and tagging, or registered by phone or over the internet, as prescribed by subsection 7.1.3 of this section.

7.2.3 Checking Stations. – Each person who hunts and kills a deer shall, within 24 hours of killing said deer, present the deer to a checking station designated by the Division or to an authorized employee of the Division. ~~or register the deer by phone.~~ Hunters may also check deer by phone or over the internet through systems authorized by the Division.

7.2.4 Dressing. – It shall be unlawful for any person to remove from any deer any part thereof, except those internal organs known as the viscera, or cut the meat thereof into parts, until such deer has been examined by an authorized employee of the Division or a checking station, as prescribed by subsection (c) of this section or registered using the phone or internet system.

7.2.5 Receipt Tag. – The Division shall issue, at a checking station or otherwise, an official receipt tag proving the deer was examined by an authorized employee of the Division or a checking station, as prescribed by subsection (c) of this section. The receipt tag shall remain with the deer until such time as the deer is processed for consumption or prepared for mounting. Deer checked over the phone or internet will be given a registration number. These deer shall be tagged by the hunter, butcher or taxidermist with the registration number, hunter's first and last name, hunter's date of birth, and date of kill. This tag may be homemade or be one provided by the Division and must remain with the head and/or carcass until the mount is picked up from the taxidermist or the meat is processed and stored as food.

~~7.2.6 Hunting with Tags Detached from License. It shall be unlawful for any person to hunt deer with any license that has the applicable deer tag detached from the license, even though said tag may be in the possession of the hunter. Any person with a detached deer tag may, upon application to the Division, have a duplicate license issued in order to obtain a valid deer tag.~~

7.3 Method of Take.

7.3.1 Shotgun. It shall be unlawful for any person to hunt deer during the shotgun season using a shotgun of a caliber smaller than 20 gauge, or have in his or her possession any shell loaded with shot smaller than what is commonly known as "buckshot."

7.3.2 Bow and Arrow. It shall be unlawful for any person to hunt deer during the longbow season and have in his or her possession any weapon or firearm other than a knife, a bow and sharpened broadhead arrows having minimum arrowhead width of 7/8 of an inch.

7.3.3 Muzzle-loading Pistols. A single shot muzzle-loading pistol of .42 caliber or larger using a minimum powder charge of 40 grains may be used to provide the coupe-de-grace on deer during the primitive firearm season.

7.3.4 Refuge in Water. It shall be unlawful for any person to shoot, kill or wound or attempt to shoot, kill or wound any deer that is taking refuge in or swimming through the waters of any stream, pond, lake or tidal waters.

7.3.5 Dogs. It shall be unlawful for any person to make use of a dog for hunting during the shotgun or muzzleloader seasons for deer (in each county), except as permitted in the hunting of migratory waterfowl from an established blind or for hunting dove, quail, raccoon or rabbit on properties closed to deer hunting with firearms during December and January.

7.4 Illegal Hunting Methods; Baiting.

It shall be unlawful for any person to set, lay or use any trap, snare, net, or pitfall or make use of any artificial light, or other contrivance or device, for the purpose of hunting deer. This subsection does not preclude the use of bait for the purpose of attracting deer in order to hunt them on private land.

7.5 Seasons.

7.5.1 Shotgun Seasons. Deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the Friday in November that precedes Thanksgiving by thirteen (13) days through the second Saturday succeeding said Friday; and from the Saturday that precedes the third Monday in January through the following Saturday in January.

7.5.2 Archery Seasons. Deer may be hunted with longbow in accordance with statutes and regulations of the State of Delaware governing the hunting of deer: from September 1 (September 2, if September 1 is a Sunday) through the last day of January, provided hunter orange is displayed in accordance with § 718 of Title 7 when it also lawful to hunt deer with a firearm.

7.5.3 Muzzleloader Seasons. – Deer may be hunted with muzzle-loading rifles in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the ~~Saturday~~ Friday that precedes the second Monday in October through the ~~next~~ second

Saturday that succeeds the Friday opening day; and from the Monday that follows the close of the January shotgun season through the next Saturday.

7.5.4 Special Antlerless Seasons. – Antlerless deer may be hunted with a shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer during all Fridays, Saturdays and Mondays in October except for during the October Muzzleloader season and the last Monday prior to the opening Friday of the October Muzzleloader season. Notwithstanding the foregoing, antlered deer may be taken with archery equipment that is legal during this October shotgun season. Antlerless deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the second Saturday in December through the third Saturday in December.

7.5.5 Crossbow Seasons. Crossbows may be used in lieu of shotguns during that part of the November shotgun season that runs from Monday through Saturday of each year and in any shotgun or muzzleloader deer season open in December or January.

7.5.6 Special Shotgun Season for Young and Disabled Hunters. Deer may be hunted on the first Saturday of November by disabled (non-ambulatory) hunters using a wheelchair for mobility, and hunters 12 years of age or older but less than 16 years of age (12 to 15 inclusive) who have completed an approved course in hunter training. Young hunters must be accompanied by a licensed non-hunting adult who is 21 years of age or older. Young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun.

See 3 DE Reg. 289 (8/1/99)

See 6 DE Reg. 536 (10/1/02)

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.

**DELAWARE STATE FIRE
PREVENTION COMMISSION**

Statutory Authority: 16 Delaware Code,
Section 6603 (16 Del.C. §6603)

ORDER**Part X – Ambulance Regulations**

This regulation has been revised to reflect consolidation of numerous policies and an upgrade in training requirements and certification of Ambulance Attendants to Delaware Emergency Medical Technicians Basics implemented since 1998 by the Delaware State Fire Prevention Commission.

The State Fire Prevention Commission (“the Commission”) held a properly noticed public hearing on April 20, 2004 to receive comment on proposed revisions, to the Commission’s Ambulance Regulations. (Attached to this Order as “Exhibit A”) The attendance sheets and transcribed minutes of this hearing are attached to this Order as “Exhibit B” in lieu of a statement of the summary of evidence. Similarly, those written comments received by the Commission and introduced into evidence at the hearing are attached to this Order as Exhibit “C”.

Based upon the evidence received, the Commission finds the following facts to be supported by the evidence.

1. There was no public comment presented concerning the proposed regulations at the public hearing.

2. In written correspondence, Dr. Ross E. Megargel, the State EMS Medical Director, requested that “the county and/or State EMS Medical Director be listed as members of the Basic Life Support Data Assessment Committees.”

The Commission accepts Dr. Megargel’s requests and amends Part IX subsection (1) of the Ambulance Regulations to include thte “county and/or State EMS Medical Director” as members of the county’s Basic Life Support (BLS) Data Assessment Committees.

THE LAW

The State Fire Prevention Commission’s rulemaking authority is provided by 16 Del.C. §6711(b)(2) and §6717(a) that state:

§6711. Establishment of operational standards.

(a) ...

(b) Emergency ambulance licensing and certification.

(b)(1)...

(b)(2) The Commission shall adopt regulations specifying operational standards for ambulances. Regulations so adopted shall also require that the interior of the ambulance and the equipment within the ambulance be sanitary and maintained in good working order and sufficient quantities at all times.

§6717. Establishment of State Fire Prevention Commission ambulance service responsibility and authority; ambulance service districts; operational and

administrative requirements; ambulance service permits.

(a) As the responsible agency for the regulation of ambulance services within the State, the Commission shall adopt regulations applicable to ambulance service providers including but not limited to the establishment of ambulance service districts, establishment of operational and administrative requirements and requirements for certification of ambulance service providers. The Commission shall also have the authority to establish a process for certification renewal and shall have the authority to decertify any agency for noncompliance with its regulations.

DECISION

The Commission hereby adopts the Ambulance Regulations as proposed with alterations and clarifications noted in this Order and a copy of the Regulations as adopted is attached to this Order. The Commission relies upon its expertise in this area and the evidence presented in the testimony and documents submitted.

IT IS SO ORDERED this 18th day of May, 2004

STATE FIRE PREVENTION COMMISSION

Kenneth H. McMahon, Chairman
W. (Bill) Betts, Jr., Vice Chairman
Carlton E. Carey, Sr.
Frances J. Dougherty
Robert Ricker
Daniel W. McGee
Jasper H. Lakey

Part X, Ambulance Services Regulations

I. Purpose

The purpose of this regulation is to ensure a consistent and coordinated high quality level of ambulance service throughout the state, focusing on timeliness, quality of care and coordination of efforts.

II. Application

This regulation shall apply to any person, firm, corporation or association either as owner, agent or otherwise providing either pre-hospital or inter hospital ambulance service meeting the definitions of either "BLS Ambulance Service" or "Non-Emergency Ambulance Service" within the State of Delaware. The following are exempted from this regulation:

a. ~~Entities engaged in providing ALS ambulance service.~~

b. a. Privately owned vehicles not ordinarily used in

the business of transporting persons who are sick, injured, wounded or otherwise incapacitated or helpless.

~~e. b.~~ A vehicle rendering service as an ambulance in case of a major catastrophe or emergency when the ambulances with permits and based in the locality of the catastrophe or emergency are insufficient to render the services required.

~~d. c.~~ Ambulances based outside the State rendering service in case of a major catastrophe or emergency when the ambulances with permits and based in the locality of the catastrophe or emergency are insufficient to render the services required.

~~e. d.~~ Ambulances owned and operated by an agency of the United States Government.

~~f. e.~~ Ambulances based outside the State engaged strictly in interstate transportation.

~~g. f.~~ A vehicle which is designed or modified and equipped for rescue operations to release persons from entrapment and which is not routinely used for emergency medical care or transport of patients.

III. Definitions

For the purpose of this policy the following definitions are used:

Advanced Life Support (ALS) - The advanced level of pre-hospital and inter hospital emergency care that includes basic life support functions including cardiopulmonary resuscitation, plus cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of anti arrhythmic agents, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive medical devices, trauma care and other authorized techniques and procedures.

Advertising - Information communicated to the public, or to an individual concerned by any oral, written, or graphic means including, but not limited to, handbills, newspapers, television, billboards, radio, and telephone directories.

Ambulance - Any publicly or privately owned vehicle, as certified by the Delaware State Fire Prevention Commission, that is specifically designed, constructed or modified and equipped, and intended to be used for and is maintained or operated for the transportation upon the streets and highways of this state for persons who are sick, injured, wounded or otherwise incapacitated or helpless.

Ambulance Attendant - A person trained in emergency medical care procedures and currently certified by the Delaware State Fire Prevention Commission in accordance with standards prescribed by the Delaware State Fire Prevention Commission. ~~Such course shall be classified as basic life support and shall be the minimum acceptable level of training for certified emergency medical personnel.~~

Ambulance Service District - A geographical area with boundaries which are typically (but not always) aligned to fire service districts within the state as identified and

certified by the Delaware State Fire Prevention Commission.

BLS Run Report - Standardized Patient Care Report provided by the State EMS office, paper or computerized.

Basic Life Support (BLS) - The level of capability which provides ~~noninvasive~~ EMT-B [Ambulance Attendant] emergency patient care designed to optimize the patient's chances of surviving an emergency situation.

BLS Ambulance Service - Ambulance service which provides BLS level intervention both through the level of personnel and training provided.

BLS Ambulance Service Contract - A written contract between either a Primary or Secondary Ambulance Service Provider and an individual, organization, company, site location or complex or other entity for BLS ambulance service.

Board State Board Of Medical Practice (Board) - ~~Means the State Board of Medical Practice.~~ The Board of Medical Practice is charged with protecting the consumers of the Delaware healthcare system through the proper licensing and regulation of physicians and other health care professionals.

Cardiopulmonary Resuscitation (CPR) - A combination of chest compressions and rescue breathing used during cardiac and respiratory arrest to keep oxygenated blood flowing to the brain. (AHA Manual)

Certification - An initial authorization by the Delaware State Fire Prevention Commission to practice the skills of an EMT-Basic/Ambulance Attendant or First Responder specifying that the individual has successfully completed and passed the approved curriculum and evaluation instruments process.

Commission - ~~The State Fire Prevention Commission or a duly authorized representative thereof.~~

Delaware State Fire Prevention Commission (DSFPC) - The State Governing Body mandated in Title 16, Delaware Code whom Regulates the Basic Life Support System in Delaware.

~~**DFPC** - The Delaware Fire Prevention Commission~~

~~**DOT** - United States Department of Transportation~~

~~**DSFS** - Delaware State Fire School~~

Delaware Refresher Course - A course of instruction authorized by the DOT respectively for EMT-B or First Responders that prepare the ambulance provider for re-certification by the DFPC or the NREMT. A course of instruction for re-certification required by the Delaware State Fire Prevention Commission for EMT-B/Ambulance Attendants and First Responders that meet the guidelines of the DOT Curriculum.

Delaware State Fire School (DSFS) - An agency of the Delaware State Fire Prevention Commission which is designated as its duly authorized representative to administer the provisions of the Ambulance Service Regulations.

Delaware Training Standard For Delaware Emt-b/ambulance Attendants & First Responders - The current

of United States Department of Transportation Curriculum.

~~**EMT-B** - Emergency Medical Technician - Basic~~

~~**EMT-B** - Bridge Course - A state approved course of instruction that upon successful completion entitles the provider to sit for the NREMT-B examination.~~

~~**Emergency** - A combination of circumstances resulting in a need for immediate pre-hospital emergency medical care.~~

Emergency Medical Dispatch System - Means an a BOARD approved protocol system used by an approved dispatch center to dispatch aid to medical emergencies which must include:

- Systematized caller interrogation questions
- Systematized pre-arrival instruction; and
- Protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

Emergency Medical Services (Ems) Provider - Individual providers certified by the Delaware State Fire Prevention Commission to perform pre hospital care. For the purposes of this regulation this includes EMT-B[Ambulance Attendant] and First Responders.

~~**Emergency Medical Technician (EMT)** - A person trained, and currently certified by the State Fire Prevention Commission in emergency medical care procedures through a course which meets the objectives of the National Standard Curriculum.~~

Emergency Medical Technician - Basic (EMT-B) - The individual as defined in Title 16 of Delaware Code who provides patient care on an ambulance and has completed the National Department of Transportation curriculum and initially certified as a National Registered and Delaware Emergency Medical Technician-Basic and upon re-certification chooses to meet the State of Delaware requirements.

Emergency Mission - The BLS and ALS response to the needs of an individual for immediate medical care in order to prevent loss of life or aggravation or physiological or psychological illness or injury.

First Responder - An individual who has to take the First Responder Course as provided by the Delaware State Fire School that meets the DOT curriculum.

~~**First Responder Curriculum** - The United States Department of Transportation National Standard Curriculum for First Responders.~~

Center For Medicare/Medicaid Services (CMS) - The Federal Agency which oversee Medicare Billing and Ambulance Standard.

HIPAA - Health Insurance Probability and Accountability Act of 1996.

Hospital - An institution having an organized medical staff which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services or rehabilitation services for the care or

rehabilitation of injured, disabled, pregnant, diseased, sick or mentally ill persons. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific medical specialties, but not facilities caring exclusively for the mentally ill.

Medical Command Facility - The distinct unit within a hospital which meets the operational, staffing and equipment requirements established by the Secretary, Delaware Health and Social Services for providing medical control to the providers of advanced life support services. Any hospital that operates an emergency medical facility and desires to be designated as a medical command facility shall maintain and staff such facility on its premises and at its own expense with exception of base station communication devices which shall be an authorized shared expense pursuant to the provisions of Title 16, Chapter 98.

Medical Control - shall mean directions and advice normally provided from a centrally designated medical facility operating under medical supervision, supplying professional support through radio or telephonic communication ~~for on-site and in-transit basic and advanced life support services given by field and satellite facility personnel.~~

Medical Control Physician - Any physician board-certified or board-prepared in emergency medicine, or a physician certified on advanced trauma life support (ATLS) and advanced cardiac life support (ACLS) who is credentialed by the hospital within which a medical command facility is located, and who is authorized by the medical command facility to give medical commands via radio or other telecommunication devices to a paramedic. When a medical control physician establishes contact with a paramedic, and provides medical control instructions that exceed or otherwise modify the standing orders of the statewide standard treatment protocol, the paramedic shall, solely for the purpose of compliance with the Medical Practices Act, be considered to be operating under the license of said medical control physician.

Mobilization Time - The total time from station alert to the time an ambulance "is in service".

~~**NREMT** - The National Registry of Emergency Medical Technicians.~~

National Department Of Transportation (DOT) - Emergency Medical Technician Curriculum - A curriculum developed and adopted by the Federal Government as a recommended guide for people providing emergency care in the field.

National Registry Of Emergency Medical Technicians (NREMT) - The nationally recognized organization for the testing and registering of persons who have completed a DOT, EMT-Basic course and First Responder Courses.

National Registered Emergency Medical Technician - Basic (NREMT-B) - a person who completed the DOT

curriculum and ~~passes~~ passed the National Registry of Emergency Medical Technicians Examination.

Non-emergency Ambulance Service - Ambulance service which provides routine transport of persons who are sick, convalescent, incapacitated and non-ambulatory but do not ordinarily require emergency medical treatment while in transit.

~~**OEMS** - Office of Emergency Medical Services, Division of Public Health.~~

Office Of Emergency Medical Services (OEMS) - The State Agency Mandated in Title 16 that serves as the designated representative of the NREMT; provides medical advise and direction; regulates the statewide automatic external defibrillator program; and coordinates data collection activities for the EMS system.

Patient - An individual who is sick, injured, wounded or otherwise incapacitated or helpless and/or seeks who needs immediate medical attention.

Pre-hospital Care - Any emergency medical service, including advanced life support, rendered by an emergency medical unit before and during transportation to a hospital or other facility.

Primary Ambulance Service - BLS Ambulance Service provided by the Primary Ambulance Service Provider certified by the Delaware State Fire Prevention Commission within a specific ambulance service district.

Primary Ambulance Service Provider - An organization or company which has been designated by the Delaware State Fire Prevention Commission as having primary responsibility for providing BLS ambulance service within a specific ambulance service district.

Protocols - shall mean written and uniform treatment and care plans for emergency and critical patient statewide that constitutes the standing order of basic life support provider. The treatment protocols shall be prepared by the Board of Medical Practice as defined by House Bill 332 of the 140th General Assembly.

~~**Provider** - A person who, as an individual or member of a corporation or organization, whether profit-making or nonprofit, on a regular basis gives or offers for sale any supplies, equipment, professional or nonprofessional services, or is capable of giving or offering for sale supplies, equipment or services vital or incidental to the function of an emergency medical service system.~~

Recertification Training - A defined curriculum that once completed allows the individual to continue practicing as an EMT-B/Ambulance Attendant or First Responder for a specific period of time as determined by the Delaware State Fire Prevention Commission.

Response Time - The ~~total time from "in-service"~~ the ambulance is notified by dispatch until the ambulance arrives to arrival on the scene.

Responsible Charge - The individual who is identified

as having both the responsibility and authority to ensure full and complete compliance with all requirements of this regulation.

Secondary Ambulance Service - Ambulance Service provided under contract to specific locations within a primary ambulance service district by a BLS Ambulance Service Provider other than the primary provider.

Secondary Ambulance Service Provider - An organization or company which provides supplemental BLS ambulance service anywhere in the state and always under specific contractual agreements.

Semi Automatic External Defibrillation (AED) Certification - An external computerized defibrillator designed for use in unresponsive victims with no breathing or signs of circulation (AHA Manual).

~~**AED Certification** - Semi-Automatic External Defibrillation Training and Certification as recognized by the Delaware Board of Medical Practice.~~

~~**H. Training Standard** - Effective June 16, 1998, the current of United States Department of Transportation Emergency Medical Technician - Basic National Standard Curriculum shall be the curriculum adopted for the Ambulance Attendants in the State of Delaware.~~

Basic Life Service (BLS) Ambulance Service

IV. BLS Ambulance Service Permits

A. Any person, firm, corporation or association either as owner, agent or otherwise who furnish, conduct, maintain, advertise or otherwise engage in or profess to be engaged in the business or service of providing BLS Ambulance Service upon the streets or highways of this state shall hold a valid permit as either a Primary or Secondary Ambulance Service Provider issued by the Delaware State Fire Prevention Commission. Application for this permit shall be upon forms provided by the Delaware State Fire Prevention Commission (~~Appendix B~~).

B. The issuance of a permit hereunder shall not be construed so as to authorize any person, firm, corporation or association to provide ambulance services or to operate any ambulance without compliance with all ordinances and regulations enacted or promulgated by any state, county or municipal government concerning ambulances.

C. Prior to issuing an original or renewal permit, the Delaware State Fire Prevention Commission shall determine that all requirements of this regulation are fully met. Additionally, the Delaware State Fire Prevention Commission has the authority to ensure continued compliance with these regulations through the periodic review of records and operations.

D. Only companies holding a current, valid BLS Ambulance Service Provider Permit shall be authorized to respond and provide BLS Ambulance Service within the

state.

E. A Primary or Secondary Ambulance Service Provider may not discontinue BLS ambulance service until a replacement provider has been selected and can assume service with no reduction in service.

V. BLS Ambulance Service Districts

A. The Delaware State Fire Prevention Commission shall have the authority to establish Ambulance Service Districts as per Title 16 Delaware Code, Section 6717(a).

B. The role of Primary Ambulance Service Provider shall be assigned to those fire departments providing BLS Ambulance Service at the time this regulation ~~is officially adopted~~ was initially adopted in 1997. The ambulance service district for these providers shall correspond to their established fire districts as certified by the Delaware State Fire Prevention Commission.

C. In those areas in which fire departments ~~are were~~ not providing BLS Ambulance Service at the time this regulation was officially adopted in 1997, the organization who ~~is currently~~ was providing BLS Ambulance Service shall be designated as the Primary Ambulance Service Provider. The ambulance service district for these providers shall correspond to their current boundaries.

VI. Primary And Secondary BLS Ambulance Service Providers

A. BLS Ambulance Service may be provided by Primary Ambulance Service Providers within their ambulance service district or in the course of providing mutual aid within other ambulance service districts provided:

1. They have a current permit
2. They are assigned by the Delaware State Fire Prevention Commission as a Primary Ambulance Service Provider

B. The Delaware State Fire Prevention Commission shall be authorized to select a new Primary Ambulance Service Provider at such time that:

1. The current Primary Ambulance Service Provider chooses to discontinue service
2. Failure to meet one or more elements of these regulations creates a threat to public safety

C. Any organization desiring to assume the role of Primary Ambulance Service Provider will be required to apply to the Delaware State Fire Prevention Commission showing adequate cause in the interest of public safety to justify the change.

D. BLS Ambulance Service may be provided by Secondary Ambulance Service Providers only to those with whom they have a contract for such service provided they:

1. Have a current permit.
2. Have a written contract to provide BLS

Ambulance Service to that specific location or site.

3. Provide the names, locations and conditions of all Secondary Ambulance Service contracts to the Delaware State Fire Prevention Commission within 20 days of contract finalization.

VII. BLS Ambulance Service Provider Permit Requirements

BLS Administrative Requirements

A. Procedures for securing a BLS ambulance service primary or secondary ambulance service permit include:

1. The owner or registered agent must apply to the Delaware State Fire Prevention Commission upon forms provided and according to procedures established by the Delaware State Fire Prevention Commission.

2. The Primary or Secondary Ambulance Service Provider shall either be based in Delaware or maintain an office in Delaware with a full time individual domiciled at that office who is in "Responsible Charge".

3. All requirements set forth in this regulation must be met before issuance of permit.

4. The Primary or Secondary Ambulance Provider must provide proof of automobile liability insurance in the amount of \$1 Million individual, \$3 Million aggregate per occurrence. The Primary or Secondary Ambulance Provider must provide proof of liability insurance in the amount of \$1 Million blanket liability coverage.

B. Permits shall be valid for a period of one year from the permits effective date. Effective date runs for a calendar year.

C. The Delaware State Fire Prevention Commission may issue temporary permits when determined to be in the interest of public safety per Title 16.

D. On an on-going basis throughout the term of the permit, the owner or individual in "responsible charge" shall be available upon reasonable notification for the purpose of providing documentation on any provisions of this regulation and permitting physical inspection of all facilities and vehicles.

E. No ambulance service provider shall advertise or represent that it provides any ambulance service other than authorized to provide under this regulation.

F. All individuals or ambulance service providers shall be required to participate in the Delaware State Fire Prevention Commission approved ambulance data collection system which includes:

1. A BLS run report will be completed on all dispatched responses.

~~2. A completed copy of the report will be left at the hospital receiving the patient, at the time of the call~~

~~[32.]A completed copy of the report will be forwarded to the state EMS office. EMT-B [Ambulance~~

Attendant's] must complete, without exception, a written/computer report on each patient contact. Reports must be completed in a timely fashion.

~~[43.]When available, the report will be entered electronically and forwarded to the state EMS office.~~

~~[54.]Failure to comply with data submission will result in loss of ambulance provider license or EMT-B/Ambulance Attendant Certification.~~

~~[65.]Submit any other data to the designated agencies as required by the Delaware State Fire Prevention Commission.~~

~~G. The ambulance company shall provide on an annual basis a financial statement to the Delaware State Fire Prevention Commission. The Delaware State Fire Prevention Commission has the option to withhold funding as per HB 332 for failing to report the financial statement.~~

~~XIII. Reporting~~

~~A. Every individual who operates as an ambulance attendant and provides patient care will:~~

~~1. Ensure that the State mandated EMS Run paper on computer data report is submitted to ambulance agency for forwarding to the proper collection agency and the receiving health care facility. Failure to comply with data submission will result in loss of ambulance attendant certification.~~

~~2. Submit any other data to the designated agencies as required by the State Fire Prevention Commission.~~

BLS Operational Requirements

A. Vehicle Standards

1. All ambulances shall be registered and licensed in the State of Delaware by the Delaware Motor Vehicle Department.

EXCEPTIONS:

a. Those vehicles to which the international registration plan applies

b. Those vehicles properly registered in some other state.

2. Vehicles shall have clearly visible letters on both sides and the rear identifying the name of the organization or corporation or the vehicle's specific identifier as specified under permit documentation. The letters shall be at least three inches in height.

3. Vehicle patient compartment shall conform with the criteria within the GSA Federal Specifications for ambulances (KKK-1822C).

B. Equipment Standards

Every ambulance shall be equipped with equipment and supplies as specified by the Delaware State Fire Prevention Commission within Appendix "A" and updated annually following recommendations from the Delaware State Fire School Director with concurrence from the

Delaware State Fire Prevention Commission's Medical Advisor Director.

C. Staffing Requirements

1. Minimum acceptable crew staffing when transporting a patient shall consist of a driver and one EMT-B/Ambulance Attendant.

2. A minimum of one EMT-B/Ambulance Attendant shall always be in the patient compartment when a patient is present.

3. ~~Within 6 months following adoption of this regulation,~~ BLS ambulance drivers are required to have completed the "Emergency Vehicle Operators" course conducted by the Delaware State Fire School or an equivalent program approved by the Delaware State Fire Prevention Commission.

D. Quality Assurance

1. Each Primary and Secondary Ambulance Service Provider shall be responsible for monitoring quality assurance in the form of patient care and both mobilization and response times. The method in which this is accomplished is the authority and responsibility of the Primary or Secondary Ambulance Service Provider.

~~NOTE: For Primary Ambulance Service Providers this monitoring shall only apply to response within their Primary Ambulance Service District NOT for mutual aid calls to other ambulance service districts.~~

2. ~~As identified above, included within the quality assurance program is the responsibility for assuring the public a consistently reasonable response to BLS ambulance calls. In the interest of public safety, primary and secondary ambulance service providers are responsible for meeting the following mobilization and response times:~~

Mobilization Times

~~80% of all emergency missions within 8 minutes –
1st Year regulation is in effect~~

~~85% of all emergency missions within 8 minutes –
2nd Year regulation is in effect~~

~~90% of all emergency missions within 8 minutes –
3rd Year regulation is in effect~~

~~Response Times – 90% of all BLS calls shall not exceed 18 minutes~~

3. ~~For the purposes of Monitoring quality control, bth mobilization and response times will be monitored based on calendar year quarterly periods.~~

4. ~~Upon periodic review of both mobilization and response times, the Commission may consider extraordinary weather and traffic conditions as impacting these times.~~

~~NOTE: As stated above, this regulation is striving to ensure, within a high percentage of ambulance calls, that two goals are met:~~

1. ~~That ambulances will be in service within 8 minutes from the time of station alert.~~

2. ~~That, once an ambulance is in service,~~

~~time to arrive on the scene is not more than 18 minutes.~~

~~NOTE: The intent of this criteria is to cause the review and monitoring of both mobilization and response time. By reviewing these times based on quarterly periods, both mobilization and response times are being monitored relative to the above criteria in order to determine if a problem is developing. Mobilization or response time exceeding the above criteria for any quarter requires review. The same problem(s) occurring for a second period or within a total one year period of time require some form of correction action. The form of corrective action taken is the prerogative of the BLS Ambulance Service Provider and may include but not be limited to the following: Providing an incentive to personnel responding to ambulance calls during problem time periods, providing paid personnel during difficult time periods, contracting with secondary ambulance service providers on an individual or regional basis. Once determined to be necessary, corrective action is required to be implemented within 3 months. Additional corrective action shall be required if monitoring indicates a problem continues to exist.~~

E. Communications Requirements

1. Dispatch Centers

a. Dispatch centers for both Primary and Secondary Ambulance Service Providers shall meet the criteria established of NFPA 1221 as amended by the Delaware State Fire Prevention Commission.

b. Secondary ambulance service providers dispatch centers shall be responsible for following call taking protocols as established by the Delaware State Fire Prevention Commission. Calls determined to be ALS in nature shall be transferred to the appropriate public safety answering point (PSAP) within 30 seconds of taking the call utilizing a dedicated phone line to that PSAP.

c. Calls determined to be BLS in nature shall not be required to be forwarded to the PSAP.

d. Dispatch centers shall follow an Emergency Medical Dispatch System approved by the Delaware State Fire Prevention Commission.

2. Ambulances

a. All Ambulances shall be equipped with reliable communications systems which permit direct communications with their dispatch center and all medical command facilities with which the ambulance will or may operate.

F. SAED Requirements

Upon placing an SAED on any ambulance, the ambulance service provider will comply with the Delaware Early Defibrillation Program Administrative Policies as established by the ~~Department of Health and Human Services,~~ Office of Emergency Medical Services.

G. Infection Control

All ambulance service providers will comply with the infection control requirements in chapter 12A, Title 16 of

the Delaware code.

H. Medical Control

~~Once medical control is established,~~ Ambulance service providers shall be required to follow all orders issued.

I. Center for Medicare Medicaid Services (CMS)

All ambulance services providers will comply with the Final Rule in the Federal Register (64F.R3637) revising the Medicare policies for ambulance services adopted February 24, 1999.

J. Health Insurance Portability and Accountability Act of 1996 (HIPAA) All ambulance service providers will comply with the HIPAA of 1996.

VIII. Compliance

A. The owner or registered agent of every ambulance service provider shall provide ambulance service in accordance with the requirements set forth in this regulation and the contractual agreements established as either a primary or secondary Ambulance Service Provider and filed with the Delaware State Fire Prevention Commission in accordance with the provisions set forth in these regulations. Failure to provide this service shall be grounds for suspension or revocation of permit.

B. Grievances - All grievances relative to ambulance service shall follow procedures established within the Delaware State Fire Prevention Regulations, Part IX "Fire Service Standards" sections 1.1 through 6.1.

C. Penalties - Following review of a valid complaint or upon failure to comply with any provision of this regulation, the Delaware State Fire Prevention Commission, following procedures established within the Delaware State Fire Prevention Regulations, shall have the authority to issue corrective orders, suspend or revoke the provider's permit.

D. Whenever there is reason to believe that any provisions of this regulation have been violated, the ambulance service provider shall be immediately notified. Violations shall require correction within five (5) working days of receipt of notice with the exception of those violations which represent an imminent danger to the public.

E. For those violations representing an imminent danger to the public, the Delaware State Fire Prevention Commission shall issue and deliver an order to cease and desist any further ambulance service until such time as the violation has been verified as being corrected and corrective measures accepted by the Delaware State Fire Prevention Commission.

F. The continued violation of any element of this regulation or failure or refusal to comply with any order to correct a violation or failure to obey a cease and desist order by any ambulance service provider shall be cause for revocation or suspension of permit by the Delaware State Fire Prevention Commission after determination that the provider is guilty of such violation.

G. In addition to (F), it shall be cause for revocation or suspension of a permit after determining the ambulance service provider:

(a) Has practiced any fraud, misrepresentation, or deceit in obtaining or renewing a permit

(b) Is guilty of gross negligence, incompetence or misconduct in providing services

(c) Is guilty of a violation of the codes and regulations adopted by the Delaware State Fire Prevention Commission

(d) Has been found guilty of an unfair or deceptive trade practice

(e) Has violated any contractual agreement related to providing ambulance service

H. Upon issuance of an order, the ambulance service provider accused may request a review of the order by the Delaware State Fire Prevention Commission. All hearings shall be conducted in conformity with procedures established by the Delaware State Fire Prevention Commission.

I. Any person aggrieved by a violation or order may file an appeal to the Delaware State Fire Prevention Commission pursuant to Delaware Code, Title 16, Chapter 66, Section 6608.

IX. Basic Life Support Data Assessment Committees

1. Members: The Delaware State Fire Prevention Commission, ~~hereinafter referred to as the Commission,~~ hereby establishes Basic Life Support (BLS) Data Assessment Committees, hereinafter referred to as the Committees.

There shall be three committees, one in each county of the State of Delaware. Members shall consist of representatives from the County Volunteer Firemen's Association, the County Fire Chief's Association, the County Ambulance Association, [**County and/or State EMS Medical Directors,**]and the County or local Fire and Emergency Medical (EMS) Dispatch Center dispatching the respective Company's EMS calls.

The President of his or her respective Association shall appoint each representative. The manager of the Fire and EMS Dispatch Center dispatching the Company's BLS incidents shall appoint the Dispatch Center representative.

The representative from each Association shall serve on their respective Committee until a letter of appointment is received from the respective Association or Dispatch Center indicating replacement of their current representative.

2. Goal Duties: Each Committee shall meet at least biannually, or as necessary, to review their respective County's Fire and EMS Dispatch Center's Basic Life Support (BLS) data. They shall review the monthly data for each Ambulance Provider, hereinafter referred to as Provider, in their County. Criteria for review shall include

numbers of dispatched calls, scratches, and special circumstances. Each committee shall submit biannually a written report to the Delaware State Fire Prevention Commission, reporting on their reviews, and any suggestions they might have to improve the BLS system or committee procedures.

If the Committee deems that a Provider needs improvement in an area, the Committee shall schedule a meeting with that Provider to determine if they can support the Provider in solving the identified problem(s). When meeting with the Provider, the Committee, by consensus, shall select a Chair to mediate discussions presented by the Committee to the Provider.

3. Grievance Procedure

In the event that the Committee has problems with the Provider, or the Provider has problems with the Committee, either may forward the problem to the Delaware State Fire Prevention Commission through the normal Grievance Procedures, previously adopted by the Delaware State Fire Prevention Commission. ~~Each Committee shall submit an annual written report to the Commission, reporting on their reviews, and any suggestions they might have to improve the BLS system or Committee procedures.~~

NON-EMERGENCY AMBULANCE SERVICE

X. Non-emergency Ambulance Service Permits

A. Any person, firm, corporation or association either as owner, agent or otherwise who furnish, conduct, maintain, advertise or otherwise engage in or profess to be engaged in the business or service of providing non-emergency ambulance service upon the streets or highways of this state shall hold a valid permit issued by the Delaware State Fire Prevention Commission. Application for this permit shall be upon forms provided by the Delaware State Fire Prevention Commission (~~Appendix B~~).

B. The issuance of a permit hereunder shall not be construed so as to authorize any person, firm, corporation or association to provide ambulance services or to operate any ambulance without compliance with all ordinances and regulations enacted or promulgated by any state, county or municipal government concerning ambulances.

C. Prior to issuing an original or renewal permit, the Delaware State Fire Prevention Commission shall determine that all requirements of this regulation are fully met. Additionally, the Delaware State Fire Prevention Commission has the authority to ensure continued compliance with these regulations through the periodic review of records and operations.

D. Only companies holding a current, valid non-emergency ambulance service provider permit shall be authorized to respond and provide non-emergency ambulance service within the state.

XI. Non-emergency Ambulance Service Provider Permit Requirements

Administrative Requirements

A. Procedures for securing a non-emergency ambulance service permit include:

1. The owner or registered agent must apply to the Delaware State Fire Prevention Commission upon forms provided and according to procedures established by the Delaware State Fire Prevention Commission.

2. The non-emergency ambulance service provider shall either be based in Delaware or maintain an office in Delaware with a full time individual domiciled at that office who is in "Responsible Charge".

3. All requirements set forth in this regulation must be met before issuance of permit.

4. The non-emergency ambulance service provider must provide proof of liability insurance in the amount of \$1 Million blanket liability coverage.

5. The non-emergency ambulance service provider must provide proof of automobile liability insurance in the amount of \$1 Million individual, \$3 Million aggregate per occurrence.

B. Permits shall be valid for a period of one year from the permits effective date.

C. The Delaware State Fire Prevention Commission may issue temporary permits when determined to be in the interest of public safety per Title 16.

D. On an on-going basis throughout the term of the permit, the owner or individual in "responsible charge" shall be available upon reasonable notification for the purpose of providing documentation on any provisions of this regulation and permitting physical inspection of all facilities and vehicles.

E. No ambulance service provider shall advertise or represent that it provides any ambulance service other than authorized to provide under this regulation.

Operational Requirements

A. Vehicle Standards

1. All ambulances shall be registered and licensed in the State of Delaware by the Delaware Division of Motor Vehicle Department.

EXCEPTIONS:

a. Those vehicles to which the international registration plan applies.

b. Those vehicles properly registered in some other state.

2. Vehicles shall have clearly visible letters on both sides and the rear identifying the name of the organization or corporation or the vehicle's specific identifier as specified under permit documentation. The letters shall be at least three inches in height.

3. Vehicle patient compartment shall conform

with the criteria within the GSA Federal Specifications for ambulances (KKK-A-1822C).

B. Equipment Standards

Every ambulance shall be equipped with equipment and supplies as specified by the Delaware State Fire Prevention Commission ~~within Appendix "A"~~ and updated annually considering recommendations from the Delaware State Fire School Director with concurrence from the Delaware State Fire Prevention Commission's Medical Advisor Director.

C. Staffing Requirements

1. Minimum acceptable crew staffing when transporting a patient shall consist of a driver and one ~~[EMT-B/Ambulance Attendant ambulance attendant]~~.

2. A minimum of one ~~[EMT-B/Ambulance Attendant ambulance attendant]~~ shall always be in the patient compartment when a patient is present.

D. Communications Requirements Ambulances

All Ambulances shall be equipped with a reliable communications systems which permit direct communications with all medical command facilities with which the ambulance will or may operate.

E. SAED Requirements

Upon placing an SAED on any ambulance, the ambulance service provider will comply with the Delaware Early Defibrillation Program Administrative Policies as established by the ~~Department of Health and Human Services~~, Office of Emergency Medical Services

F. Infection Control

All ambulance service providers will comply with the infection control requirements in Chapter 12A, Title 16 of the Delaware code.

G. Center for Medicare Medicaid Services (CMS)

All ambulance services providers will comply with the Final Rule in the Federal Register (64F.R3637) revising the Medicare policies for ambulance services adopted February 24, 1999.

H. Health Insurance Portability and Accountability Act of 1996 (HIPAA) All ambulance service providers will comply with the HIPAA of 1996.

XII. Compliance

A. The owner or registered agent of every ambulance service provider shall provide ambulance service in accordance with the requirements set forth in this regulation and the contractual agreements established as either a primary or secondary Ambulance Service Provider and filed with the Delaware State Fire Prevention Commission in accordance with the provisions set forth in these regulations. Failure to provide this service shall be grounds for suspension or revocation of permit.

B. Grievances - All grievances relative to ambulance service shall follow procedures established within the Delaware State Fire Prevention Regulations, Part IX "Fire

Service Standards" ~~Sections 1.1 through 6.1.~~

C. Penalties - Following review of a valid complaint or upon failure to comply with any provision of this regulation, the Delaware State Fire Prevention Commission, following procedures established within the Delaware State Fire Prevention Regulations, shall have the authority to issue corrective orders, suspend or revoke the provider's permit.

D. Whenever there is reason to believe that any provisions of this regulation have been violated, the ambulance service provider shall be immediately notified. Violations shall require correction within five (5) working days of receipt of notice with the exception of those violations which represent an imminent danger to the public.

E. For those violations representing an imminent danger to the public, the Delaware State Fire Prevention Commission shall issue and deliver an order to cease and desist any further ambulance service until such time as the violation has been verified as being corrected and corrective measures accepted by the Delaware State Fire Prevention Commission.

F. The continued violation of any element of this regulation or failure or refusal to comply with any order to correct a violation or failure to obey a cease and desist order by any ambulance service provider shall be cause for revocation or suspension of permit by the Delaware State Fire Prevention Commission after determination that the provider is guilty of such violation.

G. In addition to (F), it shall be cause for revocation or suspension of a permit after determining the ambulance service provider:

(a) Has practiced any fraud, misrepresentation, or deceit in obtaining or renewing a permit

(b) Is guilty of gross negligence, incompetence or misconduct in providing services

(c) Is guilty of a violation of the codes and regulations adopted by the Delaware State Fire Prevention Commission

(d) Has been found guilty of an unfair or deceptive trade practice

(e) Has violated any contractual agreement related to providing ambulance service

H. Upon issuance of an order, the ambulance service provider accused may request a review of the order by the Delaware State Fire Prevention Commission. All hearings shall be conducted in conformity with procedures established by the Delaware State Fire Prevention Commission.

I. Any person aggrieved by a violation or order may file an appeal to the Delaware State Fire Prevention Commission pursuant to Delaware Code, Title 16, Chapter 66, Section 6608.

Appendix A

Required Ambulance Equipment & Supplies

- 1— set Battery Jumper Cables or Dual Battery System
- 1— Fire Extinguisher (minimum 5 pound dry chemical)
- 1— Portable Resuscitation, Oxygen Inhalation Apparatus
- 1— Fixed Oxygen Inhalation Apparatus
- 1— Portable Suction Apparatus
- 1— Permanently Mounted Suction Apparatus
- 1— Adult Bag Mask Ventilator
- 1— Child Bag Mask Ventilator
- 1— Infant Bag Mask Ventilator
- 2— Size “D” or “E” Bottles of Oxygen
- Splints for two arms & two legs (May be inflatable splints, Timmons splints, or wooden padded boards)
- 1— Hare Traction Splint or Equivalent
- 1— KED (Or an equivalent Extrication Device)
- 1— Spine Board (Or Equivalent CPR Device)
- 2— Backboards
- 1— Orthopedic Stretcher
- 8— Extrication Collars (2 large Adult, 2 Medium, 2 Small & 2 Child)
- 1— Bandage Shears
- 1— Hand Lantern
- 1— Set Oropharyngeal Airways (Seven Sizes)
- 1— Ambulance Cot
- 1— Folding Stretcher OR Square Bench
- 1— Stair Chair OR Combination Stretcher Chair
- 1— Wrecking Bar—24” Minimum
- 2— Sputum Pans OR Buckets
- 3— BP Cuffs (One Large Adult, One Adult & One Child)
- 1— Stethoscope
- 1— Head Immobilizer for each long backboard
- 1— AED (Effective one year from adoption of this regulation)

SUPPLIES

- 1— Set Dot Triangles
- 5— Adhesive Tape (various sizes)
- 2— Towels
- 2— Blankets
- 2— Pillows
- 24— Sterile Gauze Pads (4”X4”)
- 6— Roller Bandage, Self Adhering type (3” X 5 YD)
- 2— Roller Bandage, Self Adhering Type (6” X 5 YD)
- 1— Universal Dressing (10”X36”)
- 3— Triangular Bandages
- 2— Sets of Cot Linens
- 1— OB. Kit (Sterile) Including:
 - 2— Drape Sheets
 - 2— Pair Rubber Gloves
 - 2— Receiving Blankets

- 1— Bulb Aspirator
- 2— Hand Tools
- 2— Cord Clamps OR Umbilical Tape
- 1— Gallon of Water (Distilled)
- Trauma Dressings
- 4— Ice Packs
- 12— Surgical Disposable Gloves
- 4— Hot Packs
- 1— Burn Kit
- 1— Sharps Container
- 6— Oxygen Masks— Non Rebreathers and 6 Nasal Canules
- 12— Eye/Mouth/Nose Protection (Disposable)
- 1— Child Car Seat
- Eye Protection
- Disposable Gowns

XIII. Discontinuation Of Service By Ambulance Providers

~~Ambulance Company’s Intent to Discontinue Service~~

A. STEP 1

Any fire department and/or ambulance company desiring to terminate ambulance service in the state of Delaware must notify the Delaware State Fire Prevention Commission in writing 120 days before terminating service.

B. STEP 2

Immediately upon notification of a fire department and/or ambulance company’s desire to terminate service, the Chairman or the Vice Chairman of the Delaware State Fire Prevention Commission shall notify the president of the county firemen’s association in which the fire department and/or ambulance company provides service to the residences and visitors of the state of Delaware for that district.

C. STEP 3

Immediately upon receiving notification of a fire department and or ambulance company’s desire to terminate service the county firemen’s association president shall appoint a committee. The committee shall include, but not be limited to: two members shall be the President’s of the County Fire Chief’s and County Ambulance Associations or their designees. The County President shall have the right to appoint other members to this committee, as he and/or she may deem necessary.

1. To communicate and offer assistance to the terminating company in an effort to help them continue service.

2. In the event that the county committee is unable to get the company to continue service, they shall then contact the surrounding departments and ascertain and/or develop a plan for those departments to divide the district and continue service.

3. In the event that steps one and two fail the county committee may put forth any and all suggestions they deem viable in order to provide ambulance service to the

residences and visitors of the state of Delaware for that district.

4. The committee, through the County Firemen's Association President, shall report to the Delaware State Fire Prevention Commission within 60 days with their recommendations and/or findings.

XIV. Training/Certification

All individuals who successfully complete initial EMT-B [**Ambulance Attendant**] training ~~or a bridge course~~ shall be eligible for and must successfully pass the NREMT examination to receive Delaware EMT-B/**Ambulance Attendant**] certification.

IV. ~~Effective Date Of Implementation~~

~~January 1, 2002 all ambulance attendants who provide patient care and ride in the patient care compartment shall be Emergency Medical Technicians Basic.~~

V. Eligibility For Certification/EMT-B/Ambulance Attendant

A. Apply to the Delaware State Fire Prevention Commission on the approved application form provided by the Delaware State Fire School.

B. An individual may apply for and receive certification as an EMT-B/Ambulance Attendant provided that.

1. They are a member in good standing of a Delaware Fire Department, an Ambulance Organization, a Private Ambulance Provider or any other group, business or industry certified by the Delaware State Fire Prevention Commission to provide ambulance service.

2. They have obtained EMT-B, EMT-I or EMT-P registration from the NREMT.

3. The Chief, CEO, or head of the respective organization signs the application.

4. They are compliant with criminal history background check legislation.

5. Must be 18 years of age.

6. Comply with the State of Delaware Immunization policy.

VI. Certification

A. ~~After 2004 [A.]~~ Certification will be obtained by completing a state approved EMT-B/**Ambulance Attendant**] Course and passing the National Registry of Emergency Medical Technicians Exam. ~~Every individual who successfully completes the National Registry of Emergency Medical Technician Basic certification will receive~~ Registration & Certification will be issued for the time period to coincide with the NREMT registration cycle. This is typically a two-year period. Individuals will be issued a Delaware EMT-B/**Ambulance Attendant**] certification upon successful completion of ~~initial or bridge~~

~~course and the NREMT registration process.~~

~~B. During the Implementation phase from January 1, 1998 to December 31, 2001 initial NREMT B certification may be obtained in one of two ways:~~

~~1. Complete a full Emergency Medical Technician Basic course as offered by a member of the Prehospital Education Consortium of Delaware or other recognized training program and passes the National Registry of Emergency Medical Technicians examination.~~

~~Prerequisites~~

~~a Must be 18 years or older~~

~~b Healthcare Provider CPR~~

~~e AED Certification~~

~~2. Complete an Emergency Medical Technician Bridge course offered by a member of the Prehospital Education Consortium of Delaware or other recognized training program and passes the National Registry of Emergency Medical Technicians examination.~~

~~Prerequisites~~

~~a Must possess current ambulance attendant or~~

~~b Emergency Care Technician certification. CPR/AED~~

~~e Must be 18 years old or older~~

~~C. After 2001 certification will be obtained by completing a state approved EMT-B Course and passing the National Registry of Emergency Medical Technicians Exam.~~

~~D. The Bridge Course will be offered only during implementation which ends December 31, 2001.~~

~~B. Individuals who take EMT-B/**Ambulance Attendant**] class from approved provider other than the Delaware State Fire School are required to meet all Delaware State Fire Prevention Commission requirements for certification.~~

~~1. It is the responsibility of the individual applying for certification to provide criminal history background check as specified by Delaware State Fire Prevention Commission.~~

~~2. It is the responsibility of the individual applying to provide all necessary documentation for certification to include AED/CPR, protocol training and NREMT-B card.~~

VII. Recertification as DELAWARE EMT-B/Ambulance Attendant****

~~A. Individuals will be re-certified for a two year period.~~

~~B. All individuals initially receive both a State and NREMT-B Certification. After the first two years, the department or the individual may:~~

~~1. Reregister with the NREMT. The provider will be re-certified as both a Delaware EMT-B and NREMT-B.~~

~~2. Re-certify as a Delaware EMT-B.~~

~~C. The registration requirements for a National~~

~~Registry of Emergency Medical Technicians – Basic will be determined by the National Registry of Emergency Medical Technicians.~~

~~D. The re-certification requirements for a Delaware EMT-B will be determined by the Delaware State Fire Prevention Commission, with recommendations of their medical advisor/director.~~

~~A. Individuals will be re-certified for a two-year period.~~

~~B. The re-certification requirements for a Delaware EMT-B/[Ambulance Attendant] will be determined by the Delaware State Fire Prevention Commission, with recommendations of their medical advisor/director.~~

~~C. Requirements for re-certification are:~~

~~1. Individuals must submit a request for re-certification to the Delaware State Fire School documenting completion of requirements.~~

~~a. Requirements~~

~~• Attend a prescribed DOT/EMT-B/[Ambulance Attendant] refresher~~

~~• Current CPR/AED certificate~~

~~D. Re-registration as an NREMT-B: The registration requirements for a National Registry of Emergency Medical Technician – Basic will be determined by the National Registry of Emergency Medical Technicians.~~

~~1. Continuing education classes to achieve re-registration through the NREMT will be reviewed for approval by the Office of Emergency Medical Services in accordance with NREMT policy and procedures.~~

~~E. Active duty military personnel not able to re-certify due to deployment may request for an extension of certification until they are able to return and complete necessary requirements. Upon return the individual shall have 90 days to complete re-certification requirements.~~

VII Continuing Education Requirements

~~A. Requirements for continuing education will be determined by the authority having jurisdiction over type and quantity of Continuing Education required.~~

~~B. Special Requirements:~~

~~1. Continuing education classes to achieve re-registration through the NREMT will be reviewed for approval by the OEMS in accordance with NREMT policy and procedure.~~

~~2. Delaware Continuing Education classes will be approved by the State Fire Prevention Commission with recommendation of their Medical Advisor/Director.~~

IX Decertification

~~A. An EMT-B/Ambulance Attendant will lose their Delaware EMT-B/[Ambulance Attendant] Certification to provide patient care if:~~

~~1. They do not meet the required continuing education re-certification requirements as defined by the~~

~~Delaware State Fire Prevention Commission.~~

~~2. Certification is revoked De-certification by the Delaware State Fire Prevention Commission following procedures and in compliance with Delaware State Fire Prevention Regulations, Part IX Fire Service Standards.~~

~~B. National Registry of Emergency Medical Technicians will revoke certification based upon their national policy. If an individual has their certification revoked by the National Registry of Emergency Medical Technicians the Delaware State Fire Prevention Commission may also revoke decertify their Delaware EMT-B/[Ambulance Attendant] Certification.~~

~~C. The individual is convicted of an offense as specified in 16 Del C. §6712(b) while currently certified and the procedures in Part X, Section XV, Criminal History Background Check Section VII of this policy followed.~~

X Expired Certifications

~~A. Maintain state EMT-B certification, but NREMT-B lapsed and wish to regain NREMT-B.~~

~~1. Attends DOT EMT-B refresher as specified by National Registry of Emergency Medical Technicians~~

~~2. Pass DOT EMT-B Practical Exam~~

~~3. Pass National Registry of Emergency Medical Technicians Written Exam~~

~~B. Both state EMT-B certification and NREMT-B lapsed beyond two years~~

~~1. Attend EMT-B course and pass the National Registry of Emergency Medical Technicians exam~~

~~2. CPR/AED – Current Certification.~~

~~C. Both state EMT-B certification and NREMT-B lapsed less than two years~~

~~1. DOT EMT-B Refresher~~

~~2. CPR/AED Current~~

~~3. National Registry of Emergency Medical Technicians/State Practical Exam~~

~~4. National Registry of Emergency Medical Technicians written exam.~~

Reinstatement For Delaware EMT-B/[Ambulance Attendant] Delaware EMT-B Reinstatement Policy

~~A. Individual desiring to regain certification as a Delaware EMT-B/[Ambulance Attendant], after the expiration of their certification may do so provided the following conditions are met.~~

~~• Their card has been expired 18 months or less.~~

~~• They must attend an approved EMT-B/[Ambulance Attendant] refresher course.~~

~~• They must take and pass the Delaware Protocol examination.~~

~~• They must show proof of a current AED and CPR certification.~~

~~• They must take and pass the current protocol self study course available from the Delaware State Fire School.~~

• They must acquire a Delaware and Federal Background Check at their expense.

• They must submit all required paperwork and application for certification to the Delaware State Fire School.

B. Individuals whose card has expired 18 months or more must take the entire EMT-B/[Ambulance Attendant] course and National Registry Examination.

C. Individuals desiring to regain registration as an NREMT-B must follow the policies of the National Registry Organization.

XI Testing Procedures For National Registry

Initial testing and re-testing for National Registered EMT-B and National Registered First Responders will follow the guidelines set forth by the National Registry of Emergency Medical Technicians.

XII Reciprocity

A EMT's Emergency Medical Technicians, paramedics, nurses, or physicians who enter Delaware with prior Emergency Medical Services Training a National Registry EMT-B, EMT-I or EMT-P certification will receive reciprocity as EMT-B/[Ambulance Attendant] in the Delaware System provided that.

1. They become a member of a certified ambulance service provider.

2. They have a current National Registry EMT-B certification:

- A. Submit request for reciprocity
- B. CPR and AED as approved in Delaware
- C. Challenge four (4) practical exams

3. They have a current EMT-B certification from another state

A. Certification less than 2 years and practical less than 12 months —

- 1. State approved practical exam
- 2. National Registry written exam

B. Certification greater than two years and practical greater than 12 months

- 1. State Practical/National Registry exam
- 2. Complete DOT EMT-B Refresher
- 3. National Registry written exam
- 4. State Approved AED & CPR Certification

4. They submit the required application form to the State Fire Prevention Commission:

1. They become a member of a certified ambulance service provider in Delaware.

2. They submit the required application form to the Delaware State Fire School.

3. They have a current National Registry EMT-B, EMT-I or EMT-P certification.

4. CPR and AED as approved by the Delaware State Fire Prevention Commission.

5. Challenge four (4) practical exams as required.

6. Challenge Delaware Protocol Examination.

7. Provide mandated State & Federal background checks.

8. Applicants will be advised of the appeal process of Part X, Section XV, Criminal History Background Check if reciprocity is denied because of criminal history background check.

B. Applicant's certified from other states without at least a Nationally Registered EMT-B certification must obtain National Registry prior to applying for Delaware Certification.

B PARAMEDICS

They hold a current certification and/or license specified below

1. National Registered Emergency Medical Technician-Paramedic

- A. Submit request for reciprocity
- B. Must produce current cards AED/CPR
- C. Letter from affiliate

2. Emergency Medical Technician-Paramedic from another state

A. Challenge National Registry exam at the basic or Paramedic level

B. Must take DOT refresher at the level they are challenging written exam

C REGISTERED NURSE

1. Registered Nurse or higher with current Ambulance Attendant Certification

- A. DOT EMT-B Refresher
- B. National Registry/State approved practical exam

- C. CPR/AED
- D. NREMT-B exam

- E. Letter from affiliate

2. Registered Nurse or higher with no prior EMS training-

- A. CPR/AED
- B. EMT-B course
- C. State approved practical
- D. National Registry written exam

D PHYSICIANS WITH DELAWARE LICENSE

- A. CPR/AED
- B. State approved practical exam
- C. National Registry Written exam
- D. Letter from affiliate

E PHYSICIANS WITHOUT DELAWARE LICENSE

- A. CPR/AED
- B. EMT-B course National Registry State approved practical-
- C. National Registry Written exam

~~D. Letter from affiliate~~

F.C. The Delaware State Fire Prevention Commission reserves the right to administer a written examination if deemed necessary.

~~G. The State Fire Prevention Commission will grant reciprocity with recommendations from their Medical Advisor/Director.~~

XV. Criminal History Background Records Check Policy

I. Authorized Governmental Designee for the Delaware State Fire Prevention Commission

A. The Delaware State Fire Prevention Commission authorizes the Director of the Delaware State Fire School to be its governmental designee to acquire and review State and Federal criminal history ~~records~~ background checks submitted by the State Bureau of Identification for an applicant applying to become ~~[an Ambulance Attendant/or a Delaware Emergency Medical Technician a Delaware EMT-B/Ambulance Attendant]~~ an Ambulance Attendant/~~or a Delaware Emergency Medical Technician~~ and to interview the applicant, if necessary.

II. Evaluation Procedure for Criminal History Background Checks

A. The Director of the Delaware State Fire School shall evaluate the criminal history ~~records~~ background checks using the criteria established in 16 Del.C. §6712(b). All criminal history ~~records~~ background checks will be forwarded by the State Bureau of Identification to the Director of the Delaware State Fire School.

B. Should the Director of the Delaware State Fire School as a result of the criminal history [background records] check find cause to recommend to the Delaware State Fire Prevention Commission that it deny the application of the person seeking certification as an [EMT-B/Ambulance Attendant ~~Ambulance Attendant/ or as an Delaware Emergency Medical Technician-B~~], the Director shall notify the Delaware State Fire Prevention Commission of this decision.

C. The Delaware State Fire Prevention Commission shall advise the applicant that it intends to deny the application and state the reason therefor. The Delaware State Fire Prevention Commission will also advise the applicant of the right to review all information reviewed by the Director of the Delaware State Fire School and the right to appeal the Delaware State Fire Prevention Commission's decision by requesting a hearing before the Delaware State Fire Prevention Commission.

III. Appeal Process for Denial of Certification or Decertification because of Criminal Conviction

A. Any Delaware EMT-B/Ambulance Attendant

applicant or certificate holder notified by the Delaware State Fire Prevention Commission that the Delaware State Fire Prevention Commission intends to deny the application or decertify the certificate holder because of criminal history [background records] check information may appeal the denial to the Delaware State Fire Prevention Commission. The process is:

1. Within 10 days after the postmark on the notification of the intent to deny certification or decertify a certificate holder, the applicant shall submit a written request for a hearing to the Delaware State Fire Prevention Commission stating the reason(s) supporting the appeal.

2. Notice of the hearing shall be given at least 20 days before the day of the hearing and comply with the provisions of 29 Del.C. §10122.

3. The grievance hearing before the Delaware State Fire Prevention Commission will be conducted in accordance with the Delaware Administrative Procedures Act 29 Del.C. Ch 101.

4. The hearing will be closed to the public unless the applicant requests an open hearing. After the hearing, the Delaware State Fire Prevention Commission will inform the applicant of its decision.

IV. Requirements for Certification

A. Persons seeking certification as an Ambulance Attendant/Delaware Emergency Medical Technician ~~Ambulance Attendant or as an Emergency Medical Technician~~ must be eighteen (18) years of age at the time of application.

1. Individuals entering an EMT-B/[Ambulance Attendant] course must be eighteen (18) years of age at the start of the course.

B. An individual applying for certification must meet the requirement of Part X, of the Delaware State Fire Prevention Regulations "Ambulance Service Regulations". ~~Section V, Eligibility of Certification of the State Fire Prevention Commission Addendum to the Ambulance Service Regulations, BLS Ambulance Provider/First Responder.~~

C. Persons seeking certification must meet the criminal history [background records] check as mandated in 16 Del C. § 6712(b), effective July 12, 2001 and follow the procedures outlined in this policy.

V. Administrative Policy Pertaining to Criminal History Background Checks

A. Delaware State Fire School All training announcements for EMT-B/[Ambulance Attendant] courses will include the statement "Criminal History Background Records checks will be required on or before the first night of class".

B. All Chiefs of Departments, Presidents or Ambulance Captains of volunteer rescue or ambulance

squads or Operating Officers of private corporations which have students pre-registered for the class will be sent a notice to inform the student that a criminal history background records checks will be done on the first night of class and fingerprinting will be required. It will be the responsibility of private EMT-B/[Ambulance Attendant] training institution to make their students aware that a Criminal History Background Check is required to become a State of Delaware EMT-B/[Ambulance Attendant] and the Criminal History Background Check be available in order to receive certification.

C. Any student not pre-registered for the class will not be accepted as a walk-in.

D. All EMT-B/[Ambulance Attendant] students will sign a release provided by the State Bureau of Identification authorizing the criminal history [background records] check. Any student failing to sign the designated form will not be allowed to participate in the course.

~~E. All students of new courses who are members of a volunteer fire, rescue or ambulance organization will sign the authorization of payment allowing the State Fire Prevention Commission to reimburse the State Bureau of Identification on their behalf for the cost of the criminal history records check.~~

F.E. Students who are members of a private ambulance service are required to pay the course tuition prior to the first night of class. The tuition is non-refundable unless the student drops out prior to the first night of class. The tuition includes the cost of the criminal history [background records] check which will be paid to the State Bureau of Identification on the student's behalf by the Delaware State Fire School.

G.F. Any volunteer fire, rescue or ambulance company ~~which~~ registering a student who is denied certification pursuant to the provision of 16 Del. C. § 6712(b), shall be responsible to reimburse the Delaware State Fire Prevention Commission for the cost of the criminal history [background records] check.

H.G. Any student accepted into the course who does not complete ~~same~~ the course will be required to reimburse the Delaware State Fire Prevention Commission the cost of the criminal history [background records] check and course textbook.

VI. Condition and Duration of Certification/De-certification

A. The Delaware State Fire Prevention Commission shall issue initial certification as an Ambulance Attendant/~~and Delaware Emergency Medical Technician – Basic~~ as prescribed in Part X, ~~Section VI, Certification~~, of the Delaware State Fire Prevention Commission Regulations provided that:

1. The applicant passes the mandated criminal history record check.

2. Obtain all necessary immunizations.

3. Meet the course attendance requirement policy as prescribed by the Delaware State Fire School, if applicable.

4. Pass the National Registry of Emergency Medical Technician's Examination.

B. De-certification

1. The State Fire Prevention Commission shall decertify an Ambulance Attendant or Delaware EMT-B if:

a. The individual does not meet the re-certification requirements established in the State Fire Prevention Commission Regulation, Part X, section IX. Or

b. The individual is convicted of an offense as specified in 16 Del. C. § 6712(b) while currently certified and the procedures in section VII of this policy are followed.

VII B. Procedure for De-certification for Criminal Offense

A 1. The Delaware State Fire Prevention Commission may decertify any currently certified [EMT-B/ Ambulance Attendant Ambulance Attendant/ or Delaware Emergency Medical Technician-Basic EMT] when it has reason to believe that the person has been convicted of a crime within the scope of §6712 of Title 16.

B. 2. Upon receiving a written notice that an [EMT-B/ Ambulance Attendant/ or EMT Delaware Emergency Medical Technician-Basic] was convicted of a crime within the provisions of §6712, Title 16 the Delaware State Fire Prevention Commission shall:

1 a. Immediately suspend the individual's certification pending an investigation into the allegations.

2 b. Notify the individual in writing of the allegations and suspensions and allow the certificate holder an informal opportunity to contest the allegations of a conviction.

3 c. Require the individual to obtain a current Criminal History background check at their expense.

a 1. Criminal History Background check information will be sent to and reviewed by the Director of the Delaware State Fire School, who will make determination if cause for de-certification exists. The Director of the Delaware State Fire School will notify the Delaware State Fire Prevention Commission of the findings.

4 d. Based on the information provided by the Director of the Delaware State Fire School, the Delaware State Fire Prevention Commission will either inform the certificate holder of the intent to de-certify the individual or lift the individual's suspension.

€ 3. The individuals may appeal the de-certification using the procedure under Part X, Section XV, Criminal History Background Check, Appeal Process section III, Appeal Process specified in this Policy.

VIII. Reciprocity Applicants for Certification as Ambulance Attendant or EMT

~~A. Applicants applying for reciprocity for Ambulance Attendant and Delaware EMT-B from another state shall meet the requirements of Part X, Section XII of the Delaware State Fire Prevention Commission Regulations~~

~~B. Applicants applying for reciprocity from another state must comply with the background check requirements as specified in 16 Del. C. § 6712.~~

~~IX. Reciprocity Applicants – Criminal History Records Check Procedures~~

~~A. Applicants seeking reciprocity to become Delaware Ambulance Attendant or EMT's must submit to a criminal history records check prior to applying for reciprocity certification.~~

~~1. Applicants will go to a Delaware State Police Troop and apply for a State and Federal criminal history records check. All reciprocity applicants will pay at the time of request. The criminal history records check must be done within 30 days of the reciprocity request.~~

~~2. Applicant will authorize the release of the criminal history records check information directly to the Director of the Delaware State Fire School.~~

~~3. Applicant will notify the Delaware State Fire School on the prescribed form they are seeking reciprocity and have applied for a criminal history records check.~~

~~4. Upon receipt by the Delaware State Fire School and evaluation of the criminal history records check the individual will be notified by the Fire School as to how to proceed with required testing and certification procedures.~~

~~5. Should the applicant be denied reciprocity because of criminal history records check information they will be advised of the appeal process in section III of this policy.~~

~~X C. Funding of Reciprocity Criminal History Background Checks~~

~~A 1. All applicants will pay for the criminal history background records check at the time of their request.~~

~~1 a. It is the responsibility of the private providers, private individuals or City of Wilmington to pay all costs – they are not eligible for reimbursement.~~

~~2 b. Upon successful completion of the reciprocity process the Delaware State Fire Prevention Commission will reimburse the individual or the individual's volunteer fire, rescue or ambulance organization for the cost of the criminal history background records check.~~

~~XI D. Reciprocity for University of Delaware Students~~

~~A 1. The Delaware State Fire Prevention Commission will waive the criminal history background records check requirements for all University of Delaware Students applying for certification as an Ambulance Attendant or as an Delaware Emergency Medical Technician.~~

~~1 a. The University Police Department will provide the Director of the Delaware State Fire School with a written document listing all eligible students and a statement that they have passed an internal background check at least equal to the requirement of 16 Del. C. § 6712.~~

~~XII E. Confidentiality Of Criminal History Background Check Information~~

~~A 1. Information obtained pursuant to the criminal history background check is confidential and except as provided in Section C below, shall not be released from the Delaware State Fire School under any circumstances to anyone.~~

~~B 2. All criminal history background check information that is reviewed by the Director of the Delaware State Fire School shall be retained in a locked file cabinet in the custody of the Director for a two (2) year period.~~

~~C 3. When a denial for certification is made, the information will be turned over to the Delaware State Fire Prevention Commission where it will be secured for at least 60 days or until the appeal process is completed.~~

~~1. If an appeal is not filed at the end of 60 days, the information is to be returned to the Director of the Delaware State Fire School.~~

~~D 4. Per 16 Del.C. §6712 the individual may meet with the Director of the Delaware State Fire School and after providing proof of identification including a photo identification, review their information. Copies will not be provided to anyone.~~

~~XIV XVI First Responder~~

~~First Responders do not meet the requirements of EMT-B/[Ambulance Attendant] and cannot transport a patient without a Delaware EMT-B/[Ambulance Attendant] present and in the patient care compartment.~~

~~A Individuals who successfully complete the Delaware State Fire School First Responder Course will be certified as same by the Delaware State Fire Prevention Commission for a period of two years.~~

~~A. First Responder Criteria Eligibility for Delaware First Responder Certification~~

~~1. CPR/AED Prerequisites 16 years of age~~

~~2. Must be 16 years old or older Complete Approved DOT First Responder Curriculum~~

~~B 3. National Registry First Responder Certification is optional~~

~~C Individuals who have maintained their Ambulance Attendant Certification until December 31, 2001 but do not become an Emergency Medical Technician Basic will be certified as a First Responder.~~

~~B. Certification is valid for 2 years with a re-certification date of September.~~

~~C. Re-certification~~

~~1. Must re-certify as mandated by the Delaware~~

State Fire Prevention Commission.

a. DOT First Responder Refresher, AED and CPR.

b. National Registry – As determined by National Registry.

D. De-certification

1. May have their certification revoked by the Delaware State Fire Prevention Commission in compliance with the Delaware State Fire Prevention Regulations Part IX “Fire Service Standards”.

~~D A First Responder may provide initial on scene care in the following situations.~~

~~Initial on scene care as contained in the First Responder curriculum.~~

~~Semi Automatic External Defibrillation if holding an AED card.~~

~~Cardiopulmonary Resuscitation (CPR)~~

~~E The First Responder may not provide transport of a patient without an EMT-B or higher present.~~

~~F First Responders can participate as a member of an ambulance crew with an EMT-B providing Patient Care.~~

~~G Must re-certify as mandated by the State Fire Prevention Commission to maintain First Responder Status.~~

- ~~• DOT First Responder Refresher, AED & CPR~~
- ~~• National Registry— As determined by National Registry~~

~~H May have their certification revoked by the State Fire Prevention Commission in compliance with Delaware Fire Service Standards.~~

~~I Reciprocity for First Responders from other states must submit request for reciprocity, obtain CPR/AED as approved in Delaware, and challenge two practicals.~~

~~XV E Expired First Responder Cards Certifications~~

~~A. State First Responder card lapsed less than two (2) years~~

~~1. Refresher as specified by State Fire Prevention Commission~~

~~2. DOT First Responder Refresher~~

~~3. Current CPR & AED~~

~~B. Maintain State First Responder, but National Registry First Responder lapsed~~

~~1. Refresher with practical evolutions as specified by National Registry~~

~~2. National Registry First Responder written exam~~

~~C State First Responder and National Registry First Responder lapsed within two years~~

~~1. DOT First Responder Refresher~~

~~2. State approved practical~~

~~3. National Registry First Responder exam~~

~~D. State First Responder and National Registry First Responder lapsed greater than 2 years: Must take entire First Responder Course~~

1. Individuals desiring certification as a First Responder after the expiration date of their certification may do so providing the following conditions are met.

a. Card expired 18 months or less

b. Attend approved refresher course

c. Show proof of current AED/CPR

Certification

d. Submit all required applications and paperwork to Delaware State Fire School

2. Individuals whose card has expired more than 18 months must attend a complete First Responder Training course.

3. Individuals desiring to regain National Registry Registration must follow the policies of the National Registry.

F. Testing procedures Delaware First Responder

1. Initial testing and retesting for First Responders will follow the guidelines set forth by Delaware State Fire School.

G. Reciprocity

1. First Responders from other state must submit a request

2. Show proof of attending a DOT curriculum

3. Obtain CPR/AED as approved by Delaware State Fire Prevention Commission

4. Challenge practical examinations as determined by the Delaware State Fire School

5. Challenge the State First Responder Examination

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

24 DE Admin. Code 2500

Statutory Authority: 24 Delaware Code,
Section 2509 (24 Del.C. §2509)

ORDER

A hearing was held to receive comments on May 12, 2004 at a scheduled meeting of the State Board of Pharmacy. The Board considered proposed changes to Regulations 3 and 15 as published in the Register of Regulations, Vol. 7, Issue 10, April 1, 2004.

Summary Of The Evidence And Information Submitted

1. Suzanne E. Raab-Long, Vice President, Professional Services, Delaware Healthcare Association,

wrote a letter dated May 12, 2004 in support of the changes to Regulations 15. The proposed provisions are less onerous and are helpful to hospitals and health systems. She also made verbal comment at the public hearing. Submitting a written plan for an automated system rather than making a personal appearance at a meeting of the Board is a more efficient procedure for a system that has previously been evaluated and approved.

Findings Of Fact With Respect To The Evidence And Information Submitted

The comment confirms the need for the proposed changes to Regulation 15.

Decision And Effective Date

The Board hereby adopts the changes to Regulations 3 and 15 to be effective 10 days following publication of this order in the Register of Regulations.

Text And Citation

The text of the revised rules remains as published in Register of Regulations, Vol. 7, Issue 10, April 1, 2004.

SO ORDERED this 12th day of May, 2004.

STATE BOARD OF PHARMACY

John E. Murphy, R.Ph., President
Yvonne Brown, R.Ph., Vice President
Daniel Hauser, Pharm. D.
Karen J. Dey, R.Ph.
Angelo Chiari, R.Ph.
Chris Tigani, Public Member
Nancy Weldin, Public Member
Carlolyn Calio, Public Member

*** Please note that no changes were made to the regulation as originally proposed and published in the April 2004 issue of the Register at page 1237 (7 DE Reg. 1237). Therefore, the final regulation is not being republished. Please refer to the April 2004 issue of the Register or contact the Board of Pharmacy.**

BOARD OF CLINICAL SOCIAL WORK EXAMINERS

24 DE Admin. Code 3900

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

ORDER

The Board of Clinical Social Work Examiners (“the Board”) held a properly noticed, public hearing on March 15, 2004 to receive comment on proposed additions, revisions, deletions and modifications to the Board’s Regulations. No members of the public attended. The written comments received by the Board included a January 12, 2004 letter from Anthony L. Horstman on behalf of the Delaware Developmental Disabilities Council, a February 12, 2004 letter from John A. Werner on behalf of the Governor’s Advisory Council For Exceptional Citizens and a February 3, 2004 Memorandum from Rita Landgraf on behalf of the State Council For Persons With Disabilities.

Based upon the evidence received, the Commission finds the following facts to be supported by the evidence:

There was no public comment received concerning the proposed amendments to the Regulations except for the provisions in Regulation 4.1 concerning who may provide professional supervision to an applicant in the absence of a licensed clinical social worker. The letters received by the Board as public comment requested that the list of who may provide supervision be expanded to include a “licensed counselor of mental health” and a “master’s level certified rehabilitation counselor.” The Board declines to accept this request because the licensees who may offer professional supervision in the absence of a licensed clinical social worker are specified in 24 *Del. C.* § (a)(1), and therefore, the change requested would require a legislative change. To clarify Regulation 3.2.1, the Board inserted the phrase “through a Board approved form,” after the word “Board.”

The Law

The Board’s rulemaking authority is provided by 24 *Del. C.* §3906(1).

§ 3906 Same - Powers and Duties

The Board shall have the authority to:

(1) Formulate rules and regulations with appropriate notice to those affected; all rules and regulations shall be promulgated in accordance with the procedure specified in the Administrative Procedures Act of this State. Each rule or regulation shall implement or clarify a specific section of this chapter.

Decision

The Board hereby adopts the Regulations as proposed with the alterations and classifications noted in this Order, and a copy of the Regulations as adopted is attached to this Order.

IT IS SO ORDERED this ____ day of April, 2004.

Malisa Knox, President
 Timothy J. Toole, Secretary
 Dr. Maria Connoll
 Robb Carter
 Gloria Ho-Ruggiero

1.0 Election of Officers and Responsibilities

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

1.2 Officers have the following responsibilities:

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

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

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

2.0 Definitions

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

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

“**Assessment**” of “biopsychosocial dysfunction, disability and impairment” includes ongoing evaluation of a client’s functioning and intervention outcomes.

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

3.0 Acceptable Clinical Social Work Experience

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

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

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

3.2.1.1 Provides adequate clinical diagnoses and biopsychosocial assessments;

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

3.2.1.3 Establishes treatment plans with measurable goals;

3.2.1.4 Adapts interventions to maximize client responsiveness;

3.2.1.5 Demonstrates competence in clinical risk assessment and intervention;

3.2.1.6 Recognizes when personal issues affect clinical objectivity;

3.2.1.7 Recognizes and operates within own practice limitations;

3.2.1.8 Seeks consultation when needed;

3.2.1.9 Refers to sources of help when appropriate; and

3.2.1.10 Practices within established ethical and legal parameters.

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

~~2.0~~ 4.0 Professional Supervision

~~2.1 Acceptable supervision shall be that amount of personal oversight by the licensed professional that would be considered usual and customary in the profession consistent with the applicant’s level of skill, education and experience, but in any event should include the following activities, by way of example and not by way of limitation:~~

~~2.1.1 Individual case reviews.~~

~~2.1.2 Evaluations of diagnosis and courses of treatment.~~

~~2.1.3 Proper adherence to agency policy and procedures.~~

4.1 Professional supervision that is acceptable to the Board shall be that amount of personal oversight, conducted

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

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

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

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

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

~~3.0~~ 5.0 Application and Examination

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

~~3.2~~ 5.2 The Board will not review incomplete applications.

~~3.3~~ 5.3 All signatures must be original on all forms.

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

~~3.5~~ 5.5 Any applicant holding a degree from a program outside the United States or its territories must provide the Board with an educational credential evaluation from International Consultants of Delaware, Inc., its successor, or

any other similar agency approved by the Board, demonstrating that their training and degree are equivalent to domestic accredited programs. No application is considered complete until the educational credential evaluation is received by the Board. **(29 Del. C. § 3907(a)(1))**

~~4.0~~ 6.0 Renewal

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

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

~~5.0~~ 7.0 Continuing Education

~~5.1~~ 7.1 Required Continuing Education Hours:

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

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

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

~~5.1.3~~ 7.1.3 Hardship. A candidate for license renewal may be granted an extension of time in which to complete continuing education hours upon a showing of good cause. "Good Cause" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. No extension shall be granted for more than 120 days after the end of the licensing period. If the Board does not have sufficient time to consider and approve a request for hardship extension

prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception.

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

5.2.2 7.2 Definition and Scope of Continuing Education:

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

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

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

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

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

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

5.2.4 7.2.4 The Board may, upon request, review and approve credit for self-directed activities, to a maximum of 15 hours per biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

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

5.3 7.3 Continuing Education Content Requirements:

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

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

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

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

HIV

5.4 7.4 Continuing Education Reporting and Documentation

5.4.1 7.4.1 Continuing Education Reporting Periods

Licenses are valid for 2 year periods, renewing on January 31 of odd numbered years (e.g. January 31, 2001, 2003). Continuing education reporting periods run from October 31 to October 31 of the preceding two even-numbered years (e.g. credits for the January 2001 license renewal may be obtained between October 31, 1998 and October 31, 2000). The Board will allow credits obtained between October 31 and January 31 to apply to either (but not both) of the biennial licensing periods, at the licensee's discretion.

Beginning with the January 2003 license renewal, all required continuing education should be completed within the previous two year October to October period (e.g. between October 31, 2000 and October 31, 2002 for January 2003 renewal). The Board shall continue to have

the discretion, however, to grant extensions of time in which to complete continuing education in cases of hardship, pursuant to **24 Del.C. §3912** and Rule ~~5.1.3~~ 7.1.3.

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

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

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

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

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

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

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

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

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

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

7.0 9.0 Ethics

7.1 9.1 Duties to Client

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

~~7.1.2~~ 9.1.2 In providing services, the LCSW must not discriminate on the basis of age, sex, race, color, religion/ spirituality, national origin, [~~handicap~~ disability],

political affiliation, or sexual orientation.

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

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

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

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

7.2 9.2 Confidentiality/privileged Communications

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

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

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

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

~~7.2.3.2~~ 9.2.3.2 Where the communication reveals [~~the contemplation of a crime or harmful act~~ the planning of any violent crime or act].

~~7.2.3.3~~ 9.2.3.3 When the person waives the privilege by initiating formal charges against the LCSW.

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

~~7.2.4~~ 9.2.4 The disclosure of confidential information, as permitted by Rule 7.2.3, is restricted to what is necessary, relevant, verifiable and based on the recipients' need to know. The LCSW should, provided it will not adversely affect the client's condition, inform the client

about the nature and scope of the information being disclosed, to whom the information will be released and the purpose for which it is sought.

7.3.9.3 Ethical Practice

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

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

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

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

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

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

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

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

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

7.4.9.4 Clinical Supervision

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

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

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

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

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

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

8.0 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

8.0 10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

8.0 10.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

8.0 10.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

8.0 10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or

alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

~~8-5~~ 10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

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

~~8-6-1~~ 10.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

~~8-6-2~~ 10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

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

treatment program.

~~8-6-4~~ 10.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

~~8-6-5~~ 10.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

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

~~8-7~~ 10.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

~~8-8~~ 10.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

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

~~8-10~~ 10.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

~~8-11~~ 10.11 Any person who reports pursuant to this

section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

~~8.12~~ 10.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

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

DEPARTMENT OF AGRICULTURE PESTICIDES SECTION

Statutory Authority: 3 Delaware Code,
Section 1237 (3 Del.C. §1237)

ORDER

Notice Provided

In accordance with 29 Del.C. §10115 and 3 Del.C. §1237, the State of Delaware, Department of Agriculture, published notice of proposed changes to the Pesticide Rules and Regulations (“**Rules**”) in the **Delaware Register of Regulations (“Register”)**, March 1, 2004. The notice provided a full text of the existing **Rules** with proposed changes, and provided a notice of date, time, and location for a Public Hearing at which the public could present their views. In addition to the notice published in the **Register**, the Department of Agriculture published notice of the Public Hearing in the Legal Classified Advertisements of the Delaware State News (publish date, April 4, 2004) and the News Journal (publish date, April 11, 2004). Notice of the proposed Rule changes were also mailed to the Chair, of the Governor’s Pesticide Advisory Committee, and electronically mailed to the following organizations:

Responsible Industry for a Sound Environment (RISE)
Pesticide.Net
National Agricultural Aviation Association (NAAA)
National Pest Management Association (NPMA)
Professional Lawn Care Association of America (PLCAA)
Golf Course Superintendents of America (GCSA)
Association of Landscape Contractors of America
National Arborist Association
Delaware Pest Control Association

A copy of the proposed Rules were also mailed to James

Metzger, Wilmington, DE, in consideration of Mr. Metzger’s past participation in pesticide rulemaking.

Summary of Evidence Received:

A hand written letter was received from Mr. James Metzger, dated March 8, 2004, with a request to clarify the definition of “hazardous waste.” In addition, Mr. Metzger provided a recommendation to move the paragraph relating to certification renewal for Private Applicators, to paragraph 9.4. Mr. Metzger also offered numerous suggestions to improve format and wording.

Recommendations relating to the “hazardous waste” definition were received from Karen JAnthony, Department of Natural Resources and Environmental Control, Waste Management Section. Ms. JAnthony also provided clarification to wording in paragraphs 16.2.1.8 and 16.2.1.8.2, relating to container rinsing.

A letter from Susan W. King, Ph.D., Chair, Pesticide Advisory Committee, was received on April 27, 2004. Dr. King supported the amendments to the Rules.

The Public Hearing was held on April 28, 2004, at 6 p.m., Delaware Department of Agriculture Building. No one from the public attended.

Based upon the evidence received from Mr. Metzger and Ms. JAnthony, modifications were incorporated into the proposed Rules, as published in the March 1, 2004, Register. None of the changes to the proposed Rules were substantive. The full text of the revised Rules are attached to this Order.

Decision and Order

In accordance with the authority vested in the State of Delaware, Department of Agriculture, to establish rules and procedures for the enforcement of the **Delaware Pesticide Law, 3 Del.C. Ch. 12**, the attached, amended Pesticide Rules and Regulations are adopted. The effective date of these amendments shall be June 1, 2004.

Michael T. Scuse
Secretary of Agriculture
Delaware Department of Agriculture
4/29/04

801 Pesticide Rules and Regulations

1.0 General

1.1 Scope

1.1.1 These regulations establish general operating rules and procedures for the enforcement of the Delaware Pesticide Law, including but not limited to the certification of users of restricted and general use pesticides.

1.2 Authority

1.2.1 These regulations are issued under the

authority of Title 3 Part II Chapter 12 of the Annotated Code of Delaware.

1.3 Effective Date

1.3.1 These regulations were amended on ~~June 15, 2000~~ (new date to be entered), in accordance with Title 29, Chapter 101, Annotated Code of Delaware

1.4 Filing Date

1.4.1 These regulations were filed in the Office of the Secretary of State on ~~June 15, 2000~~ (new date to be entered).

2.0 Declaration of Policy

2.1 3 **Del.C.** Chapter 12, Section 1237, places the enforcement of the Delaware Pesticide Law with the Department of Agriculture and empowers the Department to establish regulations.

2.2 By virtue of the authority vested in me as Secretary of Agriculture by 3 **Del.C.** Chapter 12, I, John F. Tarburton Michael T. Scuse, Secretary of Agriculture, do hereby promulgate the following rules and regulations governing the sale, use and application of pesticides in Delaware.

3.0 Definitions

The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise. All terms defined by the Delaware Pesticides Law (3 **Del.C.** Chapter 12) are hereby incorporated by reference in this regulation.

“Accident” means an unexpected, undesirable event resulting in the presence of a pesticide that adversely affects man or the environment.

“Brand” means any word, name, symbol, device, or any combination thereof, which serves to distinguish a pesticide product manufactured, distributed, sold, or offered for sale by one person from that manufactured, distributed, sold, or offered for sale by any other person.

“Certification” means the recognition by the Department that a person has met the qualification standards established under Section 8 or Section 9 of these regulations and has been issued a written certificate from the Department authorizing them to use pesticides for the specified type(s) of pest control.

“Competent” means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and associated responsibility.

“Fumigant” means a gaseous or readily volatilizable chemical (such as hydrogen cyanide or methyl bromide) used as a pesticide.

“Fumigation” means the application of a fumigant to one or more rooms in a structure, or to the entire structure, or to a localized space within a structure or outside a structure, such as a box car, aircraft, truck, ship or any object sealed or covered. Excluded is the use of a fumigant in or on

the soil.

“Grade” means a formulation of a pesticide, except that the addition of pigments solely for coloration shall not constitute a change in formulation such as to constitute a new grade requiring registration.

“Handle pesticides” means to mix, load, apply, or dispose of pesticides.

~~**“Hazardous waste”** [means a solid waste, or combination of solid wastes, which because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating, irreversible illness or poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. Without limitation, included within this definition are those hazardous wastes listed in Section 261.31, 261.32 and 261.33 of the State of Delaware Hazardous Waste Regulations and those solid wastes which otherwise exhibit the characteristics of a hazardous waste as defined in Part 261 of the State of Delaware Hazardous Waste Regulations. has the same meaning as found in 7 Del.C. Ch. 63.]~~

“Law” means the Delaware Pesticide Law, 3 **Del.C.** Chapter 12.

“Regulated pest” means a specific organism considered by the state or by a Federal Agency to be a pest requiring regulatory restrictions, regulations or control procedures in order to protect man or the environment.

“Service vehicle” means any vehicle used by a licensee to transport pesticides for the purpose of their application.

4.0 Registration

4.1 Product Registration

4.1.1 Every pesticide which is distributed within the State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered with the Secretary subject to the provisions of this law. Registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part of a pesticide which is registered under the provision of an experimental use permit issued by the U.S. Environmental Protection Agency.

4.1.2 An applicant for registration for a pesticide which is federally registered shall file a statement with the Secretary which shall include:

4.1.2.1 The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's.

4.1.2.2 The name of the pesticide.

4.1.2.3 Other necessary information required for completion of the Department's application for registration form.

4.1.2.4 A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use.

4.1.2.5 The use classification as provided in the "Federal Insecticide, Fungicide and Rodenticide Act", as amended.

4.1.2.6 The EPA product registration number.

4.1.3 The applicant desiring to register a pesticide shall pay a biennial registration fee of seventy dollars (\$70.00) to the Delaware Department of Agriculture for each brand or grade of pesticide to be registered for ~~such~~ the applicant. All registrations shall continue in effect until June 30 of the year in which they expire. Applications received between January 1 and June 30 shall be registered for the upcoming two year period. Applications received between July 1 and December 31 will be registered for a two year period beginning July 1 of the year in which the application was received.

4.1.4 Any registration approved by the Secretary and in effect on June 30, for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until suspended, or otherwise denied in accordance with the provisions of Section 1205 of the LAW. Forms for registration shall be mailed to registrants at least forty-five days prior to the due date.

4.1.5 If it appears to the Secretary that the composition of the pesticide is such as to warrant the proposed claims for it and if the pesticide and its labeling and other material required to be submitted comply with the requirements of these regulations, he shall register the pesticide.

4.1.6 Pesticide products that are discontinued by a registrant shall be registered for a period of two years. Said two year limit covers the year in which the item is declared to be discontinued by the registrant and an additional year to permit time to dispose of shelf stock. Should the registrant provide the Department with written notification that shelf stocks of the product are depleted, the products shall be exempt from the two year continued registration period.

4.2 Employee Registration

4.2.1 ~~Every~~ Licenses shall register with the Department all employees who handle pesticides. Registration shall be made when making an application for a license or within 30 days after employment. The fee for registering ~~each~~ an employee shall be \$25.00. However, the employee registration fee shall be waived ~~for any employee registration~~ if ~~that~~ the employee is certified under the LAW.

4.2.2 ~~Each~~ Licenses shall be responsible for

insuring that all employees handling pesticides (other than a certified applicator) have successfully completed a training program approved by the Department. ~~Such~~ This training shall be completed within 30 days of employment and before the employees ~~is~~ are registered with the Department.

4.2.2.1 The Department will not approve any training program that does not include the following subjects:

4.2.2.1.1 Pesticide Law and Regulations;

4.2.2.1.2 Label comprehension;

4.2.2.1.3 Safety and emergency

procedures;

4.2.2.1.4 Proper pesticide handling,

storage and disposal;

4.2.2.1.5 Pest identification and control

procedures;

4.2.2.1.6 Pesticide application techniques;

4.2.2.1.7 Environmental and health

concerns; and

4.2.2.1.8 Integrated pest management

principles

4.2.2.2 Upon request by the Department, each licensee shall provide written verification that an employee has completed an approved training program.

4.2.3 ~~The name and address of each such employee shall be provided to the Department by the licensee. The Department shall issue a registration card to those registered. This registration card shall bear the name and license number of the employee and shall become null and void upon termination of employment with the licensee. The name and address of employees who have been trained according to this Section shall be provided to the Department by the licensee. The Department shall issue a registration card bearing the employee's name and the licensee's name, address and license number. The employee registration shall become null and void upon termination of employment with the licensee.~~ This card is to be carried by the employee during working hours and is to be displayed upon request.

4.2.4 ~~Written notification of employment termination of this registered employee with the licensee shall be made to the Department within 30 days subsequent to termination. The licensee shall provide the Department written notification of a registered employee's employment termination within 30 days of the effective date of termination.~~

4.2.5 The Department, after due notice, and opportunity for a hearing may deny, suspend or revoke an employee registration, if the Department finds the registered employee has committed any violations of the LAW.

4.2.6 The Department, after due notice and opportunity for a hearing, may deny an application for employee registration, if the applicant has committed any violations under the Law.

5.0 Licensing

5.1 Applicants for a business license shall complete a signed and notarized application form prescribed by the Department.

5.2 All business license applicants shall pay an annual fee of \$50.00, or a biennial fee of \$100.00.

5.3 No license shall be issued to any person, nor shall it remain valid, unless such person is certified or has a certified applicator in his employ at all times.

5.4 For applicants or holders of a license in categories 7.1.1, 7.2, or 7.7.1.1 - 7.7.1.3, at least one person designated as a certified applicator under the license shall meet the experience requirement of §1207(c)(1) of the LAW.

5.5 All pest control business license numbers shall appear on all service vehicles used by persons holding a commercial pesticide applicators license with the exception of categories: 7.1.1 Agriculture Plant Pest Control; 7.1.2 Agriculture Animal Pest Control; 7.2 Forest Pest Control; 7.4 Seed Treatment; 7.5 Aquatic Pest Control; 7.8 Public Health Pest Control; 7.9 Regulatory Pest Control; 7.10 Demonstration and Research Pest Control. The license number shall be in bold readable numbers not less than 2 inches or more than 6 inches high. The full name of the business licensee shall be displayed on the vehicle.

6.0 Restricted Use Pesticides Classification

Restricted use pesticides shall be classified in the State of Delaware to conform to the current listing of pesticides classified by the EPA as Federally ~~registered use products~~ Restricted Use Pesticides.

7.0 Categorization of Commercial Applicators

Categories and subcategories of applicators (other than private applicators) who use or supervise the use of pesticides are identified below.

7.1 Agricultural Pest Control Category

7.1.1 Agricultural Plant [(1A)] - This subcategory includes commercial applicators using or supervising the use of pesticides in the production of agricultural crops, including without limiting the following: feed grains, soybeans, forage, vegetables, small fruits and tree fruits; as well as on grasslands and non-crop agricultural lands.

7.1.2 Agricultural Animal [(1B)]- This subcategory includes commercial applicators using or supervising the use of pesticides on swine, sheep, horses, goats, poultry and livestock, and to places on or in which animals are confined. Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, or publicly holding themselves out as pesticide applicators or engaged in large scale use are included in this category.

7.1.3 Fumigation of Soil and Agricultural Products [(1C)]- This subcategory includes commercial applicators using or supervising the use of pesticides for soil

fumigation in the production of an agricultural commodity and/or for fumigation of agricultural products in storage or transit.

7.2 Forest Pest Control Category [(02)]

7.2.1 This category includes commercial applicators using or supervising the use of pesticides in forests, forest nurseries, and forest seed producing areas.

7.3 Ornamental and Turf Pest Control Category [(03)]

7.3.1 This category includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers and turf.

7.4 Seed Treatment Category [(04)]

7.4.1 This category includes commercial applicators using or supervising use of pesticides on seeds.

7.5 Aquatic Pest Control Category

7.5.1 Aquatic Weed [(5A)]- This subcategory includes commercial applicators using or supervising the use of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities.

7.5.2 Antifouling Paint [(5B)] - This subcategory includes commercial applicators using or supervising the use of any anti-fouling paints for the protection of boat hulls. This subcategory also includes applicators using or supervising the use of anti-fouling paints on containers ~~which that~~ they sell, lease, or use for the purpose of harvesting shellfish.

7.5.3 Mosquito Control [(5C)]- This subcategory includes applicators using or supervising the use of pesticides for the management and control of mosquitoes.

7.6 Right-of-way Pest Control Category [(06)]

7.6.1 This category includes commercial applicators using or supervising the use of pesticides in the maintenance of roads, electric power lines, pipelines, railway rights-of-way or similar areas.

7.7 Industrial, Institutional, Structural and Health Related Pest Control Category

7.7.1 This category includes commercial applicators using or supervising the use of pesticides in, on, or around food handling establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; human dwellings, institutions, such as schools and hospitals, industrial establishments; and for the protection of stored, processed or manufactured products. This category contains the following subcategories:

7.7.1.1 General Pest Control [(7A)]. This subcategory includes commercial applicators who use or supervise the use of pesticides to control household pests, including pests that infest structures, stored products, and residential food preparation areas, and pests that infest or contaminate food and any stage of processing in food processing facilities. This includes treatment of food

processing areas and control of vertebrate structural invaders. This category does not include control of wood-destroying pests, or the use of fumigants.

7.7.1.2 Wood Destroying Pest Control [(7B)]. This subcategory includes commercial applicators using or supervising the use of pesticides, other than fumigants, in or around structures for the prevention, suppression, or control of wood destroying organisms.

7.7.1.3 Fumigation Pest Control (non-agricultural) [(7C)]. This subcategory includes commercial applicators using or supervising the use of fumigant pesticides to control pests in structures other than soils and agricultural products/commodities.

7.7.1.4 Wood Preservatives [(7D)]. This subcategory includes commercial applicators using or supervising the use of pesticides for the preservation of wood or wood products. This would include, but not be limited to, the pressure treatments, non-pressure treatments, or brush-on applications with wood preservatives. Commercial applicators certified in another category of pest control and who use or supervise the use of wood preservatives on an incidental basis may apply these products under their current certification. Private applicators using wood preservative products for purposes related to agricultural production may also apply wood preservatives under their current certification.

7.7.1.5 Institutional and Maintenance Pest Control [(7E)]. Except as otherwise provided in these regulations, this subcategory includes any individual using pesticides on a property they own, or are employed or otherwise engaged to maintain, including but not limited to janitors, general maintenance personnel, sanitation personnel, and grounds maintenance personnel. This subcategory does not include private applicators as defined in Section 9 below, individuals who use anti-microbial pesticides, or individuals who use pesticides which are not classified as "restricted use pesticides" in or around their dwelling.

7.7.1.6 Cooling Tower Pest Control [(7F)]. This subcategory includes commercial applicators using or supervising the use of pesticides to control microbial and other pests in cooling towers or related areas.

7.7.1.7 Miscellaneous Pest Control [(7G)]. This subcategory includes commercial applicators using or supervising the use of pesticides in a category not previously covered in these regulations.

7.8 Public Health Pest Control Category [(08)]. This category includes, but is not limited to, State, Federal and other governmental employees who use or supervise the use of pesticides in public health programs for the management and control of pests having medical or public health importance.

7.9 Regulatory Pest Control Category [(09)]. This category includes State, Federal and other governmental

employees who use or supervise the use of restricted use pesticides in the control of regulated pests.

7.10 Demonstration and Research Pest Control Category [(10)]

7.10.1 This category includes:

7.10.1.1 Individuals who demonstrate to the public the proper use and technique of application of a restricted use pesticide or supervises such demonstrations, and/or

7.10.1.2 Persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides. Included in the first group are ~~such~~ persons such as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The second group includes State, Federal, commercial and other persons conducting field research when utilizing pesticides.

8.0 Standards for Certification of Commercial Applicators

8.1 Determination of Competency.

8.1.1 Competence in the use and handling of pesticides shall be determined on the basis of written examinations, and, as appropriate, performance testing, based upon standards set forth below and which are approved by the Secretary. ~~Such e~~Examination and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory (if any) in which an applicator is to be certified. All examinations shall be administered as closed book examinations.

8.1.2 Applicants for examination shall register at least one (1) week before the scheduled examination date.

8.1.3 Exams shall be scheduled quarterly during the calendar year and shall be given at such times and places as the Secretary may direct.

8.1.4 Correctly answering 70% or more of the questions shall be considered to be satisfactory evidence of competence.

8.1.5 Failure to answer at least 70% of the questions correctly shall be grounds for denial of certification. Applicants may apply for one (1) reexamination scheduled at least thirty (30) days after their initial examination. No person shall be permitted to be examined in the same category or subcategory more than twice in any twelve (12) month period.

8.2 General Standards for All Categories of Certified Commercial Applicators.

8.2.1 All commercial applicators shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the

applicator's certification and the following areas of competency:

- 8.2.1.1 Label & Labeling Comprehension
 - 8.2.1.1.1 The general format and terminology of pesticide labels and labeling;
 - 8.2.1.1.2 The understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;
 - 8.2.1.1.3 Classification of the product, general or restricted; and the necessity for use consistent with the label.
- 8.2.1.2 Safety
 - 8.2.1.2.1 Pesticides toxicity and hazard to man and common exposure routes;
 - 8.2.1.2.2 Common types and causes of pesticides accidents;
 - 8.2.1.2.3 Precautions necessary to guard against injury to applicators and other individuals in or near treated area;
 - 8.2.1.2.4 Need for and use of protective clothing and equipment;
 - 8.2.1.2.5 Symptoms of pesticide poisoning;
 - 8.2.1.2.6 First aid and other procedures to be followed in case of a pesticide accident; and
 - 8.2.1.2.7 Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.
- 8.2.1.3 Environment
 - 8.2.1.3.1 The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors such as:
 - 8.2.1.3.1.1 Weather and other climatic conditions;
 - 8.2.1.3.1.2 Types of terrain, soil or other substrate;
 - 8.2.1.3.1.3 Presence of fish, wildlife and other non-target organisms; and
 - 8.2.1.3.1.4 Drainage patterns.
- 8.2.1.4 Pests
 - 8.2.1.4.1 Factors such as:
 - 8.2.1.4.1.1 Common features of pest organism and characteristics of damage needed for pest recognition;
 - 8.2.1.4.1.2 Recognition of relevant pests; and
 - 8.2.1.4.1.3 Pest development and biology as it may be relevant to problem identification and control.
- 8.2.1.5 Pesticides
 - 8.2.1.5.1 Factors such as:
 - 8.2.1.5.1.1 Types of pesticides;

- 8.2.1.5.1.2 Types of formulations;
 - 8.2.1.5.1.3 Compatibility, synergism, persistence and animal and plant toxicity of the formulations;
 - 8.2.1.5.1.4 Hazards and residues associated with use;
 - 8.2.1.5.1.5 Factors which influence effectiveness or lead to such problems such as resistance to pesticides; and,
 - 8.2.1.5.1.6 Dilution procedures.
- 8.2.1.6 Equipment
 - 8.2.1.6.1 Factors including:
 - 8.2.1.6.1.1 Types of equipment and advantages and limitations of each type; and
 - 8.2.1.6.1.2 Uses, maintenance and calibration.
 - 8.2.1.7 Application Techniques
 - 8.2.1.7.1 Factors including:
 - 8.2.1.7.1.1 Methods or procedures used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation;
 - 8.2.1.7.1.2 Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
 - 8.2.1.7.1.3 Prevention of drift and pesticide loss into the environment.
 - 8.2.1.8 Laws and Regulations
 - 8.2.1.8.1 Factors including:
 - 8.2.1.8.1.1 Applicable State and Federal laws and regulations.
- 8.3 Specific Standards for Competency for Each Category of Commercial Applicators
- Some of the factors referenced in this section are of particular importance because of the different types of activities carried out by the applicators in each category. For example, practical knowledge of drift problems should be required of agricultural applicators but not seed treatment applicators. The latter, however, should be particularly knowledgeable of the hazards of the misuse of treated seed and the necessary precautionary techniques. Commercial applicators in each category shall be particularly qualified with respect to the practical knowledge standards elaborated below.
- 8.3.1 Agricultural Pest Control Category
 - 8.3.1.1 Agricultural Plant Pest Control Subcategory
 - 8.3.1.1.1 Applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil

and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

8.3.1.2 Agricultural Animal Pest Control Subcategory

8.3.1.2.1 Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.

8.3.1.3 Fumigation of Soil and Agricultural Products Subcategory

8.3.1.3.1 Applicators must demonstrate knowledge of application techniques appropriate to soil fumigation and agricultural product fumigation. This includes the use of personal protective clothing and equipment, and general safety procedures such as posting, reentry, aeration, and accident procedures.

8.3.2 Forest Pest Control Category

8.3.2.1 Applicators shall demonstrate practical knowledge of types of forests, forest nurseries, and forest seed production in Delaware and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must, therefore, demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

8.3.3 Ornamental and Turf Pest Control Category

8.3.3.1 Applicators shall demonstrate knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other

domestic animals.

8.3.4 Seed Treatment Category

8.3.4.1 Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface-active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.

8.3.5 Aquatic Pest Control Category

8.3.5.1 Aquatic Weed. Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this subcategory. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall also demonstrate practical knowledge of the principles of limited area application.

8.3.5.2 Antifouling Paint. Applicators in this subcategory shall demonstrate practical knowledge of the labeling instructions, safety precautions and environmental concerns associated with the use of marine anti-fouling paints. They shall demonstrate practical knowledge of the term "acceptable release rate" as it applies to organotin paints; knowledge of the types of paints approved for specific hull types; knowledge of the types of anti-fouling paints approved for use on equipment or containers used for the harvesting of shellfish; knowledge of potential environmental consequences from the use/misuse or improper disposal of pesticides; safety precautions necessary to avoid exposure of workers to anti-fouling paints; proper storage, handling, and disposal methods of paint chips and dusts suspected of containing organotin compounds; marine pests and relevant life cycles which are controlled through the application of anti-fouling paints; methods, procedures, and equipment used in applying organotin and anti-fouling paints; applicable State and Federal laws and regulations; and recordkeeping requirements under the Delaware Pesticide Law.

8.3.5.3 Mosquito Control. Applicators shall demonstrate a practical knowledge of the principles associated with the management of mosquitoes, including all of the following: their life cycle; types of formulations appropriate for their management; methods of application; possible effects on water quality; and, the potential health effects on humans in the target area.

8.3.6 Right-of-way Pest Control Category

8.3.6.1 Applicators shall demonstrate a practical knowledge of a wide variety of environments, since right-of-ways can traverse many different terrains, including

waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in the adjacent areas and communities.

8.3.7 Industrial, Institutional, Structural and Health Related Pest Control Category

8.3.7.1 Applicators in this category must demonstrate a practical knowledge of a wide variety of pests including their life cycles, types of formulation appropriate for their control, and methods of application that avoid contamination of food, contamination of habitat, and the exposure of people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors [which that] may lead to a hazardous condition including continuous exposure. Because health related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions particularly related to this activity.

8.3.7.1.1 General Pest Control Subcategory

8.3.7.1.1.1 Applicators must demonstrate knowledge of household pests including but not limited to: pests that invade or infest structures, stored products, and residential food preparation areas; pests that infest or contaminate foods and foodstuffs at any stage of processing in the food manufacturing and processing areas of operation including but not limited to: flour mills, bakeries, bottling plants, dairies, canneries, meat packing plants, supermarkets, convenience stores, rest homes, hospitals, ships, vehicles, restaurants, cafeterias, and snack bars; conditions conducive to infestations and selection of appropriate control procedures, other than fumigation for each situation; and hazards associated with pesticides in food manufacturing and processing.

8.3.7.1.2 Wood Destroying Pest Control Subcategory

8.3.7.1.2.1 Applicators must demonstrate knowledge of organisms that destroy structures made of wood including but not limited to beetles, termites and fungi, and conditions conducive to infestation; selection, calibration, and use of appropriate control procedures and their related equipment including: rodding and trenching, topical application of pesticides and local injection of specially labeled liquid or pressurized aerosol pesticides into infested wood; hazards involved in the handling and use of these pesticides.

8.3.7.1.3 Fumigation (Non-agricultural) Subcategory

8.3.7.1.3.1 Applicators must

demonstrate a practical knowledge of the conditions requiring the application of fumigants, and the selection of the most appropriate fumigation methods to use; equipment used in fumigation including but not limited to application, monitoring, testing, calculating, and personal protective devices; release, distribution, and maintenance of the correct fumigant concentrations for the product being used and the structure being fumigated under differing conditions; and hazards involved in the use of fumigants.

8.3.7.1.4 Wood Preservative Subcategory

8.3.7.1.4.1 Applicators must demonstrate a practical knowledge of the pests involved with wood products, including their life cycles, wood degradation, the pesticides available for controlling such problems, and methods of application including pressure, non-pressure and brush-on treatments. Since there is concern regarding the potential for environmental contamination as well as acute and chronic health problems from applicator exposure when using certain woodtreating pesticides, specific emphasis will be placed upon demonstrating a practical knowledge of the product use, precautions which are required and found on the labels and labeling of these pesticides and include protective clothing and equipment, sanitation procedures, disposal procedures and environmental precautions. Since treated wood products present potential environmental problems and acute and chronic exposure problems to the users and the general public, whether or not they come into direct contact with the treated wood, applicators must demonstrate a practical knowledge of the consumer information covering use, site, and handling precautions which are found in the Consumer Information Sheets of products registered for pressure treatment and in the labeling for products registered for sap and stain control, ground line treatment of utility poles, and home and farm use (including railroad tie repair).

8.3.7.1.5 Institutional and Maintenance Subcategory

8.3.7.1.5.1 Applicators in this subcategory must demonstrate a practical knowledge of a wide variety of pests for the purpose of providing structural pest control or lawn pest control in and around schools, hospitals, nursing homes, child day-care centers, and apartment buildings. Since children and elderly people have a potentially higher sensitivity to pesticides, applicators in this subcategory should be particularly knowledgeable in avoiding applications which may lead to a hazardous condition, including continuous exposure.

8.3.7.1.6 Cooling Tower Subcategory

8.3.7.1.6.1 Applicators shall demonstrate a practical knowledge of the labeling instructions, safety precautions and environmental concerns associated with the use of pesticides to treat the waters of cooling towers. They must demonstrate an understanding of the following: the effects of tower operation upon cooling

water composition; the importance and potential harm of discharge of exhaust water into environment waters, the steps that can be taken to minimize water-caused problems, the importance of diligence and control in the execution of cooling water treatment programs.

8.3.7.1.7 Miscellaneous Subcategory

8.3.7.1.7.1 Applicator must demonstrate knowledge appropriate to their specific field of pest control.

8.3.8 Public Health Pest Control Category

8.3.8.1 Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests are involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of ~~such~~ non-chemical control methods such as sanitation, waste disposal, and drainage.

8.3.9 Regulatory Pest Control Category

8.3.9.1 Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use of pesticides used in suppression and eradication programs.

8.3.9.2 They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

8.3.10 Demonstration and Research Pest Control Category

8.3.10.1 Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticides uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide - organism interactions and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in section 8.02 above. In addition, they shall meet the specific standards required for categories (1) through (7) of this section as may be applicable to their particular activity.

8.3.10.2 Persons conducting field research or method improvement work with restricted use pesticides should be expected to know the general standards detailed in 8.2 above. In addition, they shall be expected to know the specific standards required for paragraph 8.3.1.1 through 8.3.1.9 of this section, applicable to their particular activity, or alternatively, to meet the more inclusive requirements listed under "Demonstration".

8.4 ~~[Commercial Applicator]~~ Certification Fees ~~[, and]~~ Renewal ~~[, and Expiration]~~

8.4.1 Certification Fees

8.4.1.1 Commercial applicators shall pay an annual certification fee of \$20.00. All certifications shall continue in full force until December 31st of each year whereupon they shall become invalid unless renewed, except that a certification for which a renewal application has been submitted to the Department by November 30th, shall remain in full force and effect until such time as the Department gives notice to the applicant of renewal or denial. Applications for renewal shall be mailed to all certified applicators by the Department before October 1st of each year.

8.4.1.2 Federal, State or Local government employees who are certified under this law are exempt from this fee. This exemption shall remain valid only when applying or supervising the application of pesticides for such governmental agencies.

8.4.2 Certification Renewal

8.4.2.1 ~~[Commercial Applicators]~~

~~[8.4.2.1.1]~~ Commercial applicators shall be required to be reexamined through a written test prior to their annual certification renewal.

8.4.2.~~[1]~~2 The reexamination requirement may be satisfied without taking a test, if the commercial applicator provides the Department with evidence that he has completed a specified minimum number of hours attending approved education courses, seminars or programs during the three calendar years preceding certification renewal. The specified number of hours for each category are listed in paragraph 8.4.2.~~[1]~~4 below. This exemption from reexamination does not apply to a person holding a lapsed certificate, as described in paragraph 8.4.~~[2]~~3 below.

8.4.2.~~[1]~~3 A commercial applicator shall be exempt from the reexamination requirement for the first two certification renewals following his original certification in Delaware.

8.4.2.~~[1]~~4 The number of hours of training required to fulfill paragraph 8.4.2.~~[1]~~2 are specified as follows:

Category of Pest Control	Hours
Agricultural Plant (1A)	8
Agricultural Animal (1B)	4
Fumigation of Soils and Agricultural Commodities (1C)	4

Forest (02)	4
Ornamental & Turf (03)	8
Seed Treatment (04)	2
Aquatic (5A)	4
Antifouling Paint (5B)	2
Mosquito (5C)	4
Right-of-Way (06)	4
Industrial, Institutional, Structural & Health Related (07)	
General Pest Control (7A)	18
Wood Destroying Pest Control (7B)	18
Fumigation Pest Control (non-agricultural) (7C)	4
Wood Preservatives (7D)	4
Institutional and Maintenance (7E)	18
Cooling Towers (7F)	4
Miscellaneous (7G)	4
Public Health (08)	4
Regulatory (09)	4
Demonstration & Research (10)	8

pesticides as drugs or medication during the course of their normal practice.

8.5.1.3 Owners and employees of any child day-care center which is operated within a private home.

9.0 Standards for Certification of Private Applicators

9.1 As a minimum requirement for certification, a private applicator must show that he possesses a practical knowledge of the pest problem and pest control practices associated with his agricultural operations and his related legal responsibility. This practical knowledge includes ability to:

9.1.1 Recognize common pests to be controlled and damage caused by them.

9.1.2 Read and understand the label and labeling information - including the common name of pesticides he applies; pest(s) to be controlled, timing and methods of application; safety precautions; any pre-harvest or re-entry restrictions; and specific disposal procedures.

9.1.3 Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.

9.1.4 Recognize local environmental situations that must be considered during application to avoid contamination.

9.1.5 Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

9.2 Such The competence of each private applicator shall be verified through the administration of a private applicator certification system here described which ensures that the private applicator is competent, based upon the standards set forth above, to use the restricted use pesticides under limitations of applicable State and Federal laws and regulations. One or more of the following options will be employed to certify private applicators:

9.2.1 General Certification

9.2.1.1 This option certifies the private applicator as competent to apply any restricted use pesticide which he would normally expect to use in his particular agricultural operations. Competency determination shall reflect all aspects of the private applicator standards and shall be broad enough to test the private applicator's ability to apply general principles to specific problems associated with the restricted use pesticides required for the production and protection of his crops.

9.2.2 Pesticide Class Certification

9.2.2.1 This option certifies the private applicator as competent to apply any restricted use pesticide products and all different formulations of a pesticide used for the same purpose, use, or application. Examples include,

~~8.4.2.2 Private Applicators~~

~~8.4.2.2.1 A private applicator's certification shall continue in full force until December 31st of the third year following his original certification.~~

~~8.4.2.2.2 A private applicator shall be required to be reexamined prior to certification renewal.~~

~~8.4.2.2.3 The reexamination requirement may be satisfied without taking a test, if the applicator provides the Department with evidence that he has attended a minimum of three (3) hours of approved education courses, seminars or programs during the three (3) calendar years preceding certification renewal.]~~

8.4.~~2.~~3 Expiration

8.4.~~2.~~3.1 A certificate shall have a ninety (90) day grace period after the date of expiration. When the grace period expires, the certificate shall be considered to have lapsed.

8.4.~~2.~~3.2 A person holding a lapsed certificate must be examined as described by paragraph 8.1, in order to receive a new certificate.

8.4.~~2.~~3.3 An applicator ~~[is not imparted the right to may not]~~ purchase, use or supervise the use of a restricted use pesticide during the ninety (90) day grace period following the expiration date on his certificate.]

8.5 Exemptions

8.5.1 The above standards do not apply to the following persons for the purposes of these regulations:

8.5.1.1 Persons conducting laboratory type research involving restricted use pesticides; and

8.5.1.2 Doctors of Medicine, Doctors of Osteopathy, and Doctors of Veterinary Medicine applying

but are not limited to, preemergence herbicides for vegetable crops, foliar insecticides on corn, rodenticides in fruit orchards, nematicides in fields prior to planting, ground application of fungicides on vegetables, seed treatments for plant diseases, and livestock dips for insect control.

9.2.2.2 Competency determination shall reflect the full range of the private applicator standards, but with special emphasis placed on the particular characteristics of the pesticide class, as well as the nature of the application or use.

9.2.3 Commodity/Crop/Site Certification

9.2.3.1 This option certifies the private applicator as competent to apply any restricted use pesticide needed for specific crops or sites ~~which~~ that the applicator would be expected to deal with in his agricultural operations. This would include any pesticide products (different pesticide classes, active ingredients, and formulations) used on a specific line or class designation. Examples include: single crop such as corn, apples, or wheat; single site class such as poultry houses or dairy barns; single livestock line, such as beef cattle, swine, or turkeys; crop classes such as forage crops or small fruits, site class such as barns or greenhouses; and livestock class such as poultry.

9.2.3.2 Competency determination shall reflect the full range of the private applicator standards, with emphasis placed on the particular characteristics of the specific crop or site, or crop/site class concerned and the pests involved.

9.2.3.3 A private applicator may wish to be certified for a specific crop or site (such as corn or beef cattle) or for a crop or site class (such as forage crops, livestock, small grain crops).

9.2.4 Single Product Certification

9.2.4.1 This option certifies as competent the private applicator for one or more uses of a single product or related products with the same active ingredient and with a similar formulation and uses. Competency determination shall reflect all appropriate uses of these products for the agricultural area where he will be expected to make pesticide application.

9.2.5 Single Products/single Use Authorization (Emergency Program)

9.2.5.1 This option would authorize the private applicator to make single use application(s) of a restricted use product (or other products of the same formulation). This option will be used only as an emergency provision to accommodate situations such as an unexpected pest problem that requires immediate certification of a previously uncertified private applicator or one whose particular type of certification would not cover the product needed to deal with the problem.

9.3 Determination of Competency for Private Applicators

9.3.1 Competence in the use and handling of

pesticides by private applicators shall be determined by written examinations with questions based upon study materials made available by the Department. Correctly answering 70% or more of the questions shall be considered to be satisfactory evidence of competence.

9.3.2 Failure to answer at least 70% of the questions correctly shall be grounds for denial of certification. The applicant may apply for reexamination, which shall be scheduled by the Department at least 30 days after the applicant's initial examination.

9.3.3 Upon showing of hardship, an applicant for private applicator certification may appeal to the Secretary for an exception to paragraphs 9.3.1 and 9.3.2. At his discretion, the Secretary may provide for an alternative means of examination, to include but not be limited to oral examination. Oral examinations shall cover the same material included in the written examination.

9.4 Private Applicators Certification Fees and Renewal

9.4.1 A private applicator's certification shall continue in full force until December 31st of the third year following his original certification.

9.4.2 A private applicator shall be required to be reexamined prior to certification renewal.

9.4.3 The reexamination requirement may be satisfied without taking a test, if the applicator provides the Department with evidence that he has attended a minimum of three (3) hours of approved education courses, seminars or programs during the three (3) calendar years preceding certification renewal.

9.4.4 In accordance with Title 3, Delaware Code, Section 1218, there is no fee for Private Applicator Certification.

9.5 Expiration

9.5.1 A certificate shall have a ninety (90) day grace period after the date of expiration. When the grace period expires, the certificate shall be considered to have lapsed.

9.5.2 A person holding a lapsed certificate must be examined as described by paragraph 9.2, in order to receive a new certificate.

9.5.3 An applicator may not purchase, use or supervise the use of a restricted use pesticide during the ninety (90) day grace period following the expiration date on his certificate.]

10.0 Standards for Supervision of Non-certified Applicators by Certified Private and Commercial Applicators

10.1 Certified applicators whose activities indicate a supervisory role must demonstrate a practical knowledge of federal and state supervisory requirements, including labeling, regarding the application of restricted use pesticides by non-certified applicators.

10.2 The availability of the certified applicator must be directly related to the hazard of the situation, the complexity of the application or the ability to readily communicate with the non-certified applicator. In many situations, where the certified applicator is not required to be physically present, "direct supervision" shall include verifiable instructions to the competent person, as follows:

10.2.1 Detailed guidance for applying the pesticide properly, and

10.2.2 Provisions for contacting the certified applicator in the event he is needed. In other situations, and as required by the label, the actual physical presence of a certified applicator may be required when application is made by a non-certified applicator.

11.0 Federal Agency Pesticide Applicators

11.1 When an employee of any agency of the United States Government has been qualified in any category as competent to apply restricted use pesticides under the Government Agency Plan (GAP) or under other plans judged by the Secretary to be at least equal to the Delaware Plan, ~~such~~ the employee will be certified by the Secretary in the same category without the need for a written examination nor for the payment of any fee.

11.2 Federal employees qualified under an acceptable Federal Plan to apply restricted use pesticides and who intend to apply restricted use pesticides in Delaware as a part of their agency work shall present their qualifying documents to the Secretary and, if acceptable, these documents will be endorsed or a state document will be issued which will permit the federal employee to use restricted use pesticides in Delaware.

11.3 If, in an emergency situation, federal employees are brought into Delaware to control or eradicate pests and when these employees have been properly qualified to use restricted use pesticides under the plan of another state or under an acceptable federal government agency plan, ~~such~~ these employees shall be considered to be certified in Delaware ~~and he or his~~ for a period of 10 days. Within this 10 day period their agency must, ~~within 10 days,~~ present qualifying credentials to the Secretary and at ~~this~~ that time state credentials will be issued if the employees ~~is~~ are to remain in Delaware as ~~an~~ applicators of restricted use pesticides.

11.4 The provisions of this section do not apply to non-federal employees contracted to perform pesticide application for the federal government. In an emergency, however, and with the concurrence of the Secretary, a non-certified person may apply pesticides under the direct supervision of a properly certified federal applicator. Within 10 days such person working within the state boundaries must apply for Delaware certification in the normal manner.

12.0 Reciprocity

When a commercial applicator is certified under the state plan of another state and desires to operate as a commercial applicator in Delaware he shall make application to the Secretary and shall include, along with the proper fee and other details required by the LAW, a true copy of his credentials certifying him as an applicator of restricted use pesticides in another state. The Secretary then may, if he approves the credentials, issue a Delaware certification to the applicator in the appropriate classification ~~and/or~~ category(ies) for which he is certified in another state without a written examination. The original certification must be made in the state where the commercial applicator resides or where he has his principle place of business.

13.0 Revocation

The Department, after due notice and opportunity for a hearing, may deny, suspend, revoke or modify any application for or provision of any certification, including reciprocal certification, under the LAW if the Department finds that the Certified Applicator or the applicant for Certification has committed any act or acts declared by the Law or these regulations to be unlawful.

14.0 Records

14.1 Commercial Applicators

14.1.1 Commercial applicators shall, for a period of two years from the date of application, keep records detailing the application of any pesticides to include:

14.1.1.1 The brand name of the pesticide used. In the case of a Restricted Use Pesticide or a pesticide which is used under the provisions of 40 **Code of Federal Regulations**, Part 170, Worker Protection Standards, the EPA Registration Number shall also be recorded at or before the time of application.

14.1.1.2 When applicable, the dilution rate of the pesticide and the amount of diluted material applied per unit (i.e. gallons/acre, lbs./acre, etc.)

14.1.1.3 The date and specific area treated.

14.1.1.4 The pest against which the pesticide was used.

14.1.1.5 The applicator's name, and when applicable, the name of the certified applicator responsible for his supervision.

14.1.1.6 When label directions advise precaution in regard to drift, on-site weather conditions to include:

14.1.1.6.1 Wind velocity and direction

14.1.1.6.2 Temperature

14.1.1.6.3 Relative humidity

14.1.1.7 In addition to the above record keeping requirements, the applicator shall have available at the site of application, a copy of the label of the pesticide being used. Upon request, the applicator shall provide any

interested person at or adjacent to the application site, with any information contained on the pesticide label.

14.2 Restricted Use Pesticides Dealers

14.2.1 Restricted use pesticide dealers shall keep and maintain for a period of two years, records on the sale or other disposition of restricted use pesticides to include the following:

14.2.1.1 The name and address of the residence or principal place of business of the certified applicator to whom the pesticide is made available for use.

14.2.1.2 The certification identification number of the purchaser or receiver of the pesticide on the document. If the receiver of the restricted use pesticide is other than a certified applicator, a form of photographic identification of the receiver must be presented at the time of delivery.

14.2.1.3 The product name and E.P.A. registration number on the label of the pesticide.

14.2.1.4 The quantity of the pesticide made available for use in the transaction.

14.2.1.5 Date of the sale or transaction.

15.0 Financial Security Required of Licensee

15.1 The Secretary shall not issue a license until the applicant has filed evidence of financial security with the Secretary. ~~Such~~ ~~e~~vidence shall consist of a general liability insurance policy with completed operation coverage or certification thereof from an insurance company, person, or risk retention group formed under the Federal Risk Act of 1986, authorized to do business in Delaware.

15.1.1 Agriculture

15.1.1.1 Plant Pest Control

15.1.1.1.1 An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.1.1.2 Agriculture Animal Pest Control

15.1.1.2.1 An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.1.2 Forest Pest Control

15.1.2.1 An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.1.3 Ornamental and Turf Pest Control

15.1.3.1 An applicant for certification in this

category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.1.4 Seed Treatment

15.1.4.1 An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.1.5 Aquatic Pest Control

15.1.5.1 An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.1.6 Right-of-Way Pest Control

15.1.6.1 An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.1.7 Industrial, Institutional, Structural and Health Related Pest Control

15.1.7.1 An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.2 Aerial Applicators

15.2.1 Aerial applicators applying for a license in any of the above categories or subcategories shall show evidence of financial security in the minimum of One Hundred Thousand Dollars (\$100,000) for each individual damage and Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.3 Nothing ~~to~~ in these regulations shall be construed in any way to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules and regulations of the Secretary.

16.0 Storing and Disposal of Pesticides and Pesticide Containers

16.1 Prohibited Acts

16.1.1 No person shall dispose of or store (or

receive for disposal or storage) any pesticide, pesticide container or pesticide container residue:

16.1.1.1 In a manner inconsistent with its label or labeling;

16.1.1.2 So as to cause or allow the open dumping of pesticides or pesticide containers;

16.1.1.3 So as to cause or allow open burning of pesticide or pesticide containers. ~~except, the open burning by the user of small quantities of combustible containers (but not to exceed 50 lbs.) containing pesticides other than those containing organic mercury, chlorates, lead, cadmium, or arsenic compounds, is acceptable when allowed by state or local regulations and when due regard is given to wind direction in relation to the protection of crops, animals and people from the pesticide vapors created through burning;~~

16.1.1.4 So as to cause or allow dumping of pesticides in any stream, river, pond, ~~sewer or lake, lake, sewer, storm water drain, or to ground water~~ except in conformance with permits issued by the Delaware Department of Agriculture or other state agency having jurisdiction regarding water pollution;

16.1.1.5 So as to violate any applicable state or federal pollution control standard.

16.2 Pesticide and Pesticide Container Disposal

16.2.1 Pesticide containers shall, upon completion of use, be triple rinsed immediately by the applicator or someone under his direct supervision or cleaned by another method or procedure equivalent in residue removal effectiveness.

16.2.1.1 The standard triple rinse procedure is as follows:

16.2.1.1.1 The emptied container shall be drained for at least thirty (30) seconds after steady flow of pesticide formulation has ceased and after individual drops are evident. Any pesticide formulation drained shall be added to the spray tank mix and shall be applied in accordance with label instructions.

16.2.1.1.2 A solvent, usually water, specified by the manufacturer and capable of removing the pesticide residue shall be added to the drained container in an amount equal to ten percent (10%) of its capacity. The container then shall be shaken, agitated, or rolled vigorously in such fashion as to dislodge residues from the top, bottom and sides. The liquid residues (rinsate) shall be added as make-up to the spray tank mix, and the container shall be allowed to drain for at least thirty (30) seconds after steady flow has ceased and after individual drops are evident.

16.2.1.1.3 The above procedure shall be performed two more times, each time allowing the container to drain at least thirty (30) seconds and adding all rinsate to the spray tank mix to be applied in accordance with label instructions.

16.2.1.2 In cases where undiluted formulations are used and rinsate cannot be added to the spray tank, the

residue must be disposed of in accordance with applicable Department of Natural Resources and Environmental Control (DNREC) regulations.

16.2.1.3 Methods of rinsing or cleaning containers, other than the standard triple rinsing procedure described above, may be used provided they are shown to remove equivalent amounts of pesticide residues ~~which that~~ can be disposed of in an environmentally safe manner.

16.2.1.4 In the case of containers with removable inner liners that prevent contact between the pesticide and the container, removal of the [empty] liner shall be considered the equivalent of triple rinsing. The removed liners must be disposed of in a sanitary landfill ~~or by incineration if allowed by State and local authorities.~~ **Empty H-**liners removed from pesticide containers [that held containing] pesticides listed as hazardous waste are also considered hazardous waste unless the liners are triple rinsed [with an applicable using a] solvent capable of removing the pesticide or other method approved as equivalent [by the DNREC prior to their removal from the container. Once rinsed t] these liners [may must] be handled and disposed of [in accordance with applicable DNREC regulations in a sanitary landfill. Rinsates shall be used in accordance with 16.2.1.1.2.]

16.2.1.5 Following the rinsing, cleaning or liner removal procedure, plastic or metal containers not destined for return to manufacturers or shipment to reconditioners shall be punctured prior to disposal to ~~insure~~ ensure they are empty and to prevent re-use. Glass containers are exempt from this puncture requirement. ~~Plastic containers may be burned if allowed by State and local authorities.~~

16.2.1.6 Pesticide containers labeled for commercial or farm use, which have been triple rinsed and handled in accordance with 16.2.1.1 through 16.2.1.5, shall be disposed of at a ~~Solid Waste Facility~~ **sanitary landfill or through a Department accepted recycling program.**

16.2.1.7 Unused or unwanted farm or commercial use pesticides [which that] qualify as hazardous waste shall be disposed of in accordance with 7 Del.C. Chapter 63 and the Delaware Regulations Governing Hazardous Waste.

16.2.1.8 Pesticides ~~and~~ or pesticide containers which are not subject to these regulations are as follows:

16.2.1.8.1 Paper, cardboard and fiberboard containers. Storage, handling and disposal must, however, be in accordance with label directions and any applicable DNREC regulations ~~and~~ or local ordinances.

This waiver applies only if all the pesticide contents have been removed from the container using practical methods.

16.2.1.8.2 ~~[Empty~~ aerosol containers and ~~[empty]~~ compressed gas cylinders, provided that ~~[the empty]~~ aerosol containers ~~[contain non-reactive propellant and]~~ are disposed of according to the product labeling and the empty compressed gas cylinders are returned for re-use.

16.2.1.8.3 Pesticide containers labeled as returnable, and which are returned to the manufacturer for refill.

16.2.1.8.4 Pesticides and pesticide containers which are intended solely for home and garden use, provided they are securely wrapped in several layers of paper and disposed of singly ~~[during through]~~ routine municipal solid waste disposal ~~[or at a sanitary landfill]~~.

16.3 Pesticide Storage

16.3.1 Pesticides shall be stored in such a manner so as to prevent the contamination of food, feed and/or water.

16.3.2 Pesticides shall be stored out of the reach of children and so as not to present a public nuisance.

16.3.3 Until such time as the Secretary shall, along with the Pesticide Advisory Committee and any other person as the Secretary may consult, promulgate more specific rules and regulations covering the storage of pesticides and pesticide containers not provided in 16.1 and 16.3 of this Section, the recommended procedures for the storage of pesticides and containers detailed in Regulations promulgated by the Administrator, United States Environmental Protection Agency shall be the recommended procedures for Delaware. The Secretary shall make copies of these procedures available to any person needing guidance for proper storage of pesticides or pesticide containers.

17.0 Pesticide Advisory Committee

17.1 Expenses of Members Not from Government Departments. Pesticide Advisory Committee members not from governmental departments shall submit expense accounts to the Secretary. Reimbursements made to members not from governmental departments shall be made for the actual cost of lodging and meals (out of state) and for transportation according to the regulations applicable to Department employees.

18.0 Application and Equipment

18.1 No person shall apply, dispense or use any pesticide in or through any equipment or application apparatus unless ~~such~~ the equipment or application apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material;

all pesticide mixing, storage, or holding tanks, whether on application equipment or not, shall not leak pesticide; all spray distribution systems shall not leak pesticides and any pumps which ~~such~~ the systems may have shall not leak pesticides and any pumps which ~~such~~ the systems may have shall be capable of operating at sufficient pressure to assure a uniform and adequate rate of discharge; and all pesticide application equipment shall be equipped with whatever cut-off valves and discharge orifices may be necessary to enable the operator to pass over non-target areas without contaminating them.

18.2 All hoses, pumps or other equipment used to fill pesticide handling, storage or application equipment shall be fitted with an effective valve or device to prevent backflow of pesticides or pesticide use-dilutions into water supply systems, streams, lakes, ground water [or] other sources of water ~~or other materials~~. ~~[Provided, however, such~~ ~~to~~ B]ackflow devices or valves are not required for separate water storage tanks used to fill agricultural pesticide application equipment by gravity systems when the fill spout, tube or pipe is not allowed to contact or fall below the water level of the application equipment being filled and no other possible means of establishing a backsiphon or backflow exists.

19.0 Antifouling Paint Restrictions

19.1 For the purposes of this section, the following definitions shall apply:

"**Acceptable release rate**" means a measured release rate not to exceed 4.0 micrograms per square centimeter per day and as further defined in the Organotin Anti-fouling Paint Control Act of 1988, (Pub. L. - 100-333).

"**Antifouling paint**" means a coating, paint, or treatment that is applied to a vessel or any fishing gear used to catch shellfish or finfish to control fresh water or marine fouling organisms.

"**Commercial boat yard**" means any facility which engages for hire in the construction, storage, maintenance, repair, or refurbishing of vessels or any licensed independent marine maintenance contractor who engages in such activities.

"**Organotin**" means any compound of tin used as a biocide in an anti-fouling paint.

"**Retail**" means the transfer of title to tangible personal property other than for resale, after manufacturing or processing.

"**Vessel**" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.

19.2 Except as otherwise provided in this Section, no person shall distribute, possess, sell, or offer for sale, apply or offer for use or application any marine anti-fouling paint containing organotin.

19.3 No person may sell or deliver to, or purchase or receive from, another person at retail any substance containing organotin for the purpose of adding such substances to paint to create an anti-fouling paint.

19.4 A person may distribute or sell a marine anti-fouling paint containing organotin with an acceptable release rate to the owner or agent of a commercial boat yard. The owner or agent of a commercial boat yard may possess and apply or purchase for application an anti-fouling paint containing organotin with an acceptable release rate, however, ~~such~~ the paint may be applied only within a commercial boat yard and only to vessels which exceed twenty-five meters (82.02 feet) in length or which have aluminum hulls.

19.5 A person may distribute, sell, or apply a marine anti-fouling paint containing organotin having an acceptable release rate, if the paint is distributed or sold in a spray can in a quantity of sixteen ounces avoirdupois or less and is commonly referred to as outboard or lower unit paint.

20.0 Restricted Use Pesticide Dealer Permits

20.1 For the purposes of these regulations the following definitions shall apply:

20.1.1 The term "restricted use pesticide dealer" means any person who makes available for use any restricted use pesticide, or who offers to make available for use any such pesticide. The term excludes any person who sells or distributes pesticides only as an integral part of his pesticide application service and when ~~such~~ the pesticides are dispensed only through equipment used during a pesticide application.

20.1.2 The term "make available for use" means to distribute, sell, ship, deliver for shipment, or receive, and (having so received) deliver, for use by any person. However, the term excludes transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail dealers, acting only in those capacities.

20.1.3 The term "dealership" means any site owned or operated by a restricted use pesticide dealer where any restricted use pesticide is made available for use, or where the dealer offers to make available for use any such pesticide.

20.2 Effective December 31, 1990, no person shall make available for use any restricted use pesticide unless that person has a valid Dealer Permit issued by the Department.

20.3 A separate Dealer Permit shall be required for each dealership owned or operated by the restricted use pesticide dealer.

20.4 Issuance of a Dealer Permit:

20.4.1 Application for a Dealer Permit shall be made in writing to the Department on a designated form obtained from the Department.

20.4.2 The Department shall issue a Dealer

Permit to an applicant upon payment of a fee of \$25.00 for a calendar year or any part of a calendar year.

20.4.3 All permits shall remain in full force and effect until December 31st of each year whereupon they shall become invalid unless renewed, except that a permit for which a renewal application has been submitted to the Department by November 30th shall remain in full force and effect until such time as the Department gives written notice to the permit holder of renewal or denial.

20.5 A restricted use pesticide dealer is responsible for the acts of his employees in the solicitation and sale of all pesticides and all claims and recommendations for the use of pesticides.

20.6 A dealer permit is not transferable.

20.7 The Department, in addition to any penalties authorized by the LAW, may deny, suspend, or revoke the application or permit of a restricted use pesticide dealer if he has failed to comply with any provisions of the LAW or any rules and regulations promulgated thereunder.

21.0 Institutional and Maintenance Pesticide Use Restrictions

21.1 For the purposes of these regulations, the following definitions shall apply:

"**Apartment building**" shall mean a building that contains four or more dwelling units that are rented primarily for nontransient, permanent dwelling purposes, with rental paid by intervals of one week or longer.

"**Child day-care center**" shall mean a facility, other than a school as defined elsewhere herein, which provides care, education, protection, supervision and guidance on a regular basis for children. Services are provided for part of the 24 hour day, unattended by parent or guardian, and for compensation. Provided, nevertheless, that "child day-care center" shall not include any such facility which is operated within a private home.

"**General use pesticide**" shall include all pesticides as defined by 3 ~~Del.C. §1202(27) Delaware Pesticide Law,~~ with the following exceptions:

- Any Restricted Use Pesticides, as defined by 3 **Del.C. §1202 (30);**
- Any State Restricted Use Pesticide, as defined by 3 **Del.C. §1202 (31);**
- Any anti-microbial pesticide used for controlling bacteria, viruses, or other microorganisms.

"**Hospital**" shall have the same meaning assigned by 16 **Del.C. §1001(1).**

"**Institutional and Maintenance applicator**" means any person who ~~owns,~~ operates or maintains a school, apartment building, nursing home, hospital or child day-care center, or is **[an]** employee of a school, apartment building, nursing home, hospital, or child day-care center; and who **[Aa]**ppplies general use pesticides inside the school,

apartment building, nursing home, hospital, or child day-care center. ~~[A general use pesticide applicator must be certified pursuant to Section 8.0 of these regulations, unless, such person possesses a valid certification in subcategory 7.7.1.5 Institutional and Maintenance Pest Control.]~~

"Nursing home" shall have the same meaning assigned by 16 Del.C. §1101.

"Private home" shall mean a non-public residence such as a house, duplex, townhouse, apartment, or mobile home where the provider of child day-care services lives and has control over the furnishings and use of space. An individual unit in public housing and university housing complexes is considered a private home.

"School" shall mean a completed structure utilized as a public or private school, grades kindergarten through post graduate.

21.2 A person certified as a ~~[n general maintenance Institutional and Maintenance]~~ applicator may not engage in the business of pest control outside the scope of their employment ~~[at a school, apartment building, nursing home, hospital, or child day-care center for which they have been certified]~~, unless the person becomes certified as otherwise provided by the Law.

21.3 An owner or manager of a building that is a school, apartment building, nursing home, hospital, or child day-care center may obtain ~~[general maintenance Institutional and Maintenance]~~ pest control services for the building from a person only by:

21.3.1 Contracting with a business licensed pursuant to 3 Del.C. §1206;

21.3.2 Having the services performed by an ~~[general maintenance Institutional and Maintenance]~~ applicator with a valid certification in 7.7.1.1 or 7.7.1.5 of these regulations.

21.4 Records of "general use pesticide" applications made in a school, apartment building, nursing home, hospital, or child day-care center shall be kept in accordance with Section 14.1.

22.0 Restrictions on the Use of Pesticides for the Control of Subterranean Termites

22.1 This section applies to commercial pesticide applications for the control of subterranean termites. It is directed primarily towards soil treatment and does not include other treatments applied as dusts, aerosols or fumigants, nor does it address application technology such as biological control agents or baits.

22.2 For the purpose of this section, the following definition shall apply:

22.2.1 "Termiticide" shall mean a pesticide registered pursuant to the LAW and which is intended for

preventing, destroying, repelling or mitigating termites.

22.2.2 "Continuous chemical barrier" shall mean the application of a termiticide such that the resultant soil residue meets or exceeds the soil residue requirements currently recommended by the Association of Structural Pest Control Regulatory Officials (ASPCRO) and as those requirements may be amended in the future. Soil residue sampling shall be conducted in conformity with the current ASPCRO soil sampling protocol and as it may be amended in the future.

22.3 Termiticides shall be used to establish a continuous chemical barrier in all applicable areas prescribed by the label. However, where the termiticide is applied such that a continuous barrier is not achieved, or where the termiticide is not applied to all applicable areas prescribed by the termiticide label, the conditions outlined in both 22.3.1 and 22.3.2 below must be satisfied:

22.3.1 One or more of the following situations is present:

22.3.1.1 Specific environmental conditions are such that application of the termiticide at the full labeled concentration and volume may result in adverse environmental impact. Examples may include the presence of a well, a footing drain that empties into a water body, a high water table, etc.;

22.3.1.2 Structural barriers or soil conditions or types exist that prohibit application of the labeled volume or limit access to applicable soil treatment areas;

22.3.1.3 Specific customer request, or the recommendation of the certified applicator.

22.3.2 Within fourteen (14) days following the termiticide application, the following information shall be furnished in writing to the customer or to the customer's agent:

22.3.2.1 A full disclosure explaining the difference between full and partial applications. The disclosure shall include the termite control strategies being utilized and the reasons for those alternatives;

22.3.2.2 The pesticide used, including brand name and EPA registration number;

22.3.2.3 The actual volume of the termiticide applied;

22.3.2.4 Specific information of sufficient detail to distinguish where treatment actually occurred, including a diagram of the structure identifying treated areas, known well heads, and sites of visible termite activity;

22.3.2.5 A clear, concise statement indicating whether the application has any guarantee or warranty, and the terms of the guarantee or warranty, e.g., retreatment (full or partial), damage repair and retreatment, or no warranty.

22.3.3 This information shall be furnished to the customer or customer's agent on a form approved by the Department. The applicator shall for a period of two years from the date of application, keep and maintain all

completed copies of disclosure documents. ~~Such~~ These records shall be made available to authorized employees of the Department upon request.

22.4 Any application of termiticides, pursuant to this section, must be conducted with a commercial applicator at the site of application. This commercial applicator must be certified in category 7.7.1.2, Wood Destroying Pest Control.

22.5 The disclosure information and written notification specified in paragraph 22.3.2 are not required of termiticide treatments to utility poles, fence posts or tree stumps.

22.6 Any pre-construction termiticide application shall be applied in accordance with the termiticide product labeling and the U.S. Environmental Protection Agency, Pesticide Regulations (PR) Notice 96-7. For pre-construction treatments, PR Notice 96-7 supercedes this Section, and no pre-construction treatment shall be applied at a lower dosage and/or concentration than specified on the label, for applications prior to installation of the finished grade.

DEPARTMENT OF AGRICULTURE

Statutory Authority: 3 Delaware Code,
Sections 6301 and 7101
(3 Del.C. §§6301 and 7101)

ORDER

I. Nature Of Proceedings

Pursuant to its authority under 3 Del.C. §§6301 and 7101, the Department of Agriculture proposed to adopt regulations concerning the sale and transfer of poultry. Its purpose in proposing these amendments was to more clearly define the role of the Department of Agriculture in regulating the state's poultry industry and to set out its enforcement powers so as to ensure the health, safety and welfare of the citizens of the state from outbreaks of poultry-borne infectious diseases.

Notice of the public hearing on the Department's proposed regulations was published in the Delaware Register of Regulations for April 1, 2004 as well as in two Delaware newspapers in general circulation in accordance with 29 Del.C. §10115. Thereafter, the public hearing was held as noticed on Friday, May 7, 2004 before the Department's Secretary, Michael T. Scuses's designee, State Veterinarian Dr. H.W. Towers, DVM. This is the Department's Decision and Order adapting the proposed regulations.

II. Evidence Submitted At Public Hearing

The Department received no written comments in response to the notice of intention to adopt the proposed regulations. No public comments were received at the May 7, 2004 public hearing.

III. Findings And Conclusions

The public was given the. required notice of the Department's intention to adopt the proposed regulations and was given ample opportunity to provide the Department with comments opposing the Department's proposals. Thus, the Department concludes that its consideration of the proposed regulations was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt them.

IV. ORDER

NOW THEREFORE, it is hereby ordered that:

1. The Department's poultry regulations are adopted;
2. The text of the regulations shall be in the form attached hereto as Exhibit A.
3. The effective date of the Order is ten days from the date of its publication in the Delaware; Register of Regulations in accordance with 29 Del.C. §10118(e); and
4. The Department reserves unto itself the authority to issue such other and further orders in this matter as may be necessary to discharge its responsibilities under the enabling acts.

Michael T. Scuse, Secretary
Delaware Department of Agriculture
5/10/04

*** Please note that no changes were made to the regulation as originally proposed and published in the April 2004 issue of the Register at page 1241 (7 DE Reg. 1241). Therefore, the final regulation is not being republished. Please refer to the April 2004 issue of the Register or contact the Department of Agriculture.**

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 220 (14 Del.C. 220)
14 DE Admin. Code 103

Regulatory Implementing Order**103 Accountability for 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 amend 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State. The amendments reflect the changes made to Delaware's plan under the federal No Child Left Behind Act of 2001. Changes include: definitions of the Adequate Yearly Progress levels in 2.1.1 and changes in other sections of the regulation reflecting these changes; changes to 2.4 Participation Rate, changes in the Other Academic Indicator(s) definition in 2.6; the definition of a "new school" in 3.4; and the addition of State Progress Determinations in 5.0 and changes in other sections reflecting the calculations as defined in 5.0.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on March 19, 2004 in the form hereto attached as *Exhibit "A"*. Comments were received from the State Council for Citizens with Disabilities and the Governor's Advisory Council for Exceptional Citizens. The responses to the councils' comments are as follows:

Regarding the issue of the high school graduation rate as a performance indicator, the standard will remain as is but the Department will be issuing a memo modifying the IEP so that the Individual Education Program (IEP) will specify the time frame for graduation for students with IEPs. Regarding the change requiring the inclusion of students exempted from the DSTP in the participation rate calculation, the federal law, No Child Left Behind, requires that these students who were formally exempted be included in the participation rate calculation. The Secretary will be considering an amendment to 14 **DE Admin. Code** 101.9.0, Delaware Student Testing Program in order to correct any discrepancy that may exist between the two regulations.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 103 in order to make changes that reflect the changes made to Delaware's plan under the federal No Child Left Behind Act of 2001.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 103. Therefore, pursuant to 14 **Del.C.** §154, §155 and §156, 14 **DE Admin. Code** 103 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 14 **DE Admin. Code** 103 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and shall be cited as 14 **DE Admin. Code** 103 in the Administrative Code of *Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §154, §155 and §156 on May 20 2004. 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 20th day of May 2004.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

APPROVED THIS 20TH DAY OF MAY, 2004

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

1.0 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 including the State Progress Determinations 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 using a confidence interval to be determined by the Department of Education 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) meet the requirements of the Other Academic Indicator(s) as defined in 2.6. 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.

2.1.1 Adequate yearly progress shall include three levels: Above Target, Meets Target and Below Target.

2.1.1.1 Above Target shall mean that the school, district or State in the aggregate student population and for each subgroup exceeds the annual target in English language arts and mathematics for percent proficient as defined in 2.3 and further meets the criteria for participation as defined in 2.4 and Other Academic Indicator(s) as defined in 2.6.

2.1.1.2 Meets Target shall mean that the school, district or State in the aggregate student population and for each subgroup meets the annual target in English language arts and mathematics with or without the application of a confidence interval for percent proficient as defined in 2.3 or meets the criteria of Safe Harbor defined in 2.5, and further meets the criteria for participation as defined in 2.4 and Other Academic Indicator(s) as defined in 2.6.

2.1.1.3 Below Target shall mean that the school, district or State in the aggregate student population and for each subgroup did not meet the annual target in English language arts or mathematics through the application of a confidence interval for percent proficient as defined in 2.3 or does not meet the criteria of Safe Harbor defined in 2.5, or does not meet the criteria for participation as defined in 2.4 or does not meet the criteria of Other Academic Indicator(s) as defined in 2.6.

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~~ including 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~~ including 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~~ Level 2 or Level 1 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 divided by the number of students enrolled in these tested grades during the testing period. Students exempted by 14 **DE Admin. Code 101.9.0** ~~are not~~ shall be included in the participation rate calculation [~~unless their medical condition prevents them from being in school during the testing period. 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~~ 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~~ meets the requirements of the Other Academic

Indicator(s) as defined in 2.6. the subgroup will have met AYP.

2.6 Other ~~academic indicator~~ Academic Indicator(s):

2.6.1 High School: For AYP purposes, the ~~other academic indicator~~ Other Academic Indicator(s) shall be graduation rate as defined as the number of students in one cohort who started in the ~~school/district/state~~ school, the ~~district or the state~~ in 9th grade and graduated four years later ~~or in the time frame specified in the Individual Education Program (IEP)~~, 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~~ Other Academic Indicator shall be a graduation rate of 90% by the school year 2013-2014. The statewide target for 2003-2004 shall be 75% and shall increase by 1.5% each year until 90% is reached in 2013-2014. Beginning with the school year 2002-2003, if the graduation rate is used for ~~safe harbor~~ Safe Harbor purposes, the high school shall ~~be expected to maintain its graduation rate or show positive progress when compared to the previous year~~ or meet or exceed the statewide target for that school year.

2.6.1.2 A school that does not maintain its graduation rate or show positive progress from the previous year ~~or meet or exceed the statewide target for that school 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~~ determined by improvement of the scores of the low achieving students, defined as students performing below Performance Level 3, in reading and mathematics combined or a decrease in the percent of students scoring at Performance Level 1 in reading and mathematics. The average scale score for the students who perform at Performance Level 1 and 2 in reading and mathematics combined shall be determined for the current and previous years. The scores from the current year will be compared to the previous year to determine if the school has shown progress. A confidence interval determined by the Department of Education shall be applied to the average scale scores when making this determination. Students included in this calculation shall have been in the school for a full academic year.

2.6.2.1 The statewide target for the elementary and middle school ~~other academic indicator~~ Other Academic Indicator shall be ~~a percent proficient of 85%~~ 0% of students scoring at Performance Level 1 in

reading and mathematics by the school year 2013-2014. Beginning with the school year ~~2002-2003~~ 2003-2004, when compared to the previous year, the school or subgroup, if used for ~~safe harbor~~ Safe Harbor purposes, ~~shall be expected to maintain its percent proficient or show positive progress~~ shall maintain or show progress when compared to the previous year towards the state target of 85%. shall maintain or show improvement of the scores of the low achieving students in reading and mathematics combined or show that the percent of students at Performance Level 1 in reading and mathematics has decreased from the previous year.

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~~ or show improvement of the scores of the low achieving students in reading and mathematics combined or show that the percent of students at Performance Level 1 in reading and mathematics has decreased 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.~~ meet the requirements in 2.6.1.2 and 2.6.2.2.

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~~ Black, American Indian/Alaska ~~native~~ 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
AYP Determinations

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, the school shall be classified according to 2.1.1 as Above Target or Meets Target.~~ If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator 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~~ district shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator 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~~ state shall be classified according to 2.1.1 as Above Target or Meets Target. If there are 15 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator(s) shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient, participation rate and Other Academic Indicator 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/English language arts or mathematics for percent proficient or for participation rate, or if a school or district in the aggregate does not ~~maintain or show progress on~~ meet the requirements of the Other Academic Indicator(s) as defined in 2.6.

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~~ the special school that provides the instructional program shall be considered the Accountability School for that student. For district accountability purposes, the district of residence shall be the district to which these special school students are included for accountability.

3.2 For a student enrolled in an alternative ~~school~~ program pursuant to 14 ~~Del.C. Ch.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~~ 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 a~~ choice program pursuant to 14 ~~Del.C. Ch.4~~ the Accountability

School/District shall be the school/district to which the student has choiced.

3.4 For accountability purposes, a school shall be considered a new school if: less than sixty percent of the students would have been enrolled in the same school together without the creation of the new school; or it is the first year of operation of a charter school; or two or more grade levels have been added to the school or to a charter school's charter.

3.5 If a school is determined not to be a new school, the school shall receive the accountability rating and related consequences of the school in which the majority of students would attend in that year.

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 consistent with the regulations as prescribed by the federal Elementary and Secondary Education Act (ESEA) 20 U.S. C.A. §6301 et seq. or Individuals with Disabilities Education Act (IDEA).

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.

5.0 State Progress Determinations:

Each school and district shall receive a State Progress

Determination of Above Target, Meets Target or Below Target. The State Progress shall be determined by improvement in the composite score of the reading, mathematics, science and social studies DSTP assessments combined. The composite score range shall be from 25 to 125 and is determined by the following formula: Composite Score = 25 [(reading score x reading weight) + (math score x math weight) + (science score x science weight) + (social studies score x social studies weight)] where: Reading score = [(5 x % of students in level 5 in reading) + (4 x % of students in level 4 in reading) + (3 x % of students in level 3 in reading) + (2 x % of students in level 2 in reading) + (1 x % of students in level 1 in reading)]; Math score = [(5 x % of students in level 5 in math) + (4 x % of students in level 4 in math) + (3 x % of students in level 3 in math) + (2 x % of students in level 2 in math) + (1 x % of students in level 1 in math)]; Science score = [(5 x % of students in level 5 in science) + (4 x % of students in level 4 in science) + (3 x % of students in level 3 in science) + (2 x % of students in level 2 in science) + (1 x % of students in level 1 in science)]; Social Studies = [(5 x % of students in level 5 in social studies) + (4 x % of students in level 4 in social studies) + (3 x % of students in level 3 in social studies) + (2 x % of students in level 2 in social studies) + (1 x % of students in level 1 in social studies)]. Each of the subject areas shall be weighted equally at 25%.

5.1 Above Target shall mean that the school or district has a minimum composite score of 75.00 for the current year; or the school or district has demonstrated a growth of 6.00 or more points when comparing last year's composite score to the current year's composite score provided the composite score is 45.00 or more.

5.2 Meets Target shall mean that the school or district with a composite score of 61.00 or less than 75.00 in the current year, shall demonstrate a growth of ~~2.00~~ 1.00 or more points when comparing last year's composite score to the current year's composite score. For a school or district with a composite score of 45.00 but less than 61.00 in the current year, the school or district shall demonstrate a growth of 2.00 or more points when comparing last year's composite score to the current year's composite score.

5.3 Below Target shall mean that the school or district has a composite score of less than 45.00; or the school or district does not meet the criteria of 5.2.

5.0 6.0 Performance Classifications:

Schools and districts shall receive one of five levels of performance classification annually which shall be based on a combination of AYP determinations and State Progress determinations.

~~5.1~~ 6.1 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~~

and is a combination of Above Target for AYP and Above Target for State Progress or Above Target for AYP and Meets Target for State Progress or Meets Target for AYP and Above Target for State Progress. The additional state criteria shall be developed by the Department of Education with the consent of the State Board of Education.

5.2 6.2 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. Combinations of Above Target for AYP and Below Target for State Progress or Meets Target for AYP and Meets Target for State Progress shall be rated as Commendable. A school or district with a combination of Meets Target for AYP and Below Target for State Progress shall be determined Commendable for no more than one year; if this same combination exists for the school or district in the following year, the school or district shall be rated Academic Review.

5.3 6.3 Academic Review: A school or district's performance is deemed acceptable. Schools or districts in this category shall not have met AYP for one year and are not Under Improvement. Combinations of: Below Target for AYP and Above Target for State Progress; or Below Target for AYP and Meets Target for State Progress shall be rated as Academic Review for no more than one year; if the same combination exists for the school or district in the following year, the school or district shall be rated Academic Progress unless the provisions of 6.5 or 6.6 are met. A school or district with a combination of Below Target for AYP and Below Target for State Progress shall be rated as Academic Review unless the provisions of 6.5 and 6.6 are met.

6.4 Academic Progress: A school or district's performance is deemed as needing improvement. Schools or districts in this category shall not be Under Improvement as defined in 2.11.5.

5.4-6.5 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 6.6 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 consecutive years in the same content area as described in 2.11.5 and shall be Under Improvement.

6.0 7.0 Schools and Districts that are classified as Under Improvement.

6.1 7.1 Accountability sanctions for schools that are classified as Under Improvement:

6.1-1 7.1.1 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 7.1.2 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 7.1.3 Under Improvement - Year 3 - A school shall continue with the activities as per 6.1-2 7.1.2. In addition, all schools shall be subject to corrective action as outlined by federal ESEA requirements.

6.1-4 7.1.4 Under Improvement - Year 4 - A school shall continue with the activities as per 6.1-3 7.1.3. In addition, the school shall develop a plan for restructuring as outlined by federal ESEA requirements and submit such plan to the Secretary of Education. The Secretary of Education shall investigate the reasons for the continued deficiency of the school's performance and shall consult with the State Board of Education prior to making comment.

6.1-5 7.1.5 Under Improvement - Year 5 - A school shall continue with the activities as per 6.1-2 7.1.2. In addition, the school shall implement the restructuring plan as outlined by federal ESEA requirements.

6.2 7.2 Accountability sanctions for districts that are classified as Under Improvement:

6.2-1 7.2.1 Under Improvement - Year 1 - A district shall develop and implement a District Improvement Plan.

6.2-2 7.2.2 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 7.2.3 Under Improvement - Year 3 - A district shall continue with the activities outlined in 6.2-2 7.2.2. In addition the district shall develop a corrective action plan as outlined by Federal ESEA requirements and submit such plan to the Secretary of Education. The Secretary of Education shall investigate the reasons for the continued deficiency of the district's performance and shall consult with the State Board of Education prior to making comment.

6.2-4 7.2.4 Under Improvement - Year 4 - A district shall continue with the activities as outlined in 6.2-3 7.2.3. In addition the district and the Department of Education shall evaluate the corrective action plan and make

appropriate modifications as needed.

7-0 8.0 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. ~~[All accountability schools that have a student or students who have been granted an exemption according to 4.4 shall automatically have their classification reviewed based on the evidence submitted in the exemption request.]~~

~~7-1 8.1~~ 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~~ proposed classification. 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 8.2~~ 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 8.3~~ The Department of Education shall make a final determination within 30 calendar days from the written notice of review on the ~~Under Improvement status~~ proposed classification of the school or district based on the evidence or other substantive reasons presented by the school or district.

Regulatory Implementing Order

1025 Delaware Interscholastic Athletic Association (DIAA)

1049 DIAA Definitions

1050 DIAA Sportsmanship

1051 DIAA Senior High School Interscholastic Athletics

1052 DIAA Junior High/Middle School Interscholastic Athletics

1053 DIAA Waiver Procedure

1054 DIAA Investigative Procedure

1055 DIAA Appeal Procedure

1056 Recognition of Officials' Associations

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the

State Board of Education to amend 14 **DE Admin. Code** 1050 DIAA Sportsmanship by changing the number to 14 **DE Admin. Code** 1007 in order to conform with other number changes for the DIAA regulations. Section 2.4.1 Appeals, is also amended in order to align it with the other changes in the DIAA regulations. In the April 1st *Register of Regulations* Volume 7 Issue 10 the publication did not show this change by crossing out the version of 2.4.1 that was removed. The error has been corrected in the final version.

The Secretary of Education also seeks the consent of the State Board of Education to repeal and replace the other eight (8) DIAA regulations.

Delaware Interscholastic Athletic Association (DIAA), 14 **DE Admin. Code** 1025 will be renumbered as 14 **DE Admin. Code** 1006 and retain the same name. It now includes the content of 14 **DE Admin. Code** 1053 DIAA Waiver Procedure, 14 **DE Admin. Code** 1054 DIAA Investigative Procedure and 14 **DE Admin. Code** 1055 DIAA Appeal Procedure. In addition, it includes sections on: the organization's name and purpose; on membership; the Board of Directors; the Executive Director; responsibilities of the member schools; the reporting of violations and protests and complaints to DIAA and additional penalties and fines. The section on the reporting of violations and protests and complaints to DIAA and the section on additional penalties and fines were formally in 14 **DE Admin Code** 1051 and 1052. Delaware Interscholastic Athletic Association (DIAA), 14 **DE Admin. Code** 1025 has also been revised to reflect the changes in the Delaware Interscholastic Athletic Association processes and procedures as found in the reorganization of DIAA through 14 **Del.C.** Ch.3.

DIAA Senior High School Interscholastic Athletics 14 **DE Admin. Code** 1051 and DIAA Junior High/Middle School Interscholastic Athletics 14 **DE Admin. Code** 1052 have been renumbered as 14 **DE Admin. Code** 1008 DIAA Junior High/Middle School Interscholastic Athletics and 14 **DE Admin. Code** 1009 DIAA Senior High School Interscholastic Athletics. Both 1008 and 1009 will now include the content of two previous regulations 14 **DE Admin. Code** 1049 DIAA Definitions and 14 **DE Admin. Code** 1056 Recognition of Officials' Associations. Both 1008 and 1009 have been totally realigned. Instead of 36 and 38 sections respectively the regulations have ten (10) sections which are parallel in design. These regulations have also been revised to reflect the changes in the Delaware Interscholastic Athletic Association as found in the reorganization of DIAA through 14 **Del.C.** Ch.3.

In addition to the realignment of 14 **DE Admin. Code** 1008 and 1009 they contain the following changes:

1. The term "Relative Caregiver" was added in all references to parents and guardians in order to include that type of student/adult relationship.

2. Under 2.2 Eligibility, Residence, “with the exception of boarding school students” was added to 2.2.1.
3. The status of students who are homeless was added in 2.2.1.6 and 2.4.2.6 in 14 **DE Admin. Code** 1008 and in 2.2.1.8 and 2.4.2.6 in 14 **DE Admin. Code** 1009.
4. In section 2.3.2 in 14 **DE Admin. Code** 1008 and 2.3.3 in 14 **DE Admin. Code** 1009. issues have been clarified for students with disabilities who are placed in a special school or programs administered by a school district or charter school which sponsors junior high/middle school and senior high school interscholastic athletics. In the April 1st *Register of Regulations* Volume 7 Issue 10 the publication did not show that in 14 **DE Admin. Code** 1009 sections 2.3.3 and 2.3.3.1 were eliminated. This error has been corrected in the final version.
5. In 2.5.1.5, under 2.5 Eligibility, Amateur Status, the permissible cash value of a gift was increased from \$50.00 to \$150.00.
6. In 2.7.1.2 and 2.7.1.2.1 the definition of the term “Hardship has been clarified as well as conditions for seeking a waiver under the hardship rule. Also, 2.7.2.1 was added (in 14 **DE Admin. Code** 1009 only) to clarify the eligibility status of eighth grade students who are in eighth grade for a second time.
7. Under 2.8 (in 14 **DE Admin. Code** 1009 only) the term “international students” was substituted for “foreign students” when referring to students who are not part of a foreign exchange program and these “international students” will now be treated as transfer students under DIAA regulations.
8. Under 4.2 Practice Sessions, in 4.2.1 the minimum number of practice days has been changed from “(3) three weeks” to “21 calendar days”. In 4.2.3 the sentence “However, there shall be one day of no activity (practice, scrimmage or contests) during any seven day period” was added at the end.
9. Under 5.4 All-Star Contests in 5.4.5 (in 14 **DE Admin. Code** 1009 only), the financial report now has to be filed in ninety (90) days not Thirty (30) days and the fine for not filing on time has been raised from \$50.00 to \$300.00.
10. Under 7.5 Coaching Out of Season, in 7.5.1 (in 14 **DE Admin. Code** 1009 only), the status of eighth and ninth grade students has been clarified. In 7.5.2.4 the words “as well as to members of the student body” was added at the end of the sentence (in both 14 **DE Admin. Code** 1008 and 1009).
11. Under 9.1 Award in 9.1.1 “not more than \$150.00” was added after the word “symbolic” to place a cap

on the value of awards. In 9.1.4 the retail aggregate value of the awards was increased from \$100.00 to \$150.00.

12. The reference to boxing was removed from both 14 **DE Admin Code** 1008 and 1009.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on March 19, 2004, in the form hereto attached as *Exhibit “A”*. Written comments were received from the State Council for Citizens with Disabilities and the Governor’s Advisory Council for Exceptional Citizens. The department offers the following comments:

The State Council for Citizens with Disabilities and the Governor’s Advisory Council for Exceptional Citizens suggested that the definition of “Student with a disability” was under inclusive because it does not specifically refer to Section 504 of the Rehabilitation Act, that students who attend the Sterck School are being treated differently than students who attend other special schools, and that Section 5.1.4.1 of 14 **DE Admin Code** 1008 and Section 5.1.4.1 of 14 **DE Admin. Code** 1009 violate Title IX of the Education Amendments Act of 1972.

Section 2.3.2 of 14 **DE Admin Code** §1008 and Section 2.3.3 of 14 **DE Admin. Code** 1009 address where students with disabilities who are placed in special schools or programs are eligible to participate in interscholastic athletics. By definition, the regulations limit special schools and programs to those schools and programs that serve students who have been identified as in need of special education pursuant to the IDEA. Students qualifying for protection under Section 504 are eligible to participate in interscholastic athletics at their regular school under the same eligibility criteria as any other student. Any student, including those qualifying for protection under Section 504, who needs relief from a particular situation, may seek a waiver pursuant to 14 **DE Admin. Code** 1006.9.

Regarding the Councils’ concerns that Sterck students are being treated differently than students attending other special schools, the copy of the regulation that was approved by DIAA and the State Board of Education and forwarded to the Register for publication indicated that sections 2.3.3 and 2.3.3.1 were being deleted and what was published as section 2.3.4 was supposed to be a new section 2.3.3. With the deletion of sections 2.3.3 and 2.3.3.1, the Sterck School is not being treated differently than all other special schools. If a special school, including the Sterck School, chooses to sponsor interscholastic athletics, their students would be expected to compete on that team. DIAA does, however, have the power to hear individual waivers of this rule. See 14 **DE Admin. Code** 1006.9.

The Department has carefully considered the Councils’ concern that section 5.1.4.1 of 14 **DE Admin Code** 1008 and section 5.1.4.1 of 14 **DE Admin. Code** 1009 violate

Title IX of the Education Amendments Act of 1972. The Department respectfully disagrees. Title IX permits schools to field separate teams for members of each sex when either the sport is a contact sport or the excluded sex's athletic opportunities have been previously limited. The policy behind DIAA's exclusion of male athletes from all-female teams is to provide female athletes with athletic opportunities that have historically been denied. See *Williams v. School District of Bethlehem, PA*, 998 F.2d 168 (3d Cir. 1993), *cert. denied*, 510 U.S. 1043(1994).

In addition, 14 **DE Admin Code** 1008 2.3.4 and Regulation 14 **DE Admin. Code** 1009.2.3.6 and their prohibition of participation in interscholastic athletics if a student is enrolled in an alternative school for disciplinary reasons, reflects the long-standing policy of DSSAA, DIAA's predecessor organization, and is consistent with the 14 **DE Admin. Code** 610.7.0. Regarding the Councils' concern with mandatory caps on years of participation in a sport and age limits, DIAA carefully weighed the risks of competition against the obvious benefits and struck a balance which allows for waivers of the age rule on a non-scoring basis in non-contact sports. Lastly, the 5 consecutive day rule set forth in section 3.15 of both 14 **DE Admin. Code** 1008 and 1009 has been in place for some time and was readopted by DIAA at the request of its Sports Medicine Committee. DIAA has received no complaints from member schools, parents or students that it is overly burdensome.

Therefore, with the exception of correcting some grammatical errors, no changes are recommended in response to the comments received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin Code** 1050 Sportsmanship and to repeal and replace 14 **DE Admin. Code** 1025, 1049, 1051, 1052, 1053, 1054, 1055, and 1056 by creating 14 **DE Admin. Code** 1006, 1007, 1008 and 1009. With the exception of 14 **DE Admin. Code** 1050 Sportsmanship the regulations have been totally reformatted and amended as indicated in the Summary. These changes are necessary for the proper operation of the Delaware Interscholastic Athletic Association.

III. Decision to Amend and to repeal and Replace the Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1050 and to repeal and replace 14 **DE Admin. Code** 1025, 1049, 1051, 1052, 1053, 1054, 1055, and 1056. Therefore, pursuant to 14 **Del.C.** Ch.3, 14 **DE Admin. Code** 1025, 1050, 1049, 1051, 1052, 1053, 1054, 1055, and 1056 attached hereto as

Exhibit "B" are hereby amended and repealed and replaced. Pursuant to the provision of 14 **Del.C.** §122(e), these sections of 14 **DE Admin. Code** are hereby amended and 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** 1006, 1007, 1008 and 1009 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** Ch.3 on May 20, 2004. 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 20th day of May 2004.

DEPARTMENT OF EDUCATION
Valerie A. Woodruff, Secretary of Education

APPROVED THIS 20TH DAY OF MAY 2004

STATE BOARD OF EDUCATION
Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

1006 Delaware Interscholastic Athletic Association (DIAA)

1.0 Organization Name and Purpose: The organization shall be known as the Delaware Interscholastic Athletic Association (DIAA) and shall function as the official designee of the Secretary of Education with the authority to implement the Department of Education's Rules and Regulations governing the conduct of interscholastic athletics.

2.0 Membership in DIAA

2.1 Full Member Schools: Any secondary school including private, public, vocational-technical, and charter schools, as authorized by 14 **Del.C.** Ch. 5, may become a full member school of DIAA by payment of dues and a signed

affirmation of the obligations of membership.

2.1.1 A full member school is a non-voting member of DIAA and does not participate in its day-to-day governance. A full-member school may at any time make appropriate recommendations for policy action to the DIAA Board of Directors for its consideration.

2.2 Associate Member School: Any school, not a full member school, located within the boundaries of the state of Delaware and containing grades 6 through 8, or 8 through 12, or any grouping of such grade levels, may apply for status as an associate member school provided the applicant sets forth good cause and sufficient justification why such school cannot become a full member school. The initial application may be submitted at any time but renewal applications shall be submitted to the DIAA office no later than May 1 of each year.

2.2.1 The membership application shall contain a statement that the school will abide by the Rules and Regulations of the Department of Education and the Delaware Interscholastic Athletic Association and in those cases wherein the school cannot comply, the application shall set forth the specific rule and regulation, and a sufficiently acceptable explanation of why the rule or regulation cannot be kept in force or why the school is incapable of compliance. Full compliance shall be made with all rules and regulations when an associate member school competes with a full member school of DIAA or a comparable state association; participates in DIAA sanctioned tournaments/meets in cross country, indoor track, wrestling (except dual-team tournaments), outdoor track, and golf involving the aforementioned full member schools; or participates in a state championship event.

2.2.2 Such associate member schools, after initial approval, shall be reviewed each year by the DIAA Board of Directors for the purpose of approving, rejecting, or modifying their application for renewal of associate member status.

2.3 Membership Dues Schedule: Yearly dues for full member and associate member schools shall be as follows:

2.3.1 \$400 for middle schools.

2.3.2 \$600 for high schools with enrollments of 499 or less.

2.3.3 \$800 for high schools with enrollments of 999 or less.

2.3.4 \$1,000 for high schools with enrollments of 1,499 or less.

2.3.5 \$1,200 for high schools with enrollments of 1,999 or less.

2.3.6 \$1,400 for high schools with enrollments of 2,000 or more.

2.3.7 Membership dues shall be paid each year by August 1. Full member and associate member schools which fail to comply may be subject to penalties as determined by the DIAA Board of Directors.

2.4 Participation in State Championship Tournaments/Meets: Any member high school in good standing, is sponsoring a team in a given sport, and is in compliance with all applicable DIAA Rules and Regulations shall be eligible for the DIAA approved state championship tournament/meet in that sport.

2.5 Member schools shall comply with the regulations of the Delaware Interscholastic Association and acceptance of membership shall be construed as an agreement to that effect.

3.0 DIAA Board of Directors

3.1 Conflict of Interest: Any member of the Board of Directors who may be directly affected or whose school or school district may be directly affected by a potential decision related to an appeal or waiver request shall recuse himself or herself from consideration of the matter and shall not vote on that appeal or waiver request. The Chairperson of the Board is responsible for maintaining the integrity of the decision making process.

3.2 Committees of the DIAA Board of Directors

3.2.1 DIAA Board standing committees include: Rules and Regulations, Officials, Sports Medicine; Sportsmanship and one for each DIAA recognized sport. The Chairperson of the DIAA Board may appoint additional short term committees with specific assignments when deemed necessary.

3.2.1.1 The committee for each DIAA recognized sport shall have, in writing, procedures for determining tournament berths and selecting tournament sites. Such procedures shall be on file with the Executive Director and sent to the administrative head of each member school.

3.3 Committee Membership

3.3.1 The Chairperson of the DIAA Board of Directors and the Executive Director shall be ex-officio members of all committees. Committee membership shall be geographically representative and committee membership may include administrators, athletic directors, coaches, local school board members, officials and public members.

3.3.2 The Chairperson of the DIAA Board of Directors shall appoint individuals to serve as committee chairpersons. The individuals appointed shall serve for an indefinite period of time. The Chairperson of the Board, however, with the advice of the Executive Director, in his or her discretion, may remove a committee chairperson.

3.3.3 The Committee Chairperson, with the advice and consent of the Executive Director, shall appoint individuals to serve on the committee. The individuals so appointed shall serve for an indefinite period of time. The Committee Chairperson, however, with the advice and consent of the Executive Director, may, in his or her discretion, remove individuals from the committee.

4.0 Responsibilities of the Executive Director

4.1 Interpret the rules and regulations and grant waivers of rules and regulations: Any waiver granted shall be temporary and shall be subject to review and approval by the DIAA Board at a subsequent or special meeting. All decisions or actions as noted above shall be documented and shall be a part of any hearing or appeal procedure.

4.2 Decide issues between meetings of the Board of Directors. The Executive Director shall initiate a review of or fully investigate an alleged violation of the Rules and Regulations that he/she has seen, heard or read about, or which has been reported to him/her. Subsequent action by the Executive Director may include an official reprimand, placement on probation, a fine, the imposing of sanctions, or the suspension from participation for a designated period of time of a player, team, coach or official to ensure the necessary, orderly, and proper conduct of interscholastic competition.

4.3 Carry on the business of the DIAA Board and DIAA between meetings: Waiver requests decided by the Executive Director shall be temporary and shall be subject to review and final approval by the Board of Directors. No school or individual shall be penalized in any case in which the DIAA Board reverses an earlier ruling of the Executive Director. In addition, the Executive Director shall administer the day-to-day operation of the organization.

5.0 Responsibilities, Powers, and Duties of the Administrative Head of School

5.1 Responsibilities of Administrative Head of School

5.1.1 The administrative head of middle level and high school member schools shall be responsible for the conduct of the interscholastic athletic program in which representative teams participate including the organization and scheduling of individuals and teams. The administrative head may delegate his or her authority, but such delegation will not negate the responsibility for a violation of the DIAA Regulations by his/her school.

5.2 Powers and Duties of Administrative Head of School

5.2.1 The administrative head of each member school shall exercise general control over all of the interscholastic athletic matters of his/her school which include but are not limited to the following:

5.2.1.1 Sanctioning all interscholastic athletic contests in which his/her school participates.

5.2.1.2 Excluding any contestant because of improper conduct.

5.2.1.3 Excluding any contestant whose physical health would be jeopardized by such participation, because of illness or injury suffered, until such time as the contestant is declared physically fit by the school or attending physician.

5.2.1.4 Protecting the well-being of all

visitors and officials attending interscholastic athletic contests conducted by his/her school. Administrative heads of member schools shall be expected to provide adequate security and, in the absence of such provisions, penalties may be imposed.

5.2.1.4.1 When a contest is conducted at a neutral site, the administrative heads of the participating schools shall be held jointly responsible for the protection and well-being of all visitors and officials. In the absence of adequate security, penalties may be imposed upon either or both of the schools.

5.2.1.5 Protecting the well-being of the school's participants by providing them with safe and suitable uniforms and equipment.

5.2.1.6 Ensuring that all required contracts for athletic contests in which the school participates are in writing and bear the proper signatures.

5.2.1.7 Designating a staff member of the school as the faculty manager for the teams representing the school or to serve as the faculty manager.

5.2.1.8 Ensuring that an authorized representative accompanies the school's teams to all contests.

5.2.1.9 Certifying in writing the eligibility of his/her school's contestants in accordance with the Regulations of the Department of Education.

5.2.1.10 Exercising such other powers regarding the interscholastic athletic program of the school as are consistent with the needs of the school and with the provisions and spirit of the Regulations of the Department of Education.

5.2.1.11 Urging all students competing on the school's teams to obtain medical accident insurance which covers athletic participation.

6.0 Amendments to Department of Education Regulations

6.1 The DIAA Board, The Secretary of Education, the Executive Director of DIAA or any member school may propose changes, additions or deletions to the Department of Education regulations.

6.1.1 Proposed changes shall be submitted in writing by a member school(s) to the Executive Director and these proposed changes and any other changes submitted by the Secretary of Education or the Executive Director of DIAA or the DIAA Board of Directors shall be reviewed by the Rules and Regulations Committee.

6.1.2 Any proposed changes to the Regulations along with comments received from the Rules and Regulations Committee, shall be considered at a scheduled meeting of the DIAA Board. Proposed changes adopted by the Board shall thereafter be submitted to the Secretary of Education who will place them on the State Board of Education agenda for review and final approval.

6.1.2.1 All member schools shall then be advised in writing of any proposed changes. The member schools and the public shall have an opportunity to review and comment on the proposed changes during the thirty day period that the regulations are advertised in the Register of Regulations (as per the Administrative Procedures Act).

7.0 Reporting Violations of Department of Education Regulations and Protests and Complaints to DIAA

7.1 Reporting violations of Department of Education regulations

7.1.1 If a school violates a provision of the Department of Education regulations the administrative head or his/her designee shall notify the Executive Director in writing of the violation. All violations shall be reviewed by the DIAA Board of Directors which may impose additional penalties.

7.1.1.1 Additional penalties may be imposed for repeat offences or as deemed necessary to assure proper conduct of interscholastic athletics.

7.2 Reporting Protests and Complaints

7.2.1 All protests and complaints brought before DIAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors.

8.0 DIAA Board of Directors Investigative Procedure

8.1 The following investigative procedure shall be followed when the DIAA office receives information indicating that an incident has occurred which is not in the best interests of the interscholastic athletic programs of the member schools of DIAA.

8.1.1 The administrative head of the member school involved shall be notified by telephone and confirmed by letter of the pending investigation (copy to be forwarded to the chief school officer). The notification shall contain an explanation of the nature of the investigation and identify the person(s) conducting the investigation.

8.1.2 Permission shall be obtained from the administrative head of the member school to interview students and/or staff members and each person interviewed shall be informed of the nature of the investigation.

8.1.3 Upon completion of the investigation, a written statement of charges shall be presented to the administrative head of the charged school (copy to be forwarded to the chief school officer).

8.1.4 When immediate punitive action by the Executive Director is necessary, the action taken shall be stated in writing.

8.1.5 When charges are to be presented to the DIAA Board of Directors, the charged school shall be advised of the meeting date, time, and location and shall be provided with an opportunity to respond to the charges.

9.0 Waiver of DIAA Rules and Regulation

9.1 General

9.1.1 The DIAA Board has the authority to set aside the effect of any athletic rule or regulation, subject to any limitations set forth in the specific rule or regulation, when the affected party establishes by the preponderance of the evidence, all of the following conditions:

9.1.1.1 In the case of eligibility waiver requests, there exists a hard ship as defined by 9.2.1;

9.1.1.2 Strict enforcement of the rule in the particular case will not serve to accomplish the purpose of the Rule;

9.1.1.3 The spirit of the rule being waived will not be offended or compromised;

9.1.1.4 The ~~principal~~ principle of educational balance over athletics will not be offended or compromised; and

9.1.1.5 The waiver will not result in a safety risk to teammates or competitors.

9.1.2 Waivers are exceptional and extraordinary relief from the athletic rules and regulations. Ignorance of any rule alone, whether by the student athlete, his/her family or school, shall not be sufficient reason for waiving a rule. The burden of proof rests on the applicant (the student, his/her parents or guardians, principal, headmaster or other affected party) to show extenuating circumstances warranting waiver.

9.1.3 The waiver request shall contain all facts pertaining to the case, including sufficient data to make it possible to reach a decision without further investigation. It is not the duty of the Executive Director or the DIAA Board to produce or collect information.

9.1.4 Waiver requests would be filed promptly when it becomes apparent to the student, principal, headmaster or other affected party, that a waiver will be required. In any event, all requests for a waiver of the rules, with all documentation complete, must be received by the Executive Director at least 21 calendar days before the next regularly scheduled meeting of the DIAA Board in order to be placed on the agenda for that meeting.

9.1.4.1 Notwithstanding this requirement, the Chairperson of the DIAA Board may at his/her discretion add a waiver request to an agenda in an emergency situation. Failure to file a waiver request in a timely manner when all information is available shall not be considered an emergency situation.

9.1.5 The applicant is entitled to a hearing on his/her waiver request. Waiver hearings shall be conducted in an informal manner that affords all parties the opportunity to present all information and all relevant arguments.

9.1.5.1 The DIAA Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

9.1.5.2 Any party to a proceeding before the DIAA Board may be represented by counsel. An attorney representing a party in a proceeding before the Board shall notify the Executive Director of the representation in writing as soon as practicable.

9.1.5.3 Strict rules of evidence do not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

9.1.5.4 Any document introduced into evidence at the hearing shall be marked by the Board and shall be a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties, if any, and to each of the Board members present for the hearing unless otherwise directed.

9.1.5.5 Any request by the DIAA Board for additional information pertaining to a waiver request shall be promptly supplied by the affected students, coaches, and member schools.

9.1.5.6 DIAA shall provide a stenographic reporter at a hearing at its own expense.

9.1.6 The DIAA Board shall consider the entire record of the case in reaching its final decision. Unless otherwise provided, a decision made on a waiver request shall be effective immediately.

9.1.7 The DIAA Board's decision shall be incorporated into a final order, which shall be signed and mailed to the parties within twenty (20) days of the hearing.

9.2 Eligibility Rule Waiver Request

9.2.1 Unless specifically defined in the eligibility rule in question, "hardship" means a hardship peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school, which deprive him or her of all or part of one of his or her opportunities to participate in a particular sports season. Ignorance of any rule alone, whether by the student athlete, his/her family or school, shall not be sufficient reason for waiving a rule. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

9.2.2 All eligibility hardship waiver requests shall be processed on forms approved by the DIAA Board and in accordance with the following procedures:

9.2.2.1 A request for a waiver of the eligibility rules must be directed by the student to the involved member school's principal, headmaster or their designee who shall then file a written request stating the full particulars of the case and the reasons felt by the student or the administrator, or both, for granting the waiver.

9.2.2.1.1 All requests for eligibility

rule waivers must be signed by the Principal or Headmaster of the school requesting the waiver and must include a letter from the Principle or Headmaster indicating whether the school supports the waiver request.

9.2.2.1.2 The school shall submit a waiver request form when requested by individual student athletes. The DIAA Board, however, may take into consideration the school's position on the waiver request when rendering its decision.

9.2.2.2 To aid the DIAA Board in making an informed decision, the waiver request shall include the student's:

9.2.2.2.1 Official transcripts from the sixth grade through the current school year and semester grades for the current school year;

9.2.2.2.2 Attendance records for the last two (2) years;

9.2.2.2.3 A letter from the Principal or Headmaster either supporting or not supporting the waiver request;

9.2.2.2.4 Medical records (if applicable);

9.2.2.2.5 Legal documentation (if applicable);

9.2.2.2.6 IEP's (if applicable); and

9.2.2.2.7 Any documentation/evidence to substantiate a hardship or extenuating circumstance exists.

9.2.3 An appearance by the student and [their his or her] parent, guardian or Relative Caregiver before the DIAA Board is mandatory on requests for an eligibility waiver. An appearance by a school representative is strongly encouraged.

9.3 Waiver Requests of Non-eligibility Rules

9.3.1 The Principal or Headmaster of a member school, or any other individual may request a waiver of a rule, regulation, guideline, policy or procedure of DIAA not directly related to student eligibility when special circumstances arise that, in the Principal or Headmaster's opinion, or in the opinion of the individual, call for relief from, or modification of the effects of the rule.

9.3.2 All requests for non-eligibility waivers must be in writing, signed by the Principal or Headmaster.

9.3.3 An appearance by the Principal or Headmaster or his/her designee or other individual requesting the non-eligibility waiver is optional. If the Principal or Headmaster or his/her designee or other individual requesting the non-eligibility waiver choose to appear before the DIAA Board he/she must notify the Executive Director of his/her intent to do so at the time the request for waiver is filed. Otherwise, the principal or his/her designee, or other individual, may attend the meeting but may not be permitted to address the DIAA Board.

9.3.4 If the waiver requested would affect more

than one member school, the waiver applicant shall provide the position of the other affected member schools on the waiver request in their written application. The failure to provide this information may result in a delay in the Board's consideration of the waiver request.

10.0 Appeal Procedure to the DIAA Board of Directors

10.1 Decisions of the Executive Director, with the exception of those to uphold or rescind the suspension resulting from a game ejection, may be appealed de novo to the DIAA Board of Directors. The Board of Directors has been designated by the Secretary of Education to conduct fact finding hearings or conferences in matters regarding interscholastic athletics.

10.1.1 Initiation of an Appeal to the DIAA Board

10.1.1.1 Whenever a right of appeal of a decision to the DIAA Board of Directors is provided, an aggrieved person who is under the regulatory authority of DIAA and who has, in fact, suffered a direct injury due to the decision, may initiate an appeal by filing a Notice of Appeal with the Executive Director. The notice shall be in writing, shall be signed by the person making the request (or by the party's authorized representative), and shall be delivered to the Executive Director by certified mail.

10.1.1.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or regulation involved in the decision, the names of the parties, and the grounds for the appeal.

10.1.1.3 The notice of appeal shall be filed within a reasonable time after the controversy arises, but in no event shall a notice be filed more than thirty (30) calendar days after the appellant's receipt of written notice that official action has been taken by the Executive Director or other authorized person or body.

10.1.1.3.1 Notwithstanding the above, the notice of appeal shall be served ten (10) calendar days after appellant's receipt of written notice that official action has been taken by the Executive Director or the Sportsmanship Committee pursuant to 14 DE Admin. Code 1007.

10.1.1.4 A copy of the notice of appeal shall be delivered to all other parties to the proceeding at the same time it is sent to the Executive Director. A copy of any other paper or document filed with DIAA shall also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.

10.1.1.5 Upon receipt of an adequately detailed notice of appeal, the Executive Director shall place the appeal on the next meeting agenda of DIAA.

10.1.2 Record of Prior Proceedings

10.1.2.1 If proceedings were previously held on the matters complained of in the notice, the

committee which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Director.

10.1.2.2 The record shall contain any written decision, a copy of the rule or regulation involved, any minutes of the meetings(s) at which a disputed action was taken, a verbatim transcript of the hearing conducted by the party below, and all exhibits presented at the agency.

10.1.2.3 The record shall be filed with the Executive Director within ten (10) days of the date the Executive Director notifies the committee that the notice was filed, unless directed otherwise. A copy of the record shall be sent to the appellant when it is submitted to the Executive Director.

10.1.3 DIAA Board Hearing Procedures for Appeals

10.1.3.1 Record Review

10.1.3.1.1 If a hearing was previously held on the matters complained of in the notice, the parties to the proceeding before the DIAA Board may agree to submit the matter to the Board on the existing record without the presentation of additional evidence. The parties shall inform the Executive Director in writing of their agreement to submit the matter to the Board on the existing record no later than ten (10) days after the notice was filed.

10.1.3.1.2 If the parties agree to submit the matter for decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The written statements shall be filed no later than ten (10) days before the consideration date, unless otherwise directed.

10.1.3.1.3 If the parties agree to submit the matter for decision on the existing record, they may nonetheless request oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written statement of appeal. There will be no oral argument unless it is requested when the written statement of appeal is submitted. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen (15) minutes per side with an additional five (5) minutes for rebuttal.

10.1.3.1.4 If the parties agree to submit the matter for decision on the existing record, the DIAA Board's decision shall be based on the existing record, the written statements and oral argument, if any.

10.1.3.2 Evidentiary Hearings

10.1.3.2.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to rest on the existing record, or when the DIAA Board otherwise decides to receive additional evidence.

10.1.3.2.2 The Chairperson or his/her designated representative shall be the hearing officer. The hearing officer shall conduct the hearing and make rulings

on the admissibility of evidence.

10.1.3.2.3 The DIAA Board of Directors may continue, adjourn, or postpone a hearing for good cause on motion of a party or upon its own motion.

10.1.3.2.4 Objections to the admission of evidence shall be brief and shall state the grounds for such objections. Objections with regard to the form of question will not be considered.

10.1.3.2.5 The hearing will proceed with the appellant first presenting its evidence and case. The responding party may then present its case. The appellant will have an opportunity to present rebuttal evidence.

10.1.3.2.6 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted in the discretion of the DIAA Board.

10.1.3.2.7 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the DIAA Board.

10.1.3.2.8 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

10.1.3.2.9 Any party to a proceeding before the DIAA Board may be represented by counsel. An attorney representing a party in a proceeding before the Board shall notify the Executive Director of the representation in writing as soon as practicable.

10.1.3.2.10 Strict rules of evidence do not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

10.1.3.2.11 Any document introduced into evidence at the hearing shall be marked by the DIAA Board and shall be a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties, if any, and to each of the DIAA Board members present for the hearing unless otherwise directed.

10.1.3.2.12 DIAA shall provide a stenographic reporter at a hearing at its own expense.

10.1.3.2.13 The Board's decision shall be incorporated into a final order, which shall be signed and mailed to the parties within twenty (20) days of the hearing.

11.0 Appeal to the State Board of Education: Any party to a controversy involving the athletic rules and regulations, including a waiver thereof, may appeal to the State Board of Education by setting forth such grievance in a petition. The petition or notice of appeal shall be served on the Secretary of Education no later than thirty (30) calendar days after receipt of the decision. In addition, a copy of the petition or notice of appeal shall be served on the Executive Director of

DIAA by certified or registered mail. Any decision shall otherwise be final. All appeals to the State Board of Education shall be on the basis of the record. (See 14 Del.C. §312 and the State Board of Education Manual for the Conduct of Hearings Before the State Board of Education).

1050 1007 DIAA Sportsmanship

1.0 Member schools are required to conduct all of their athletic affairs with other schools in a spirit of good sportsmanship. Acts which are prima facie evidence of a failure to abide by this rule are those which are noted below and others of a similar nature which transgress the usually accepted code for good sportsmanship.

1.1 Failure to provide for proper control of spectators at a contest. When the number of spectators is expected to be large in relation to the seating capacity of the facility, uniformed state, county, or local police shall be provided for crowd control. The host school is expected to take reasonable and proper steps to assure crowd control under any foreseeable conditions.

1.2 Failure of a team or competitor to stay in a contest until its normal end when failure to do so is related to dissatisfaction with the officiating of the contest, unless the physical safety of the team or competitor would have been endangered by continuing the contest.

1.3 Harassment of game officials by a coach. Going onto the playing surface to interrupt a contest in protest of a decision by an official; conduct by a coach, team member, or any individual in the official party which invokes a penalty against the team; continued and visible actions by a coach which indicate to the team and/or to the spectators that the coach believes the game is being improperly officiated; public demonstrations with game officials which indicate to others extreme dissatisfaction with the officiating; and such related actions when exhibited in aggravated form are evidence of poor sportsmanship.

1.4 Failure of a school to use every means at its disposal to impress upon its faculty, student body, team members, coaching staff, and spectators the importance of good sportsmanship before, during, and after athletic contests. The host school is encouraged to read a brief statement concerning sportsmanship prior to the start of each athletic contest.

1.5 Failure of an administrator, athletic director, coach, athlete, official, or spectator to comply with the directions stipulated in the following Code of Interscholastic Athletics:

1.5.1 The School Administrator and Athletic Director shall:

1.5.1.1 Encourage and promote friendly relations and good sportsmanship throughout the school by requiring courtesy and proper decorum at all times, by familiarizing students and others in the community with the ideals of good sportsmanship, and by publicizing these concepts and attitudes so that all members of the school

community understand and appreciate their meaning.

1.5.1.2 Review the Sportsmanship Rule with all athletic staff.

1.5.1.3 Insist upon strict compliance with all DIAA rules and regulations.

1.5.1.4 Insist upon adequate safety provisions for both participants and spectators in all activities.

1.5.1.5 Encourage all to judge the success of the interscholastic athletic program based on the attitude of the participants and spectators rather than on the number of games won or lost.

1.5.1.6 Insist that all participants adhere to the highest standards of good sportsmanship as a means of ensuring desirable spectator attitudes.

1.5.1.7 Provide sanitary and attractive facilities for the dressing and housing of visiting teams and officials.

1.5.2 The Coach shall:

1.5.2.1 Demonstrate high ideals, good habits, and desirable attitudes in his/ her personal and professional behavior and demand the same of his/her players.

1.5.2.2 Recognize that the purpose of competition is to promote the physical, mental, social, and emotional well-being of the individual players and that the most important values of competition are derived from playing the game fairly.

1.5.2.3 Be a modest winner and a gracious loser.

1.5.2.4 Maintain self-control at all times and accept adverse decisions without public display of emotion or dissatisfaction with the officials. Register disagreement through proper channels.

1.5.2.5 Employ accepted educational methods in coaching and give his/her players an opportunity to develop and use initiative, leadership, and judgement.

1.5.2.6 Pay close attention to the physical well-being of his/her players, refusing to jeopardize the health of an individual for the sake of improving his/her team's chances to win.

1.5.2.7 Teach athletes that it is better to lose fairly than to win unfairly.

1.5.2.8 Discourage gambling, profanity, abusive language, and similar violations of the true sportsman's or sportswoman's code.

1.5.2.9 Refuse to disparage an opponent, an official, or others associated with interscholastic athletics and discourage gossip and rumors about them.

1.5.2.10 Properly supervise the athletes under his/her immediate care.

1.5.3 The Participant (athletes and cheerleaders) shall:

1.5.3.1 Be responsible for the perpetuation of interscholastic athletics. Strive to enhance the image of athletics not only as a member of a team but also as a

member of your school and community.

1.5.3.2 Be courteous to the visiting team. Your opponents wish to excel as much as you do. Respect their efforts.

1.5.3.3 Play hard to the limit of your ability regardless of discouragement. The true athlete does not give up, quarrel, cheat, bet, or grandstand.

1.5.3.4 Be modest when successful and be gracious in defeat. A true sportsman or sportswoman does not offer excuses for failure.

1.5.3.5 Understand and observe the playing rules of the game and the standards of eligibility.

1.5.3.6 Respect the integrity and judgement of the officials and accept their decisions without complaint.

1.5.3.7 Respect the facilities of the host school and do not violate the trust entailed in being a guest.

1.5.4 The Official shall:

1.5.4.1 Know the rules and interpretations and be thoroughly trained to administer them.

1.5.4.2 Maintain self-control in all situations.

1.5.4.3 When enforcing the rules, do not make gestures or comments that will embarrass the players or coaches.

1.5.4.4 Be impartial and fair, yet firm, in all decisions. A good official will not attempt to compensate later for an unpopular decision.

1.5.4.5 Refrain from commenting upon or discussing a team, player, or game situation with those not immediately concerned.

1.5.4.6 Conduct the game so as to enlist the cooperation of the players, coaches, and spectators in promoting good sportsmanship.

1.5.5 The Spectator shall:

1.5.5.1 Realize that he/she represents the school just as definitely as does a member of the team, and that he/she has an obligation to be a true sportsman or sportswoman and to encourage through his/her behavior the practice of good sportsmanship by others.

1.5.5.2 Recognize that good sportsmanship is more important than victory by approving and applauding good team play, individual skill, and outstanding examples of sportsmanship and fair play exhibited by either team. The following are some examples of poor sportsmanship which shall not be tolerated:

1.5.5.2.1 Profanity, vulgarity, obscene gestures, abusive language, and/or derogatory remarks.

1.5.5.2.2 Throwing objects.

1.5.5.2.3 Going onto the playing surface and interrupting a contest.

1.5.5.2.4 Use of alcohol or other controlled substances.

1.5.5.3 Respect the judgement and integrity of the officials, recognizing that their decisions are based upon game conditions as they observe them.

1.5.5.4 Treat visiting teams and officials as guests extending to them every courtesy.

1.5.5.5 Be modest in victory and gracious in defeat.

2.0 Processing Violations

2.1 Procedures

2.1.1 The Executive Director is specifically authorized to pursue any matter which, on the surface, has indications of being a sportsmanship violation.

2.1.2 Within twenty (20) calendar days of the incident, an alleged sportsmanship violation must be reported in writing to the Executive Director by the administrative head of a member school or by the Executive Board of an officials' association.

2.1.3 The Executive Director shall transmit a copy of the report to the principal of the school(s) involved.

2.1.4 Each principal concerned shall investigate and provide such information or answers to the report as are appropriate.

2.1.5 The Executive Director shall provide member schools and officials' associations with a specially designed form to facilitate the proper reporting of sportsmanship related incidents.

2.1.6 Upon receipt of all reports, the Executive Director shall review the documents and inform the school(s) involved of his/her disposition of the matter. The Executive Director may, in turn, refer the matter to the Sportsmanship Committee to investigate and adjudicate what appears to be a violation of the Sportsmanship Rule.

2.1.7 The Sportsmanship Committee shall review such available evidence as it deems necessary to reach a conclusion. Actions such as requesting reports and conducting interviews should not be interpreted as casting aspersions on a school adhering to DIAA regulations, but as an effort to keep all parties properly informed. Penalties up to and including suspensions of member schools may be imposed by the Sportsmanship Committee.

2.1.8 A copy of the Sportsmanship Committee's action shall be filed with the Executive Director and the administrative head of the school(s) involved.

2.2 Policies

2.2.1 The basis for the following policy statement is that a member school shall not be represented by individuals whose conduct reflects discredit upon the school. Insofar as unsportsmanlike actions by participants and spectators are concerned, the Sportsmanship Committee shall refer to the items previously identified in the Code of Interscholastic Athletics as well as the following guidelines:

2.2.1.1 The school whose administrator or athletic director behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:

2.2.1.1.1 Reprimanding _____ its

administrator or athletic director and providing written documentation to the Executive Director, or

2.2.1.1.2 Suspending its administrator or athletic director from representing the school in athletic events for a specified period of time not to exceed 180 school days, or

2.2.1.1.3 Having the entire school disciplined by DIAA.

2.2.1.2 An athlete shall not strike an official, opponent, coach, or spectator or display gross misconduct before, during, or after an athletic event. The athlete, depending on the seriousness of the act, may be declared ineligible by the principal, Executive Director, or Sportsmanship Committee for a specified period of time not to exceed 180 school days.

2.2.1.3 In the case of spectators physically assaulting an official, coach, or player, the school may be given the option of either taking punitive action against the offender or accepting discipline from DIAA.

2.2.1.4 Schools that do not fully cooperate in promoting the spirit of the Sportsmanship Rule may be disciplined by DIAA.

2.2.1.5 The school whose coach behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:

2.2.1.5.1 Reprimanding its coach and providing written documentation to the Executive Director, or

2.2.1.5.2 Suspending its coach from representing the school in athletic events for a specified period of time not to exceed 180 school days, or

2.2.1.5.3 Having the entire school disciplined by DIAA.

2.2.1.6 An administrator, athletic director, or coach may be considered as having committed an unsportsmanlike act if:

2.2.1.6.1 He/she makes disparaging remarks about the officials during or after a game either on the field of play, from the bench, or through any public news media, or

2.2.1.6.2 He/she argues with the official or indicates with gestures or other physical actions his/her dislike for a decision, or

2.2.1.6.3 He/she detains the official on the field of play following a game to request a ruling or explanation of some phase of the game, or

2.2.1.6.4 He/she makes disparaging or unprofessional remarks about another school's personnel.

2.2.1.7 All actions by a member school resulting from an investigation relative to the above policies shall be subject to approval by the Executive Director and/or the Sportsmanship Committee.

2.3 Penalties

2.3.1 Game Ejection

2.3.1.1 A player or coach disqualified before, during, or after a contest for unsportsmanlike and flagrant verbal or physical misconduct shall be suspended from the next complete (a winner is determined or a tie is declared) contest at that level of competition and all other complete or suspended contests in the interim at any level of competition in addition to any other penalties which DIAA or a conference may impose.

2.3.1.1.1 A player who leaves the team bench area and enters the playing field, court, or mat during a fight or other physical confrontation shall be ejected from the contest. A player who commits such an offense and is ejected by the game officials shall also be suspended from the next complete contest at that level of competition and all other complete or suspended contests at any level of competition in the interim. Additional penalties may be imposed if a player leaving the bench area becomes involved in the altercation.

2.3.1.2 A disqualified player or coach may not be physically present at any contest in that sport during his/her suspension.

2.3.1.3 If a coach is disqualified from the final contest of the season, his/her suspension shall carry over to the next year in that sport. In the case of an athlete, the same penalty shall apply if said athlete retains eligibility in that sport.

2.3.1.3.1 Coaches who do not fulfill their penalty in the same sport shall be disqualified for the appropriate length of time in their subsequent coaching assignment.

2.3.1.3.2 Seniors shall fulfill their penalty in the post-season all-star game in that sport. If not chosen to participate in the all-star game, they shall fulfill their penalty in another sport during the same season or another sport during a subsequent season. When a senior is disqualified from the last game of his/her high school career, the member school is requested to take appropriate administrative action to discipline the offending student.

See 3 DE Reg. 436 (9/1/99)

2.3.1.4 A player or coach ejected for a second time during the same season shall be subjected to a two-game suspension and meet, in a timely fashion, with the Sportsmanship Committee accompanied by his/her principal or designee and, in the case of an athlete, by his/her coach.

2.3.2 The following penalties represent degrees of discipline in enforcing the Sportsmanship Rule:

2.3.2.1 Reprimand - a reprimand may be given by the Executive Director or the Sportsmanship Committee. It is official notice that an unethical or unsportsmanlike action has occurred, is a matter of record and that such an occurrence must not be repeated.

2.3.2.2 Probation - probation is a more severe penalty and may be imposed by the Executive Director or the

Sportsmanship Committee on a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official. Probation may be expressed in one of the following ways:

2.3.2.2.1 Conditional probation wherein the offending party may participate in regular season contests, sanctioned events, and conference and state championships provided he/she/the school files with DIAA a plan indicating the measures that shall be taken to alleviate the problem which caused him/her/the school to be placed on probation, or

2.3.2.2.2 Restrictive probation wherein a member school or a particular team of a member school may engage in its regular season schedule but may not enter any sanctioned events, participate in any playoff toward a conference or state championship, or be awarded a conference or state championship.

2.3.2.3 Suspension - a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official may not participate in any DIAA sanctioned interscholastic competition.

2.4 Appeals

2.4.1 Decisions of the Executive Director or Sportsmanship Committee may be appealed to the DIAA Board of Directors in accordance with the procedure found in 14 DE Admin. Code 1006.10. In accordance with subsection 1006.10.1.1.3.1, the notice of appeal shall be served by certified mail within ten (10) calendar days after the appellant's receipt of the written notice that official action has been taken by the Executive Director or Sportsmanship Committee.

1008 DIAA Junior High/Middle School Interscholastic Athletics

1.0 National Federation of State High Schools, Conferences, Contracts and Equivalency Rules

1.1 National Federation of High School Associations

1.1.1 DIAA is affiliated with the National Federation of State High School Associations (NFHS). The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the DIAA Board of Directors.

1.1.1.1 The playing rules of the United States Tennis Association, the United States Golf Association and the United States Lacrosse Association are adopted for the sports of tennis, golf and girls' lacrosse respectively except as modified by the DIAA Board of Directors.

1.2 Conferences

1.2.1 Member schools may establish voluntary conference organizations that may be composed of public and non-public schools. When established they must submit its proposed membership and its constitution and bylaws to the DIAA Board of Directors and must be approved by the DIAA Board of Directors before the schools may enter into any contractual agreements.

1.2.1.1 All subsequent amendments to the constitution and bylaws of the conference must be compatible with all provisions of the DIAA Regulations; interpretations and rulings of the Executive Director, Sportsmanship Committee, and Board of Directors; state tournament regulations; and DIAA approved playing codes.

1.3 Contracts

1.3.1 Contracts between DIAA member schools or between DIAA member schools and full member schools of comparable state associations are encouraged but not required.

1.3.1.1 Conference master contracts are approved substitutes for individual contracts.

1.3.1.2 In the case of a dispute and provided either a signed individual contract or conference master contract was received in the DIAA office or postmarked prior to the contest in question, appeal may be made to the Executive Director or the DIAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

1.3.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the DIAA Board of Directors.

1.3.2 Contracts between DIAA member schools and non-member or associate member schools of comparable state associations are required.

1.3.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the DIAA member school being assessed a \$15.00 fine.

1.3.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the DIAA Board of Directors unless a signed individual contract is in place.

1.3.3 Contracts shall be interchanged according to the following provisions:

1.3.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

1.3.3.2 Contracts shall be drawn up by the faculty manager or other designated staff member of the home school of the earlier contest.

1.3.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

1.3.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was received in the DIAA office or postmarked prior to the contest in question and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the DIAA Board of Directors.

1.4 Equivalent Rules

1.4.1 A full member school shall not participate in a scrimmage or contest with an instate school that is not a member in good standing of DIAA.

1.4.1.1 Scrimmage is defined as: an informal competition between schools in which officials are not compensated, a score is not kept, the time periods are modified, the results of the competition are not reported to the media, the coaches may interrupt the play to provide instruction and the competition is strictly for practice purposes.

1.4.2 A full member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

1.4.3 An associate member school shall not participate in a scrimmage or contest with an in-state school that is not a member in good standing of DIAA unless the opposing school complies with the conditions specified in 1.4.2. However, the opposing school shall be exempt from those rules which DIAA has waived for its associate member school.

1.4.4 Member schools shall not participate in a practice, scrimmage, or contest with a non-school sponsored team.

1.4.5 Member schools shall not participate in a practice, scrimmage, or contest with college students. This provision shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

1.4.6 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a \$100.00 fine.

2.0 Eligibility: No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements.

2.1 Eligibility, Grades and Age

2.1.1 The junior high /middle school interscholastic program shall include grades 6-8, inclusive. No junior high/middle school student who has completed a season at the junior high/middle school level shall compete in the same sport at the senior high school level during the same school year. A junior high/middle school student who participates in a varsity or sub-varsity game at the high school level shall be ineligible to participate at the junior high/ middle school level in the same sport.

2.1.1.1 Eighth-grade students who become 15 years of age on or after June 15 in a school terminating in the eighth grade shall be eligible for all sports during the current school year provided all other eligibility requirements are met.

2.1.1.2 Permission shall be granted for 15-year old eighth-grade students in a school terminating in the eighth grade who are ineligible for junior high/middle school competition to participate in the district high school athletic program provided they meet all other eligibility requirements. In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

2.1.2 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non-scoring basis in non-contact sports.

2.2 Eligibility, Residence

2.2.1 With the exception of boarding school students, a student must be living with his/her custodial parent(s) legal guardian(s) or Relative Caregiver in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action. In the case of shared custody the parents must commit to sending the student to a particular school for the year. Maintaining multiple residences to circumvent this requirement shall render the student ineligible.

2.2.1.1 A student who, pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligible. If a student chooses to remain at his/her current school and then transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible for ninety (90) school days.

2.2.1.2 A student who changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, is granted permission to continue attending his/her present school, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

2.2.1.3 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 **Del.C.**, Ch.4.

2.2.1.4 A student who is a non-resident of Delaware shall be eligible to attend a public school, charter school or career-technical school if, in accordance with 14 **Del.C.** §607, his/her custodial parent, legal guardian or Relative Caregiver is a full-time employee of that district.

2.2.1.5 Notwithstanding 2.2.1, a student shall

be eligible at a public school, charter school or vocational-technical school if he/ she is enrolled in accordance with 14 **Del.C.** §202(f), the **[Relative] Caregivers School Authorization**.

2.2.1.5.1 An exception would be a student whose ~~relative caregiver~~ **Relative Caregiver** does not provide the documentation required by the ~~[Caregivers'~~ **Relative Caregiver**] School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the Relative Caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.2.1.6 Notwithstanding 2.2.1, a student who is homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2) shall be eligible to participate at the public school in which he/she is enrolled.

2.3 Eligibility, Enrollment and Attendance

2.3.1 A student must be legally enrolled in the junior high/middle school which he/she represents in order to participate in a practice, scrimmage, or contest.

2.3.2 Students with disabilities who are placed in special schools or programs administered by a school district or charter school which sponsors junior high/middle school interscholastic athletics.

2.3.2.1 Definitions:

"Campus" means a contiguous land area containing one or more school buildings.

"Special School or Program" means a school or program approved by the Department of Education with the approval of the State Board of Education to serve students with disabilities, but does not include alternative schools.

"Student With a Disability" means a "child with a disability" as that term in the Administrative Manual for Special Education Services (AMSES), 14 **DE Admin. Code** 925.

2.3.2.2 A student with a disability who is placed in a special school or program administered by a school district or charter school which sponsors junior high/middle school interscholastic athletics shall be eligible to participate in interscholastic athletics as follows:

2.3.2.2.1 If the special school or program sponsors the interscholastic sport in question, the student shall be eligible to participate only at the school or program.

2.3.2.2.2 If the special school or program does not sponsor the interscholastic sport in question and the student is served in a regular junior high/middle school for all or part of the school day, the student shall be eligible only at that regular junior high/middle school.

2.3.2.2.3 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is located on the campus of a regular junior high/middle school, the student shall be eligible only at the regular junior high/middle school on the same campus.

2.3.2.2.4 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is not located on the campus of a regular junior high/middle school the student shall be eligible only at the regular junior high/middle school designated to serve the special school's or program's students.

2.3.2.2.4.1 School districts or charter schools which administer special schools or programs and have multiple middle schools shall decide which of its regular middle schools shall be designated to serve special school or program students in these circumstances.

2.3.3 A student who is participating in the Delaware School Choice Program, as authorized by 14 **Del.C.** Ch.4, is obligated to attend the choice school for a minimum of two (2) years unless the student's custodial parent(s), legal guardian(s) or Relative Caregiver relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the choice district in order to legally enroll at his/her home school. Without a release, the student would not be legally enrolled and consequently would be ineligible to participate in interscholastic athletics.

2.3.4 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

2.3.5 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

2.3.6 A Student who fails to complete a semester or absence for one or more semesters for reasons other than personal illness or injury shall be ineligible for ninety (90) school days from his/her reentry to school.

2.3.7 An eligible student who practices in violation of 2.2.2 through 2.2.5 shall. When he/she regains her eligibility, be prohibited from practicing, scrimmaging or competing for an equivalent number of days.

2.4 Eligibility-Transfers

2.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged or

competed in grades 6 through 8), is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DIAA eligibility requirements.

2.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

2.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two-year attendance requirement unless he/she satisfies the conditions stipulated in 2.4.2.5.1 through 2.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district (see 1.4.6.1).

2.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students. In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, (except as permitted by 2.4.2.3) or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

2.4.2.3 The transfer is in accordance with 14 **Del.C.** §202(f), the Caregivers School Authorization.

2.4.2.3.1 An exception would be a student whose relative caregiver does not provide the documentation required by the [~~Caregivers~~ **Relative Caregiver**] School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the Relative Caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.4.2.4 The transfer is the result of a change in residence by the custodial parent(s) legal guardian(s) or Relative Caregiver from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended. A student who transfers shall be eligible in the receiving school immediately when the custodial parent(s) legal guardian(s) or Relative Caregiver has established a new legal residence in another public school attendance zone.

2.4.2.5 The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

2.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

2.4.2.5.2 The student has not attended class, excluding summer school, or participated in a scrimmage or contest at the sending school since the close of the previous academic year.

2.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

2.4.2.5.4 All other DIAA eligibility requirements have been met.

2.4.2.6 The transfer is the result of the student being homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2).

2.4.2.6.1 Notwithstanding the above, the student shall be ineligible under the ninety (90) school day ineligibility clause where the student's homeless status is created by the student or his/her family for the primary reason of:

2.4.2.6.1.1 Seeking a superior team;

2.4.2.6.1.2 Seeking a team more compatible with the student's abilities; or

2.4.2.6.1.3 Dissatisfaction with the philosophy, policies, methods or actions of a coach or administrator pertaining to interscholastic athletics; or

2.4.2.6.1.4 Avoiding disciplinary action imposed by the school of origin related to affecting interscholastic athletic participation.

2.4.3 Transfer Because of a Change in the Program of Study or Financial Hardship If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s), legal guardian(s) or Relative Caregiver is responsible for providing documentation to the DIAA Board of Directors to support the request.

2.4.3.1 Documentation for Change in Program of Study: Documentation for change in program of study (a multi-year hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome) shall include:

2.4.3.1.1 The student's schedule;

2.4.3.1.2 The student's transcript;

2.4.3.1.3 Current course descriptions from both the sending and receiving schools;

2.4.3.1.4 A statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be

offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year; and

2.4.3.1.5 A statement from the principals of both the sending and receiving school that the student is not transferring for athletic advantage (see 2.4.5).

2.4.3.2 Documentation for Financial Hardship: Documentation for financial hardship shall include:

2.4.3.2.1 Proof of extreme financial hardship caused by significant loss of income and/or increased expenses; and

2.4.3.2.2 A statement from the principal of both the sending and receiving schools that the student is not transferring for athletic advantage (see 2.4.5).

2.4.4 Transfer Because of a Custody Change: In cases of joint or shared custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

2.4.5 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school-day ineligibility clause if the reason for his/her transfer is one of the following: to seek a superior team, to seek a team more compatible with his/her abilities, dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics, or to avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

2.4.6 A student who transfers from a public, private, career-technical school or charter school to a school of choice, as authorized by 14 **Del.C.**, Ch.4 shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year.

2.4.6.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/ her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport only.

2.4.7 A student who transfers from a school of choice to either a private school, public school, career technical school or, after completing his/her two year commitment, to a public charter school, shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year.

2.4.8 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other

eligibility requirements.

2.5 Eligibility, Amateur Status

2.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

2.5.1.1 Knowingly plays on or against a professional team which is defined as a team having one or more members who have received or are receiving directly or indirectly monetary consideration for their athletic services.

2.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

2.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in the first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

2.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp/clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

2.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 9.1.4) or a merchandise discount (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic. Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$150.00, and is provided to all of the participants, shall not jeopardize his/ her amateur status.

2.5.1.6 Sells or pawns awards received.

2.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

2.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

2.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the

suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

2.6 Eligibility, Passing Work

2.6.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least four (4) courses. Two (2) of those courses must be in the areas of English, Mathematics, Science, or Social Studies.

2.6.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

2.6.2 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

2.6.2.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

2.6.2.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

2.6.2.3 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

2.6.3 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

2.6.4 Local school boards and non-public schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

2.6.5 An ineligible student who practices in violation of 2.6.1, 2.6.2 or 2.6.3, shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

2.7 Eligibility, Years of Participation

2.7.1 No student shall represent a school in athletics after four (4) consecutive semesters from the date of his/her first entrance into the seventh grade in schools which restrict participation in interscholastic athletics to students in grades 7 and 8 unless a waiver is granted for hardship reasons.

2.7.1.1 No student shall have more than two

(2) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

2.7.1.2 "Hardship" shall be defined as extenuating circumstances peculiar to the student athlete caused by [~~unforeseen~~ unforeseen] events beyond the election, control or creation of the student athlete, his/her family, or school which (1) deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season; (2) preclude him/her from completing the academic requirements for graduation within the normal period of eligibility; and (3) deprive him/her of all or part of one of his/her opportunities to participate in a particular sport. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

2.7.1.2.1 A waiver shall not be granted under this section where DIAA finds that the student was academically eligible pursuant to DIAA's minimum passing work standards but was ineligible to participate under more stringent locally adopted academic standards and where the local school board has adopted its own waiver or exemption policy.

2.7.1.2.2 A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for promotion within the normal period of eligibility and the loss of all or part of one of his/her opportunities to participate in a particular sports season.

2.7.1.2.3 The burden of proof rests with the student in conjunction with the waiver process as described in 14 **DE Admin. Code** 1006. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

2.7.2 No student shall represent a school in athletics after six (6) consecutive semesters from the date of his/her first entrance into the sixth grade in schools which permit students in grades 6, 7 and 8 to participate in interscholastic athletics unless a waiver is granted for hardship reasons

2.7.2.1 No student shall have more than three (3) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

2.7.2.2 Participation on the part of a sixth-grade student shall be at the discretion of the individual school.

2.7.2.3 Sixth-grade students shall not be permitted to participate in football unless the conference

develops a classification system that is approved by the DIAA Board of Directors.

2.7.3 Students below the sixth grade shall not be permitted to practice, scrimmage, or compete on junior high/middle school interscholastic teams.

2.7.4 Participation shall be defined as taking part in a school sponsored practice, scrimmage, or contest on or after the first allowable date for practice in that sport.

2.8 Student Eligibility Report Forms

2.8.1 Member schools shall use eligibility forms approved by the Executive Director. A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

2.8.1.1 In the case of a student who met all DIAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

2.9 Use of an Eligible Athlete:

2.9.1 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es) and/or point(s) won.

2.9.2 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

2.9.2.1 If the infraction occurs during a tournament, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament. Team and/or individual awards shall be returned to the event sponsor and team and/or individual records and performances shall be nullified.

2.9.2.2 The offending school may appeal to the DIAA Board of Directors for a waiver of the forfeiture penalty. If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both cases, rests entirely with the offending school. A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings. A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

2.9.3 The deliberate or inadvertent use of an

ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted and the contest score as well as any affected placements will be adjusted according to the rules of that sport.

2.9.3.1 If the infraction occurs during a tournament, the ineligible athlete shall be replaced by his/her most recently defeated opponent or next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

2.9.3.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor. Individual records and performances by the ineligible athlete shall be nullified.

2.9.4 If an ineligible athlete participates in interscholastic competition contrary to DIAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or DIAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties as stipulated in 2.9.1 and 2.9.2 shall be imposed.

2.9.5 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for the number of days up to the length of the school year from the date the charge is substantiated.

2.9.6 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DIAA member school for up to the number of days up to the length of the school year from the date the charge is substantiated.

2.9.7 If an athlete or his/her parent(s), legal guardian(s), or Relative Caregiver knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DIAA member school for up to the number of days up to the length of the school year from the date the charge is substantiated.

2.10 Determination of Student Eligibility and the Appeal Procedures

2.10.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall

be notified and the student suspended immediately from participation in interscholastic athletics.

2.10.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DIAA Board of Directors.

2.10.3 Decisions of the DIAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with the procedure described in Regulation 1006 Section 10.1.3.

3.0 Physical Examinations, Weight Control Programs for Wrestling and Required Medical Personnel in Attendance at All Football Games

3.1 Physical Examinations

3.1.1 A student shall not be eligible to practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after May 1 and before beginning such athletic activity for the current school year.

3.1.2 A certificate to that effect, as well as the parent's, legal guardian's or Relative Caregiver's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

3.1.3 For any subsequent sports season in the school year, a limited reexamination shall be performed if any of the following circumstances exist: the athlete has been treated for an injury during the preceding sports season, the athlete has been out of school during the preceding sports season with an illness other than the usual minor upper respiratory or gastrointestinal upset, an operation has been performed on the athlete during the preceding term, or the athlete has a remedial defect.

3.1.4 The medical history of the student should be available at the time of each examination.

3.1.5 A player who is properly certified to participate in interscholastic athletics but is physically unable to participate for five (5) consecutive days on which a practice, scrimmage, or contest is held due to illness or injury, must present to the administrative head of the school or designee, a statement from a qualified physician that he/she is again physically able to participate.

3.2 Wrestling Weight Control Program

3.2.1 Each year, four (4) weeks from the first day he/she appears at practice, a wrestler must establish his/her minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler attends. A wrestler may re-certify at a lower weight during the 4 weeks from the first day he/she appears at practice. However, once certified at a weight, a wrestler may not weigh-in more than one class above the weight of the

certification without automatically re-certifying at a higher weight. Once re-certified to a higher weight class the wrestler can no longer re-certify lower. After 4 weeks from the first practice day a wrestler may not compete in a weight class below his duly established weight class.

3.2.2 The weight classifications shall be as follows:

<u>76 lbs.</u>	<u>100 lbs.</u>	<u>124 lbs.</u>	<u>148 lbs.</u>
<u>82 lbs.</u>	<u>106 lbs.</u>	<u>130 lbs.</u>	<u>155 lbs.</u>
<u>88 lbs.</u>	<u>112 lbs.</u>	<u>136 lbs.</u>	<u>165 lbs.</u>
<u>94 lbs.</u>	<u>118 lbs.</u>	<u>142 lbs.</u>	<u>250 lbs.</u>

(minimum weight 164 lbs.)

3.2.3 With the exception of the above weight classifications, the current edition of the NFHS Wrestling Rules Book shall apply.

3.2.4 By the end of four (4) weeks of practice, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the Executive Director of DIAA. Further, duly attested notices of additions to the certified roster shall be sent to the Executive Director without delay.

3.2.5 Schools which desire to conduct their wrestling program at a time other than the specified season must request permission from the Executive Director.

3.2.5.1 A team which begins its season in October shall receive a one-pound growth allowance in November and an additional pound in December. A team which begins its season in November shall receive a one-pound growth allowance in December, an additional pound in January, and a third pound in February.

3.3 Required Medical Personnel In Attendance at All Football Games

3.3.1 Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service. Failure by the host school to provide this service shall result in a \$100.00 fine.

4.0 Sports Seasons, Practice Sessions and Maximum Game Schedules and designated Sports Seasons

4.1 Sports Seasons

4.1.1 The fall sports season shall begin on August 25 and end not later than December 1. Practice for any fall sport shall not begin earlier than August 25.

4.1.1.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays on "air", practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouth guards and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and

block protection drills which involve any contact between players are also prohibited.

4.1.1.2 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season except when participating in the state tournament." Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Touch football, featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule

4.1.2 The winter sports season shall begin 21 days before the first Friday in December and end not later than March 1. Practice for any winter sport shall not begin earlier than 21 days before the first Friday in December

4.1.3 The spring sports season shall begin on March 1 and end not later than the last school day. Practice for any spring sport shall not begin earlier than March 1.

4.1.4 A school which conducts practice prior to the first allowable date shall pay a \$100.00 fine per each illegal practice day and a school which participates in a game prior to the first allowable date shall be required to forfeit the contest and pay a \$100.00 fine.

4.1.5 No member school shall participate in a post season contest without the written approval of the Executive Director.

4.2 Practice Sessions

4.2.1 A practice session shall be defined as any instructional or conditioning activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, chalkboard sessions, warm-up and cool down exercises, drills, and mandatory strength training, etc. Member schools shall conduct a minimum of 21 calendar days of practice under the supervision of the school's coaching staff prior to the first scheduled contest in all sports.

4.2.2 Practice sessions shall be limited to two (2) hours on official school days. Split sessions may be conducted, but practice time shall not exceed two (2) hours for any individual athlete. The two-hour practice limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

4.2.3 Practicing on holidays and weekends shall be left to the individual schools and conferences. However, there shall be one day of no activity (practice, scrimmage or contests) during any seven day period.

4.2.4 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if an eighth grade student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

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4.2.5 A school which exceeds the two-hour practice limitation shall pay a \$100.00 fine.

4.3 Maximum Game Schedules and Designated Sports Seasons:

4.3.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each

team and individual in the recognized sports and their designated season shall be as follows:

Team Limitations

Individual Limitations

<i>Sport</i>	<i>Season</i>	<i>Week</i>	<i>Week</i>	<i>Day</i>
Fall				
Cross Country (boys and girls)	12 competition dates	+2 competition dates	+2 competition dates	
Field Hockey (girls)	12 contests	2 contests	2 competition dates	2 halves
Football (boys)	8 contests	1 contest	4 quarters	
Soccer (boys)	12 contests	2 contests	2 competition dates	2 halves
Volleyball (girls)	12 competition dates	2 competition dates	2 competition dates	
	of which one date may			
	involve more than			
	2 teams			
Winter				
Basketball (boys and girls)	14 contests	2 contests	2 competition dates	4 quarters
Wrestling (boys)	* 12 contests	2 competition dates	2 competition dates	5 matches
Spring				
Baseball (boys)	12 contests	2 contests	2 contests	
Softball (girls)	12 contests	2 contests	2 contests	
Outdoor Track (boys and girls)	10 competition dates	+2 competition dates	+2 competition dates	
Tennis (boys and girls)	12 contests	2 contests	2 contests	2 halves
Outdoor Track (boys and girls)	10 competition dates +	2 competition dates	+ 2 competition dates	

+ A team may not participate in two different cross country or outdoor track meets on the same day.

*Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

4.3.2 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and

convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than three (3) contests/competition dates in a week.

4.3.3 A student shall participate in a particular sport for only one season during each academic year.

4.3.4 A school which participates in more than the allowable number of contests in a season shall be fined \$200.00.

4.3.5 A school which exceeds the weekly contest limitation shall forfeit the contest and pay a \$100.00

fine.

4.3.6 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the penalties stipulated in 2.10.

5.0 School/Team Competition, Sanctioning of Competitions and All Star Contests

5.1 School/Team Competition

5.1.1 **Sponsoring Interscholastic Teams:** Interscholastic competition is defined as any athletic contest between students representing two (2) or more schools. Member of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition. Students are considered to be representing a school if the school does any of the following:

5.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).

5.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

5.1.1.3 Permits the students to compete under the name of the school.

5.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications in excess of what is customarily done for "outside" organizations.

5.1.1.5 Presents or displays individual/ team awards.

5.1.2 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

5.1.2.1 The governing body of the participating district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

5.1.2.2 The governing body of the participating district or non-public school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgment that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

5.1.2.3 The participating schools agree to comply with all applicable DIAA rules and regulations as stated in the current DIAA Official Handbook.

5.1.3 Levels of Participation

5.1.3.1 Level 1 or developmental sport - less

than seven (7) participating schools. DIAA rules and regulations shall not be in effect.

5.1.3.2 Level 2 or recognized sport - seven (7) or more participating schools. Participating schools must petition the DIAA Board of Directors for official recognition of the sport.

5.1.3.2.1 At the time of official recognition, DIAA shall provide rules publications to the participating schools, designate an approved official's association, conduct an annual or biannual rules clinic for coaches and officials, and establish a maximum game schedule. DIAA rules and regulations shall then be in effect.

5.1.3.2.2 Withdrawal of level 2 status: If, for two (2) consecutive years, less than the required number of schools participate in a sport, DIAA may withdraw official recognition for a period of time as determined by the Board of Directors.

5.1.4 Membership on Coed Teams

5.1.4.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team and girls shall participate on the girls' team even if the teams compete during different seasons. If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team but if a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team.

5.2 Sanctioning of Competitions

5.2.1 Member schools may participate in tournaments/meets involving four (4) or more schools only if the event has been sanctioned by DIAA and, if applicable, by the NFHS. Tournaments/meets shall be sanctioned in accordance with the following criteria:

5.2.1.1 The event shall not be for determining a regional or national champion.

5.2.1.2 The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

5.2.1.3 Non-symbolic competition awards shall have a value of not more than \$50.00 per recipient and shall require the prior approval of the Executive Director.

5.2.1.4 Non-school event organizers shall submit a full financial report to the DIAA office within ninety (90) calendar days of the completion of the event.

5.2.1.5 The event organizer shall submit a list of out-of-state schools which have been invited to participate and such schools shall be subject to approval by the Executive Director.

5.2.1.6 Out-of-state schools which are not members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.

5.2.1.7 The event organizer shall not accept

financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

5.2.1.8 The event organizer shall comply with all applicable NFHS sanctioning requirements.

5.2.2 Participation in a non-sanctioned event shall result in payment of a \$25.00 fine. A second offense shall result in a \$50.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the sport season. A third offense shall result in a \$100.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school year.

5.3 All-Star Contests: Junior high/middle school students shall not participate in an all-star event until they have completed their high school eligibility in that sport.

6.0 Out of Season Athletic Camps and Clinic Sponsorship, Commercial Camps and Clinics and Open Gyms, Conditioning Programs and Non School Competition

6.1 Out of season Athletic Camps and Clinic Sponsorship

6.1.1 DIAA does not restrict a student's decision to attend an out of season athletic camp/clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp/clinic which limits membership to their own district, locale, or teams. Coaches employed by an out of season athletic camp/clinic may only instruct their own athletes in accordance with 7.5.

6.1.1.1 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at out of season athletic camp/clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp/clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

6.1.1.1.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

6.1.1.1.2 All applicants shall share equally in the funds provided.

6.1.1.1.3 All applicants shall be academically eligible to participate in interscholastic athletics.

6.1.1.1.4 All applicants shall have one year of prior participation in the sport for which the camp is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp/clinic.

6.2 Commercial Camps and Clinics

6.2.1 Commercial; camps and clinics are defined as a camp/clinic operated for profit which provides

coaching or other sports training for a fee.

6.2.2 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

6.2.2.1 The student must participate unattached and may not wear school uniforms.

6.2.2.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.2.2.3 The school may not provide transportation or pay fees.

6.2.2.4 The school coach may not require his/her athletes to participate in a camp or clinic or provide instruction to his/her returning athletes in a camp or clinic except as in accordance with 7.5.

6.3 Open Gym Programs

6.3.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

6.3.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.3.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

6.3.1.3 The activities must be unstructured and student-generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

6.3.1.4 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

6.3.1.5 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/her assigned sport.

6.3.1.6 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

6.3.1.7 The participants must provide their own workout clothing.

6.4 Conditioning Programs

6.4.1 A member school may conduct a conditioning program in accordance with the following provisions:

6.4.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.4.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

6.4.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

6.4.1.4 A coach may not provide instruction in sport specific skills or techniques.

6.4.1.5 Sport specific equipment is prohibited.

6.4.1.6 The participants must provide their own workout clothing.

6.5 Non School Competition in which Participates are Competing Unattached and are Not Representing Their Schools

6.5.1 A student may participate on a non-school team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

6.5.2 Participation on a non-school team or in a non-school individual event shall be subject to the following conditions:

6.5.2.1 With the exception of organized intramurals, the student may not wear school uniforms.

6.5.2.2 With the exception of organized intramurals, the student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.5.2.3 The school or a school affiliated support group may not provide transportation.

6.5.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

6.5.2.5 The school coach may not require his/her athletes to participate in non-school competition or provide instruction to his/her athletes in non-school competition except as in 7.5.

6.5.3 14 Del.C. §122 (15) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools. Similar teams shall include organized intramural teams as well as non-school teams in that sport.

7.0 Certified and Emergency and Volunteer Coaches, Student Teaching and Coaching Out of Season

7.1 Certified Coaches

7.1.1 Only those professional employees certified by the Department of Education and whose salary is paid by the State and/or local Board of Education, or in the case of charter and non-public schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district. The terms of employment must be for the regular school year and the professional assignment shall be no less than 1/2 of the school day, exclusive of coaching duties.

7.1.2 All head coaches shall be required to attend the DIAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DIAA office. A school shall pay a \$50.00 fine and the head coach shall be placed on probation if he/ she fails to attend the DIAA rules clinic or pass the open book rules examination in his/her sport. Failure to comply for a second consecutive year shall result in the school paying a \$50.00 fine and the coach being suspended for up to five contests as determined by the Executive Director.

7.1.2.1 Certified coaches at all levels of competition shall be required to hold a current certification in adult CPR.

7.2 Emergency Coaches

7.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the school year or whose professional assignment is less than 1/2 of the school day. An individual who meets the requirements of a certified coach as specified in 21.1, but whose professional assignment is located in a different school or district than his/her coaching assignment shall not be considered an emergency coach by DIAA.

7.2.1.1 Emergency coaches at all levels of competition shall be required to hold a current certification in adult CPR.

7.2.2 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

7.2.3 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

7.2.3.1 The employing Board of Education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the district for as many days as are required by the district's collective bargaining agreement.

7.2.3.2 If an acceptable, certified professional staff member is not available, an individual who is acceptable to the employing Board of Education may be hired as an emergency coach.

7.2.3.3 Any individual employed as a coach under the emergency provision must comply with the

following regulations:

7.2.3.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

7.2.3.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

7.3 Student Teaching and Coaching

7.3.1 Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

7.4 Volunteer Coaches

7.4.1 In addition to the members of the school's regular coaching staff, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

7.5 Coaching Out of Season

7.5.1 From August 2nd through June 14th, a certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the teams of the school at which he/she coaches or transfer students from other schools who play the coach's sport.

7.5.1.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

7.5.1.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

7.5.1.3 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

7.5.1.4 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

7.5.1.5 The league shall have registration/entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

7.5.1.6 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated season in his/her assigned sport to current members of the teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

7.5.1.7 A coach who is in violation of this

section shall be suspended from coaching in the specified sport at any DIAA member school for up to the total number of days in the school year from the date the charge is substantiated.

7.5.2 From June 15th through August 1st, a certified, emergency or volunteer coach shall be allowed to provide instruction in his/her assigned sport to returning members of the varsity or sub-varsity teams of the school at which he/she coaches. Instructional contact with the aforementioned returning school team members shall be subject to the following conditions:

7.5.2.1 A coach may provide instruction to an unlimited number of his/her returning school team members in formal league/tournament competition or in formal instructional camps/clinics provided the league/tournament or instructional camp/clinic is organized and conducted by a non-school affiliated organization.

7.5.2.2 A coaching staff may provide instruction to a maximum of two returning school team members in an informal setting where the student has initiated the contact and it was not scheduled. A coaching staff may have multiple two-hour sessions on any given day. Returning school team members shall not receive more than two hours of sports instruction per day.

7.5.2.3 A coach shall not receive any compensation, from any source, for the instruction of his/her returning school team members. Reimbursement for out-of-pocket expenses (e.g. gas, food, lodging) incurred by returning school team members and coaches to attend leagues/tournaments or instructional camps/clinics are not prohibited provided that no local school or state educational funds are used.

7.5.2.4 Participation in the formal league/tournament or instructional camp/clinic, or informal instruction shall be open, voluntary and equally available to all returning school team members as well as to members of the student body.

7.5.2.5 A coach in violation of this section shall be suspended from coaching in the specific sport at any DIAA member school for up to the total number of days in the school year from the date the charge is substantiated.

8.0 Recognition of Officials' Associations, Required Use of Officials and Attendance at Rules Clinics

8.1 Recognition of Officials' Associations

8.1.1 The officiating of interscholastic contests in the state of Delaware which involve one (1) or more member schools shall be under the control of the DIAA and such control may include, but not be restricted to, giving examinations, evaluating officials, setting game fees, determining the number of officials per game, and assigning officials.

8.1.2 An official's association which desires to

officiate middle school and/or high school contests shall request recognition and approval from DIAA by submitting the following documents to the DIAA Officials' Committee:

8.1.2.1 A letter of request indicating the association's willingness to abide by DIAA rules and regulations.

8.1.2.2 A brief history of the association.

8.1.2.3 A copy of the association's constitution and bylaws including a statement that it does not discriminate on the basis of age, gender, race, religion, etc.

8.1.2.4 A description of the association's evaluation and rating system.

8.1.2.5 A description of the association's recruiting and training programs for new members.

8.1.2.6 A membership roster indicating the number of years of experience at the sub-varsity, varsity, and state tournament levels for each member and also his/her most recent rating in a previous association.

8.1.2.7 If applicable, letters of recommendation or names of references from leagues which the association has serviced during the past year.

8.1.3 The Officials' Committee shall review the aforementioned documents and, if necessary, meet with the officers of the association to discuss their petition.

8.1.4 The Officials' Committee shall reserve the right to consult with any other interested parties during the evaluation process.

8.1.5 The Officials' Committee shall report its findings to the DIAA Board of Directors and recommend that the officials' association be granted recognition, granted recognition with conditions, or denied recognition.

8.1.6 The president of the officials' association or his/her designee shall petition the DIAA Board of Directors and the Board shall render a decision.

8.1.7 If more than one association is approved to officiate a particular sport, a conference or, in the absence of a conference affiliation, an individual school shall determine which association shall provide the officials for its home contests.

8.2 Required Use of Officials

8.2.1 Member schools and tournament sponsors shall be required to use officials approved by DIAA for interscholastic contests. Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine per game per non-approved official.

8.2.1.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

8.3 Attendance at Rules Clinics

8.3.1 Officials shall be required each year to both attend the DIAA rules interpretation clinic and to pass

the rules examination provided by the DIAA office for the sport(s) they officiate.

8.3.2 Failure on the part of an official to attend the DIAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be placed on probation and to lose his/her eligibility to officiate a state tournament contest during that season.

8.3.3 Failure to satisfy both requirements in the same season for two (2) consecutive years shall cause the official to lose varsity officiating status during the second season. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to sub-varsity contests until both requirements have been satisfied in the same season.

8.3.4 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

8.3.5 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DIAA rules interpretation clinic, he/she may view a videotape of the DIAA clinic or, in the absence of a videotape, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

8.3.5.1 No later than the day of the DIAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

8.3.5.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

8.3.5.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

9.0 Awards

9.1 Awards

9.1.1 Member schools and support groups affiliated with a member schools, such as an alumni association or booster club, shall be allowed to present recognition awards for team and/or individual accomplishments. The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic, not more than \$150.00. Member schools and/or support groups affiliated with member schools are also permitted to sponsor banquets.

9.1.2 A non-profit group such as a coaches association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and/or individual

accomplishments with the approval of the administrative head of the school. Non-profit groups shall also be permitted to sponsor banquets.

9.1.3 Commercial organizations shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

9.1.4 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms, and similar items if properly inscribed (reference to the team or individual athletic accomplishment) are also acceptable. The awards shall have symbolic value only, awards with utilitarian value are prohibited. The aggregate retail value of the award shall not exceed \$150.00 per team or per recipient and shall require prior approval of the Executive Director.

10.0 Use of Influence for Athletic Purposes

10.1 Definition: The use of influence for athletic purposes shall include, but not be limited to, the following:

10.1.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or court appointed legal guardian(s).

10.1.2 Offer of waiver/reduction of tuition or financial aid if based, even partially, on athletic considerations.

10.1.3 Preference in job assignments or offer of compensation for work performed in excess of what is customarily paid for such services.

10.1.4 Offer of special privileges not accorded to other students.

10.1.5 Offer of financial assistance including free or reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her parent(s), legal guardian(s) or Relative Caregiver to change residence.

10.2 Illegal Contact with Students, Legal guardians, or a Relative Caregiver

10.2.1 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s), legal guardian(s) or a ~~relative~~ [Relative Caregiver] in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters, questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

10.2.2 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s), legal guardian(s) or a Relative Caregiver, the former must refer the individual(s) to the principal or school personnel responsible for admissions.

10.3 Permitted Activities

10.3.1 A school employee or Board approved volunteer may do the following:

10.3.1.1 Discuss the athletic program with a prospective student or his/her parent(s), legal guardian(s) or Relative Caregiver during an open house or approved visit initiated by the parent(s), legal guardian(s) or Relative Caregiver.

10.3.1.2 Provide information concerning sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or advantageous for the prospective student to participate in athletics at his/her school.

10.3.1.3 Conduct an informational presentation at a feeder school.

10.4 School Choice

10.4.1 If the number of applicants under the Delaware School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

10.5 Penalties

10.5.1 The use of influence or illegal contact but not limited to violations of 10.1 and 10.2 by a person(s) employed by or representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in that school for athletic purposes may render the student ineligible for up to 1 full school year from the date the charge is substantiated. In addition, the offending school may be placed on probation, as determined by the DIAA Board of Directors, and the offending employee, if a coach, may be suspended for up to one (1) full school year from the date the charge is substantiated.

1009 DIAA Senior High School Interscholastic Athletics

1.0 National Federation of State High Schools, Conferences, Contracts and Equivalency Rules

1.1 National Federation of High School Associations

1.1.1 DIAA is affiliated with the National Federation of State High School Associations (NFHS). The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the DIAA Board of Directors.

1.1.1.1 The playing rules of the United States Tennis Association, the United States Golf Association, and the United States Lacrosse Association are adopted for the sports of tennis, golf, and girls' lacrosse respectively except as modified by the DIAA Board of Directors.

1.2 Conferences

1.2.1 Member schools may establish voluntary conference organizations that may be composed of public and non-public schools. When established, they must submit their conferences' proposed membership and its constitution

and bylaws to the DIAA Board of Directors and be approved by the DIAA Board of Directors before the schools may enter into any contractual agreements.

1.2.1.1 All subsequent amendments to the constitution and bylaws of the conferences must be compatible with all provisions of the DIAA Regulations; interpretations and with the rulings of the Executive Director, Sportsmanship Committee, and Board of Directors; state tournament regulations; and DIAA approved playing codes.

1.3 Contracts

1.3.1 Contracts between DIAA member schools or between DIAA member schools and full member schools of comparable state associations are encouraged but not required.

1.3.1.1 Conference master contracts are approved substitutes for individual contracts.

1.3.1.2 In the case of a dispute and provided either a signed individual contract or conference master contract was received in the DIAA office or postmarked prior to the contest in question, appeal may be made to the Executive Director or the DIAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

1.3.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the DIAA Board of Directors.

1.3.2 Contracts between DIAA member schools and non-member or associate member schools of comparable state associations are required.

1.3.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the DIAA member school being assessed a \$15.00 fine.

1.3.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the DIAA Board of Directors unless a signed individual contract is in place.

1.3.3 Contracts shall be interchanged according to the following provisions:

1.3.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

1.3.3.2 Contracts shall be drawn up by the faculty manager or other designated staff member of the home school of the earlier varsity contest.

1.3.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

1.3.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was received in the DIAA

office or postmarked prior to the contest in question, and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the DIAA Board of Directors.

1.3.4.1 If a game is not played because an out of state opponent qualifies for its state championship series and the date of the playoff game conflicts with the date of the regular season game, a forfeit shall not be awarded.

1.4 Equivalency Rules

1.4.1 A full member school shall not participate in a scrimmage or contest with an in-state school that is not a member in good standing of DIAA.

1.4.1.1 Scrimmage shall be defined in as: an informal competition between schools in which the officials are not compensated, a score is not kept, the time periods are modified, the results of the competition are not reported to the media, the coaches may interrupt the play to provide instruction and the competition is strictly for practice purposes.

1.4.2 A full member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

1.4.3 An associate member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school complies with the conditions specified in 1.4.2. However, the opposing school shall be exempt from those rules which DIAA has waived for its associate member school.

1.4.4 Member schools shall not participate in a practice, scrimmage, or contest with a non-school sponsored team.

1.4.5 Member schools shall not participate in a practice, scrimmage, or contest with post graduate students or college students. This provision shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

1.4.6 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a \$100.00 fine.

2.0 Eligibility: No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements:

2.1 Eligibility, Age

2.1.1 Students who become 19 years of age on or after June 15 shall be eligible for all sports during the school year provided all other eligibility requirements are met. In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility

lists.

2.1.1.1 Requests for a waiver of the age requirement shall only be considered for participation on an unofficial, non-scoring basis in non-contact or non-collision sports

2.2 Eligibility, Residence

2.2.1 With the exception of boarding school students, a student must be living with his/her custodial parent(s), legal guardian(s), or Relative Caregiver in the attendance zone of the school which he/she attends, or be a student 18 years of age or older and living in the attendance zone of the school which he/she attends (see 2.2.1.7), in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court. In the case of shared custody the parents must commit to sending the student to a particular school for the year. Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

2.2.1.1 A student who, pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility. If a student chooses to remain at his/her current school and then transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/ she shall be ineligible, for ninety (90) school days.

2.2.1.2 A student who changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, shall be granted permission to continue attending his/her present school, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

2.2.1.3 A student shall be permitted to complete his/her senior year at the school he/she is attending and remain eligible even though a change of legal residence to the attendance zone of another school has occurred. This provision shall refer to any change of legal residence that occurs after the completion of the student's junior year.

2.2.1.4 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 Del.C., Ch.4.

2.2.1.5 A student who is a non-resident of Delaware shall be eligible to attend a public school, charter school or career-technical school if, in accordance with 14 Del.C. §607, his/her custodial parent or court appointed legal guardian or Relative Caregiver is a full-time employee

of that district.

2.2.1.6 Notwithstanding 2.2.1, a student shall be eligible at a public or vocational-technical school if he/she is enrolled in accordance with 14 Del.C. §202(f), the Caregivers School Authorization.

2.2.1.6.1 An exception would be a student whose ~~relative caregiver~~ Relative Caregiver] does not provide the documentation required by the ~~[Caregivers'~~ Relative Caregiver] School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the ~~relative caregiver~~ Relative Caregiver] has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.2.1.7 A student who reaches the age of majority (18) and leaves his/her parents' place of residency and jurisdiction thereof, and moves to another attendance zone to continue his/her high school education shall be ineligible to participate in athletics for 90 school days commencing with the first day of official attendance. This provision shall not apply to a student participating in the Delaware School Choice Program, as authorized by 14 Del.C. Ch. 4, provided the student's choice application was properly submitted prior to his/her change of residence.

2.2.1.8 Notwithstanding 2.2.1, a student who is homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2) shall be eligible to participate at the public school in which he/she is enrolled.

2.3 Eligibility, Enrollment and Attendance

2.3.1 A student must be legally enrolled in the high school which he/she represents in order to participate in a practice, scrimmage or contest.

2.3.2 A shared-time student who attends two (2) different schools during the regular school day shall be eligible to participate only at his/her home school. A student's home school shall be the school at which he/she is receiving instruction in the core academic areas and at which he/she is satisfying the majority of his/her graduation requirements; not a school at which he/she is receiving only specialized educational instruction such as vocational training.

2.3.3 Students with disabilities who are placed in special schools or programs

2.3.3.1 Definitions:

"Campus" means a contiguous land area containing one or more school buildings.

"Special School or Program" means a school or program approved by the Department of Education with the approval of the State Board of Education to serve students with disabilities, but does not include alternative schools.

“Student With a Disability” means a “child with a disability” as that term is defined in the Administrative Manual for Special Education Services (AMSES), 14 DE Admin. Code 925.

2.3.3.2 A student with a disability who is placed in a special school or program shall be eligible to participate in interscholastic athletics as follows:

2.3.3.2.1 If the special school or program sponsors the interscholastic sport in question, the student shall be eligible to participate only at the school or program.

2.3.3.2.2 If the special school or program does not sponsor the interscholastic sport in question and the student is served in a regular high school for all or part of the school day, the student shall be eligible only at that regular high school.

2.3.3.2.3 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is located on the campus of a regular high school, the student shall be eligible only at the regular high school on the same campus.

2.3.3.2.4 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is not located on the campus of a regular high school, the student shall be eligible only at the regular high school designated to serve the special school’s or program’s students.

2.3.3.2.4.1 School districts or charter schools which administer special schools or programs and have multiple high schools shall decide which of its regular high schools shall be designated to serve special school or program students in these circumstances.

2.3.4 A student who is participating in the Delaware School Choice Program, as authorized by 14 Del.C. Ch.4, is obligated to attend the choice school for a minimum of two (2) years unless the students custodial parent(s), legal guardian(s) or Relative Caregiver relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the “choice district” in order to legally enroll at his/her home school. Without a release, the student would not be eligible legally enrolled and consequently would be ineligible to participate in interscholastic athletics.

2.3.5 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

2.3.6 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

2.3.7 A student who fails to complete a semester or is absent for one or more semesters for reasons other than personal illness or injury shall be ineligible for ninety (90) school days from the date of his/her reentry to school.

2.3.8 An ineligible student who practices in violation of 2.2.2 through 2.2.5 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

2.4 Eligibility, Transfers

2.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged, or competed in grades 9 through 12) is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DIAA eligibility requirements.

2.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

2.4.2.1 The transfer is within a school district and is approved by the district’s superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a “choice school” within the district and who has not completed the two-year attendance requirement unless he/she satisfies the conditions stipulated in 2.4.2.5.1 through 2.4.2.5.4. This provision shall also not apply to a student who transfers from a “choice school” to another “choice school” within the district.

2.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students. In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, (except as permitted by 2.4.2.3), or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

2.4.2.3 The transfer is in accordance with the student being placed with a Relative Caregiver as per 14 Del.C. §202(f), the Caregivers School Authorization.

2.4.2.3.1 An exception would be a student whose relative caregiver does not provide the documentation required by the [Caregivers’ Relative Caregiver] School Authorization (proof of relation and

proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.4.2.4 The transfer is the result of a change in residence by the custodial parent(s) legal guardian(s) or Relative Caregiver from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended. A student who transfers shall be eligible in the receiving school immediately, when the custodial parent(s) legal guardian(s) or Relative Caregiver has established a new legal residence in another public school attendance zone.

2.4.2.5 The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided that the following has occurred:

2.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

2.4.2.5.2 The student has not attended class, excluding summer school, or participated in a scrimmage or contest at the sending school since the close of the previous academic year.

2.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

2.4.2.5.4 All other DIAA eligibility requirements have been met.

2.4.2.6 The transfer is the result of the student being homeless as defined in the McKinney - Vento Act, 42 U.S.C. 11434a(2).

2.4.2.6.1 Notwithstanding the above, the student shall be ineligible under the ninety (90) school day ineligibility clause where the student's homeless status is created by the student or his/her family for the primary reason of:

2.4.2.6.1.1 Seeking a superior team;

or
2.4.2.6.1.2 Seeking a team more compatible with the student's abilities; or

2.4.2.6.1.3 Dissatisfaction with the philosophy, policies, methods or actions of a coach or administrator pertaining to interscholastic athletics; or

2.4.2.6.1.4 Avoiding disciplinary action imposed by the school of origin related to or affecting interscholastic athletic participation.

2.4.3 Transfer Because of Promotion or

Administrative Assignment: Transfer because of promotion or administrative assignment to the ninth grade from a school whose terminal point is the eighth grade, or to the tenth grade from a junior high school whose terminal point is the ninth grade, shall not constitute a transfer. Students so promoted or administratively assigned shall be eligible.

2.4.4 Transfer Because of a Change in the Program of Study or Financial Hardship: If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s), legal guardian(s) or Relative Caregiver is responsible for providing documentation to the DIAA Board of Directors to support the request.

2.4.4.1 Documentation for change in the program of study (a multi-year, hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome) shall include:

2.4.4.1.1 The student's schedule;

2.4.4.1.2 The student's transcript;

2.4.4.1.3 Current course descriptions

from both the sending and receiving schools;

2.4.4.1.4 A statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year; and

2.4.4.1.5 A statement from the principals of both the sending and receiving schools that the student is not transferring for athletic advantage (see 2.4.6).

2.4.4.2 Documentation for Financial Hardship: Documentation for financial hardship shall include:

2.4.4.2.1 Proof of extreme financial hardship caused by significant and unexpected reduction in income and/or increase in expenses; and

2.4.4.2.2 A statement from the principals of both the sending and receiving schools that the student is not transferring for athletic advantage (see 2.4.6).

2.4.5 Transfer Because of Custody Change: In cases of joint or shared custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

2.4.6 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school day ineligibility clause if the reason for his/her transfer is one of the following: to seek a superior team, to seek a team more compatible with his/her abilities, dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics or to avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

2.4.7 A student who transfers from a public, private, vocational-technical, or charter school to a school of choice, as authorized by 14 Del.C. Ch.4, shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year.

2.4.7.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/ her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

2.4.8 A student who transfers from a school of choice to either a private school, career-technical school or, after completing his/her two-year commitment, to a public charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year.

2.4.9 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

2.5 Eligibility, Amateur Status

2.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

2.5.1.1 Knowingly plays on or against a professional team which is defined as a team having one or more members who have received or are receiving directly or indirectly monetary consideration for their athletic services.

2.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

2.5.1.3 Enters a competition under an assumed name. The surname and given name used by any player in his/her first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

2.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the

participants receive the same benefit.

2.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 9.1.4) or a merchandise discount, (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic. Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$150.00, and is provided to all of the participants, shall not jeopardize his/ her amateur status.

2.5.1.6 Sells or pawns awards received.

2.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

2.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

2.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to the number of days in the school year provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

2.6 Eligibility, Passing Work

2.6.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least five (5) credits. Two (2) of those credits must be in the areas of English, Mathematics, Science, or Social Studies.

2.6.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

2.6.2 In the case of a student in the twelfth grade, he/she must be passing all courses necessary for graduation from high school in order to be eligible for participation. A course necessary for graduation shall be any course, whether taken during or outside the regular school day, that satisfies an unmet graduation requirement.

2.6.3 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

2.6.3.1 In the case of a conflict between the marking period grade and the final grade, the final grade

shall determine eligibility.

2.6.3.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

2.6.3.3 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

2.6.4 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

2.6.5 Local school boards and non-public schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

2.6.6 An ineligible student who practices in violation of 2.6.1, 2.6.2, 2.6.3 or 2.6.4 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

2.7 Eligibility, Years of Participation

2.7.1 No student shall represent a school in athletics after four (4) consecutive years from the date of his/her first entrance into the ninth grade unless a waiver is granted for hardship reasons.

2.7.1.1 No student shall have more than four (4) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

2.7.1.2 "Hardship" shall be defined as extenuating circumstances peculiar to the student athlete caused by [~~unforeseen~~ unforeseen] events beyond the election, control or creation of the student athlete, his/her family, or school which (1) deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season; (2) preclude him/her from completing the academic requirements for graduation within the normal period of eligibility; and (3) deprive him/her of all or part of one of his/her opportunities to participate in a particular sport. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

2.7.1.2.1 A waiver shall not be granted under this section where DIAA finds that the student was academically eligible pursuant to DIAA's minimum passing work standards but was ineligible to participate under more stringent locally adopted academic standards and where the local school board has adopted its own waiver or exemption policy.

2.7.1.2.2 A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for graduation within the normal period of eligibility and the loss of all or part of one of his/her opportunities to participate in a particular sports season.

2.7.1.2.3 The burden of proof rests with the student in conjunction with the waiver process as described in 14 **DE Admin. Code** 1006.9. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

2.7.2 Satisfactory completion of studies in accordance with promotion policies established by the local governing body shall determine when a student is beyond the eighth grade. If the eighth grade is part of the same administrative unit as grades 9 through 12, participation on the part of an eighth-grade student toward five (5) years of eligibility shall be at the discretion of the individual school.

2.7.2.1 Eighth grade students who are enrolled or transfer to schools that meet the above criteria begin their five years of eligibility for senior high school athletic participation the first year they enter eighth grade.

2.7.3 Seventh-grade students shall not be permitted to participate on senior high school interscholastic teams.

2.7.4 Participation of Postgraduates

2.7.4.1 Participation shall be defined as taking part in a school sponsored practice, scrimmage or contest on or after the first allowable date for practice in that sport.

2.7.4.2 Postgraduates shall not be eligible to participate in interscholastic athletics. All graduates of recognized senior high schools shall be considered postgraduates.

2.7.4.3 A regularly enrolled student taking courses in an institution of higher education shall be eligible provided he/she meets all other DIAA requirements.

2.7.4.4 Students whose commencement exercises are prior to the completion of the school's regular season schedule and/or the state tournament shall be eligible to compete.

2.8 Eligibility of Foreign Exchange Students and International Students

2.8.1 Notwithstanding 2.2, 2.3, and 2.4, foreign exchange students and international students may be eligible to participate in interscholastic athletics upon arrival at their host school provided they have not attained the age of 19 prior to June 15 and are enrolled as participants in a recognized foreign exchange program.

2.8.1.1 All foreign exchange programs which are included on the Advisory List of International

Educational Travel and Exchange Programs of the Council on Standards for International Educational Travel (CSIET) and are two (2) semesters in length shall be considered as recognized.

2.8.1.2 Students participating in programs not included on the CSIET list shall be required to present evidence that the program is a bona fide educational exchange program before it shall be considered as recognized.

2.8.2 International students who are not participating in a foreign exchange program are considered to be transfer students and are ineligible to compete in interscholastic athletics unless they are in compliance with all DIAA eligibility requirements including 2.2.

2.8.3 Once enrolled, foreign exchange and other international students must comply with all DIAA eligibility rules.

2.8.3.1 Athletic recruitment of foreign exchange students or other international students by a member school or any other entity is prohibited, and any such students recruited shall be ineligible.

2.9 Student Eligibility Report Forms

2.9.1 Member schools shall use eligibility forms approved by the Executive Director. A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

2.9.1.1 In the case of a student who met all DIAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

2.10 Use of an Ineligible Athlete:

2.10.1 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and/or point(s) won.

2.10.2 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

2.10.2.1 If the infraction occurs during a tournament, including a state championship, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament, team and/or individual awards shall be returned to the event sponsor and team and/or individual records and performances shall be nullified.

2.10.2.2 The offending school may appeal to the DIAA Board of Directors for a waiver of the forfeiture penalty. If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both instances, rests entirely with the offending school. A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings and playoff eligibility and shall be automatic and not subject to refusal by the offending school's opponent.

2.10.3 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted and the contest score as well as the affected placements will be adjusted according to the rules of the sport.

2.10.3.1 If the infraction occurs during a tournament, including a state championship, the ineligible athlete shall be replaced by his/her most recently defeated opponent or the next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

2.10.3.1.1 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor. Individual records and performances by the ineligible athlete shall be nullified.

2.10.4 If an ineligible athlete participates in interscholastic competition contrary to DIAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or DIAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 2.10.1 and 2.10.2 shall be imposed.

2.10.5 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for the amount of days up to length of the school year from the date the charge is substantiated.

2.10.6 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DIAA member school for the amount of days up to length of the school year from the date the charge is substantiated.

2.10.7 If an athlete or his/her parent(s), legal guardian(s) or Relative Caregiver knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DIAA member school for up to the amount of days up to the length of the school year from the date the charge is substantiated.

2.11 Determination of Student Eligibility and the Appeal Procedures

2.11.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

2.11.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DIAA Board of Directors.

2.11.3 Decisions of the DIAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with 14 DE Admin. Code 1006.11.

3.0 Physical Examinations, Weight Control Program for Wrestling and Required Medical Personnel in Attendance at All Football Games.

3.1 Physical examinations

3.1.1 A student shall not be eligible to practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after May 1 and before beginning such athletic activity for the current school year.

3.1.2 A certificate to that effect, as well as the parent's, legal guardian's, or Relative Caregiver's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

3.1.3 For any subsequent sports season in the school year, a limited reexamination shall be performed if any of the following circumstances exist: the athlete has been treated for an injury during the preceding sports season, the athlete has been out of school during the preceding sports season with an illness other than the usual minor upper respiratory or gastrointestinal upset, an operation has been performed on the athlete during the preceding sports season, or the athlete has a remedial defect.

3.1.4 The medical history of the student should be available at the time of each examination.

3.1.5 A player who is properly certified to participate in interscholastic athletics but is physically unable to participate for five (5) consecutive days on which a practice, scrimmage, or contest is held due to illness or

injury, must present to the administrative head of the school or designee, a statement from a qualified physician that he/she is again physically able to participate.

3.2 Wrestling Weight Control Program

3.2.1 Each year, beginning November 1st and prior to January 15th, a wrestler must establish his/her minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler attends. The official weigh-in for a regularly scheduled dual meet or tournament would establish certification. In addition, each year beginning November 1 and prior to January 15, each wrestler is required to determine his/her lowest allowable competitive weight according to the DIAA Weight Monitoring Program. A wrestler may re-certify at a lower weight class during November 1 and prior to January 15 if his individual weight loss plan allows for it. However, once certified at a weight a wrestler may not weigh-in more than one weight class above the weight of certification without automatically re-certifying at a higher weight. Once re-certified to a higher weight class the wrestler can no longer re-certify lower. After January 14 no wrestler is allowed to re-certify at a lower weight.

3.2.1.1 A wrestler who weighs in at least once but fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she last weighed in before that date.

3.2.1.2 A wrestler who does not weigh in at least once and fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she first weighs in after that date.

3.2.1.3 A wrestler who is unable, prior to January 15, to get down to the maximum allowable weight of 275 pounds in order to compete in the heavyweight class shall be permitted to certify his/her minimum weight class at a later date in the season and thereafter be eligible to participate.

3.2.2 By January 15, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the secretary of the conference to which the school belongs or to the secretary of the independent tournament. Further, duly attested notices of additions to the certified roster shall be sent to the conference secretary without delay.

3.2.2.1 The conference secretary shall in turn send to each school in his/her conference copies of the certified rosters of each school. Further, he/she shall note and send copies of the notices of additions to the rosters as these additions occur.

3.3 Required Medical Personnel In Attendance at All Football Games

3.3.1 Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered

nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service. Failure by the host school to provide this service shall result in a \$100.00 fine.

4.0 Sports Seasons, Practices Sessions and Maximum Game Schedules and Designated Sports Seasons

4.1 Sports Seasons

4.1.1 The fall sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. A conference championship game must also be completed before the start of the state tournament in that sport and practice for any fall sport shall not begin earlier than 21 days before the first Friday after Labor Day.

4.1.1.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouth guards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

4.1.1.2 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season except when participating in the state tournament. Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Touch football, featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule

4.1.2 The winter sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport and practice for any winter sport shall not begin earlier than 21 days before the first Friday in December.

4.1.3 The spring sports season shall begin on March 1 and ends with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport and practice for any spring sport

shall not begin earlier than March 1.

4.1.4 A school which participates in a game prior to the first allowable date or after the start of the state championship shall be required to forfeit the contest and be assessed a \$100.00 fine.

4.1.5 A school which conducts practice prior to the first allowable date shall pay a fine of \$100.00 per illegal practice day.

4.1.6 No member school shall participate in a post-season contest without the written approval of the Executive Director.

4.2 Practice Sessions

4.2.1 A practice session shall be defined as any instructional activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, blackboard sessions, warmup and cool down exercises, drills or mandatory strength training. Member schools shall conduct a minimum of 21 calendar days of practice under the supervision of the school's certified, emergency and/or approved volunteer coaching staff prior to the first scheduled contest in all sports.

4.2.2 Practice sessions shall be limited to two (2) hours on official school days. Split sessions may be conducted but practice time shall not exceed two hours for any individual athlete. The two-hour practice limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

4.2.3 Practicing on holidays and weekends shall be left to the discretion of the individual schools and conferences. However there should be one day of no activity (practice, scrimmage, or contest) during any seven day period.

4.2.4 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if a student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

4.2.5 A school which exceeds the two-hour practice limitation shall pay a \$100.00 fine.

4.3 Maximum Game Schedules and Designated Sports Seasons:

4.3.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their sports season shall be designated by the DIAA Board of Directors and is as follows:

FINAL REGULATIONS

Team Limitations

Individual Limitations

<i>Sport</i>	<i>Season</i>	<i>Week</i>	<i>Week</i>	<i>Day</i>
Fall				
<u>Cross Country (boys and girls)</u>	<u>16 competition dates</u>	<u>+3 competition dates</u>	<u>+3 competition dates</u>	
<u>Field Hockey (girls)</u>	<u>16 contests</u>	<u>3 contest</u>	<u>3 Competition dates</u>	<u>2 halves</u>
<u>Football (boys)</u>	<u>10 contests</u>	<u>1 contest</u>	<u>4 varsity quarters or any combination of 5 varsity and subvarsity quarters provided no more than 3 quarters are at the varsity level</u>	
<u>Soccer (boys)</u>	<u>16 Contests</u>	<u>3 contests</u>	<u>3 competition dates</u>	<u>2 halves</u>
<u>Volleyball (girls)</u>	<u>16 competition dates of which 1 date may involve more than 2 teams</u>	<u>3 competition dates</u>	<u>3 competition dates</u>	
Winter				
<u>Basketball (boys and girls)</u>	<u>22 contests</u>	<u>3 contests</u>	<u>3 competition dates</u>	<u>4 quarters</u>
<u>Swimming and Diving (boys and girls)</u>	<u>16 contests</u>	<u>3 contests</u>	<u>3 contests</u>	
<u>Indoor Track (boys and girls)</u>	<u>12 contests</u>	<u>+ 3 contests</u>	<u>+ 3 contests</u>	
<u>Wrestling (boys)</u>	<u>* 18 contests</u>	<u>3 competition dates</u>	<u>3 competition dates</u>	<u>5 matches</u>
Spring				
<u>Baseball (boys)</u>	<u>20 contests</u>	<u>3 contests</u>	<u>3 contests</u>	
<u>Softball (girls)</u>	<u>20 contests</u>	<u>3 contests</u>	<u>3 contests</u>	
<u>Golf (boys)</u>	<u>16 competition dates</u>	<u>3 competition dates</u>	<u>3 competition dates</u>	
<u>Tennis (boys and girls)</u>	<u>16 contests</u>	<u>3 contests</u>	<u>3 contests</u>	
<u>Outdoor Track (boys and girls)</u>	<u>18 competition dates</u>	<u>+3 competition dates</u>	<u>+3 competition dates</u>	
<u>Lacross (boys and girls)</u>	<u>16 contests</u>	<u>3 contests</u>	<u>3 competition dates</u>	<u>4 quarters (boys) or 2 halves (girls)</u>
<u>Soccer (girls)</u>	<u>16 contests</u>	<u>3 contests</u>	<u>3 competition dates</u>	<u>2 halves</u>

The third contest/competition date in a week must be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement is waived when a school is closed for the entire week such as during winter or spring vacation.

+ A team may not participate in two different cross country, indoor track or outdoor track meets on the same day.

* Participation in a triangular meet shall count as two

contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

4.3.2 The third contest/competition date in a week shall be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement is waived when a school is closed for the entire week such as during winter or spring vacation.

4.3.2.1 A team shall not participate in two different cross country, indoor track or outdoor track meets on the same day.

4.3.2.2 Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

4.3.2.3 Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

4.3.3 A week shall be designated as starting on Monday and ending on Sunday for all sports except football. A football week shall begin the day of the varsity game and end the day preceding the next varsity game or the following Friday.

4.3.3.1 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than four (4) contests/ competition dates in a week.

4.3.4 The maximum number of regularly scheduled contests for each of the recognized sports, except football, shall be exclusive of conference championships, playoffs to determine tournament state berths, and the state tournament/meet. The maximum number of regularly scheduled football contests shall be exclusive of the state tournament.

4.3.4.1 Any playoffs to determine state tournament berths shall be under the control and supervision of the DIAA tournament committee.

4.3.5 A student shall participate in a particular sport for only one season during each academic year.

4.3.6 A school which participates in more than the allowable number of contests in a season shall be suspended from the state playoffs or, if a non-qualifying team, fined \$200.00.

4.3.6.1 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and pay a \$100.00 fine.

4.3.6.2 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the process stipulated in 2.10.

5.0 School/Team Competition, Sanctioning of Competitions, State Championships and All Star Contests

5.1 School/Team Competition

5.1.1 Sponsoring Interscholastic Teams:

Interscholastic competition is defined as any athletic contest between students representing two (2) or more schools. Members of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition. Students [who] are considered to be representing a school if the school does any of the following:

5.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).

5.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

5.1.1.3 Permits students to compete under the name of the school.

5.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications in excess of what is customarily done for "outside" organizations.

5.1.1.5 Presents or displays individual/ team awards.

5.1.2 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

5.1.2.1 The governing body of the participating district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

5.1.2.2 The governing body of the participating district or non-public school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgment that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

5.1.2.3 The participating schools agree to comply with all applicable DIAA rules and regulations as stated in the current DIAA Official Handbook.

5.1.3 Levels of Participation

5.1.3.1 Level 1 or developmental sport - less than twelve (12) participating schools at the varsity level. DIAA rules and regulations shall not be in effect.

5.1.3.2 Level 2 or recognized sport - twelve (12) or more participating schools at the varsity level.

Participating schools must petition the DIAA Board of Directors for official recognition of the sport.

5.1.3.2.1 At the time of official recognition, DIAA shall provide rules publications to the participating schools, designate an approved officials' association, conduct an annual or biannual rules clinic for coaches and officials, establish a maximum game schedule, and form a committee to promote the continued development of the sport and prepare for a future state championship. All DIAA rules and regulations shall then be in effect.

5.1.3.3 Level 3 or championship sport sixteen (16) or more participating schools at the varsity level. Upon petition by the sport committee and adoption of a tournament proposal, DIAA shall establish a state championship.

5.1.3.4 Withdrawal of level 2 or level 3 status. If, for two (2) consecutive years, less than the required number of schools participate in a sport, DIAA may withdraw official recognition or suspend the state tournament/meet for a period of time as determined by the Board of Directors.

5.1.4 Membership on Coed Teams

5.1.4.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team and girls shall participate on the girls' team even if the teams compete during different seasons. If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team but if a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team.

5.1.4.2 Coed teams shall participate only in the boys' state championship tournament/meet.

5.2 Sanctioning of Competitions

5.2.1 Member schools may participate in tournaments/meets involving four (4) or more schools only if the event has been sanctioned by DIAA and, if applicable, by the NFHS. Tournaments/meets shall be sanctioned in accordance with the following criteria:

5.2.1.1 The event shall not be for determining a regional or national champion.

5.2.1.2 The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

5.2.1.3 Non-symbolic competition awards shall have a value of not more than \$50.00 per recipient and shall require the prior approval of the Executive Director.

5.2.1.4 Non-school event organizers shall submit a full financial report to the DIAA office within ninety (90) calendar days of the completion of the event.

5.2.1.5 The event organizer shall submit a list of out-of-state schools which have been invited to participate and such schools shall be subject to approval by the Executive Director.

5.2.1.6 Out-of-state schools which are not

members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.

5.2.1.7 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

5.2.1.8 The event organizer shall comply with all applicable NFHS sanctioning requirements.

5.2.2 Participation in a non-sanctioned event shall result in payment of a \$25.00 fine. A second offense shall result in a \$50.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the sport season. A third offense shall result in a \$100.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school

5.3 State Championships

5.3.1 State Championships: The minimum number of high schools which must sponsor a sport at the varsity level in order for DIAA to approve a state championship shall be sixteen (16).

5.3.1.1 State championship play shall be permitted at the varsity level only in football, basketball, indoor and outdoor track, cross country, swimming, wrestling, golf, baseball, soccer, tennis, field hockey, softball, girls' volleyball, and lacrosse provided such tournament or meet is under the direct control and supervision of and/or has the approval of DIAA.

5.3.1.2 A member school which does not pay all fines incurred during the school year by July 1st shall be ineligible to participate in a state championship event in any sport during the following school year until such time as all fines are paid.

5.3.2 All state championships shall be managed by committees established by the DIAA Board of Directors.

5.3.2.1 Each tournament format, as well as the criteria and procedures for selecting and seeding the participating teams, must be approved by the Board of Directors and any subsequent changes must also be approved by the Board. The Executive Director shall advise the committees as to which proposed changes must be presented to the Board. If the Executive Director and the committee cannot agree, the proposed change must be presented to the DIAA Board of Directors for approval.

5.3.2.2 All financial arrangements, including the collection of monies and expenditures, must be approved by the Executive Director

5.3.2.3 Championship play in other sports must be confined to the individual conferences and conducted in accordance with the rules of the conference as approved by the DIAA Board of Directors.

5.4 All-Star Contests

5.4.1 An all-star contest shall be defined as an

organized competition in which the participants are selected by the sponsoring organization or its designee on the basis of their performance during the interscholastic season in that sport.

5.4.2 Students who have completed their eligibility in a sport may participate in all-star contests in that sport, if approved by DIAA, prior to graduation from high school.

5.4.3 Member schools shall not make their facilities, equipment, or uniforms available to the sponsoring organization or the participants unless the all-star contest is approved by DIAA.

5.4.4 The all-star contest must be approved by DIAA in accordance with the following criteria:

5.4.4.1 The contest shall not be for determining a regional or national champion.

5.4.4.2 The contest shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

5.4.4.3 The awards given shall be in compliance with 9.0.

5.4.4.4 Exceptions to the adopted rules code for the sport, including uniform regulations, shall require the approval of DIAA.

5.4.5 A full financial report must be filed with the Executive Director within ninety 90 days of the contest. Failure to submit a financial report within the specified period of time shall result in the sponsoring organization being assessed a \$300.00 fine.

5.4.6 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

6.0 Out of Season Athletic Camps and Clinics Sponsorship, Commercial Camps and Clinics and Open Gyms, Conditioning Programs and Non School Competition

6.1 Out of Season Athletic Camps and Clinic Sponsorship

6.1.1 DIAA does not restrict a student's decision to attend an out of season athletic camp/clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp/clinic which limits membership to their own district, locale, or teams. Coaches employed by an out of season athletic camp may only instruct their returning athletes in accordance with 4.5.

6.1.1.1 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at an out of season athletic camp/clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp/clinic related expenses (fees, travel costs, etc.) shall be

administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

6.1.1.1.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

6.1.1.1.2 All applicants shall share equally in the funds provided.

6.1.1.1.3 All applicants shall be academically eligible to participate in interscholastic athletics.

6.1.1.1.4 All applicants shall have one year of prior participation in the sport for which the camp/clinic is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp/clinic.

6.2 Commercial Camps and Clinics:

6.2.1 Commercial camps and clinics are defined as a camp/clinic operated for profit which provides coaching or other sports training for a fee.

6.2.2 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

6.2.2.1 The student must participate unattached and may not wear school uniforms.

6.2.2.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.2.2.3 The school may not provide transportation or pay fees.

6.2.2.4 The school coach may not require his/her athletes to participate in a camp or clinic, or provide instruction to his/her returning athletes in a camp or clinic except as provided in 7.5.

6.3 Open Gym Programs

6.3.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

6.3.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.3.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

6.3.1.3 The activities must be unstructured and student-generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

6.3.1.4 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely

accommodate.

6.3.1.5 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/her assigned sport.

6.3.1.6 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

6.3.1.7 The participants must provide their own workout clothing.

6.4 Conditioning Programs

6.4.1 A member school may conduct a conditioning program in accordance with the following provisions:

6.4.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.4.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

6.4.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

6.4.1.4 A coach may not provide instruction in sport specific skills or techniques.

6.4.1.5 Sport specific equipment is prohibited.

6.4.1.6 The participants must provide their own workout clothing.

6.5 Non-School Competition in which Participants are Competing Unattached and are Not Representing Their Schools

6.5.1 A student may participate on a non-school team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

6.5.2 Participation on a non-school team or in a non-school individual event shall be subject to the following conditions:

6.5.2.1 With the exception of organized intramurals, the student may not wear school uniforms.

6.5.2.2 With the exception of organized intramurals, the student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.5.2.3 The school or a school affiliated

support group may not provide transportation.

6.5.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

6.5.2.5 The school coach may not require his/her athletes to participate in non-school competition or provide instruction to his/her athletes in non-school competition except as in 7.5.

6.5.3 14 Del.C. §122(b)(15) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools. Similar teams shall include organized intramural teams as well as non-school teams in that sport.

7.0 Certified, Emergency and Volunteer Coaches, Student Teaching and Coaching and Coaching Out of Season

7.1 Certified Coaches:

7.1.1 Only those professional employees certified by the Department of Education and whose salary is paid by the State and/or local Board of Education, or in the case of charter and non-public schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district. The terms of employment must be for the regular school year and the professional assignment shall be no less than ½ of the school day, exclusive of coaching duties.

7.1.2 All varsity head coaches (junior varsity if the school does not sponsor a varsity team) shall be required to attend the DIAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DIAA office. A school shall be assessed a \$50.00 fine and the head coach shall be placed on probation if he/ she fails to attend the DIAA rules clinic or pass the open book rules examination in his/her sport. Failure to comply for a second consecutive year shall result in the school being assessed a \$50.00 fine and the coach being suspended for up to five contests as determined by the Executive Director.

7.1.2.1 Certified coaches at all levels of competition shall be required to hold a current certification in adult CPR.

7.2 Emergency Coaches

7.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the regular school year or whose professional assignment is less than ½ of the school day. An individual who meets the requirements of a certified coach but whose professional assignment is located in a different school or district than his/her coaching assignment shall not

be considered an emergency coach by DIAA.

7.2.1.1 Emergency head coaches at all levels of competition shall be required to hold a current certification in adult CPR

7.2.2 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

7.2.3 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

7.2.3.1 The employing Board of Education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the district for as many days as are required by the district's collective bargaining agreement.

7.2.3.2 If an acceptable, certified professional staff member is not available, an individual who is acceptable to the employing Board of Education may be hired as an emergency coach.

7.2.3.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

7.2.3.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

7.2.3.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

7.3 Student Teaching and Coaching

7.3.1 Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

7.4 Volunteer Coaches

7.4.1 In addition to the members of the school's regular coaching staff, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

7.5 Coaching Out of Season

7.5.1 From August 2nd through June 14th a certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the varsity or sub-varsity teams of the school at which he/she coaches or transfer students from other schools who play the coach's sport. He/she shall also be prohibited from coaching rising ninth graders (rising eighth graders if eighth grade is part of the same administrative unit as grades 9 through 12) who

participated in his/her assigned sport at a feeder school. A rising ninth grader is a student who has completed eighth grade requirements but is not yet enrolled in ninth grade. A rising eighth grader is a student who has completed seventh grade requirements but is not yet enrolled in eighth grade.

7.5.1.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

7.5.1.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

7.5.1.3 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

7.5.1.4 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

7.5.1.5 The league shall have registration/entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

7.5.1.6 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated season in his/her assigned sport to current members of the varsity or subvarsity teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

7.5.1.7 A coach who is in violation of this section shall be suspended from coaching in the specified sport at any DIAA member school for up to the total number of days in the school year from the date the charge is substantiated.

7.5.2 From June 15th through August 1st, a certified, emergency or volunteer coach shall be allowed to provide instruction in his/her assigned sport to returning members of the varsity or sub-varsity teams of the school at which he/she coaches. Instructional contact with the aforementioned returning school team members shall be subject to the following conditions:

7.5.2.1 A coach may provide instruction to an unlimited number of his/her returning school team members in formal league/tournament competition or in formal instructional camps/clinics provided the league/tournament or instructional camp/clinic is organized and conducted by a non-school affiliated organization.

7.5.2.2 A coaching staff may provide instruction to a maximum of two returning school team members in an informal setting which means student initiated and non-scheduled. A coaching staff may have multiple two-hour sessions in any given day. Returning school team members shall not receive more than 2 hours of sports instruction per day.

7.5.2.3 A coach shall not receive any compensation, from any source, for the instruction of his/her returning school team members. Reimbursement for out-of-pocket expenses (e.g. gas, food, lodging) incurred by returning school team members and coaches to attend leagues/tournaments or instructional camps/clinics are not prohibited provided that no local school or state educational funds are used.

7.5.2.4 Participation in the formal league/tournament or instructional camp/clinic, or informal instruction, shall be open, voluntary and equally available to all returning school team members as well as members of the student body.

7.5.2.5 A coach who is in violation of this section shall be suspended from coaching in the specified sport at any DIAA member school for up to the total number of days in the school year from the date the charge is substantiated.

8.0 Recognition of Officials' Associations, Required Use of Officials and Attendance at Rules Clinics

8.1 Recognition of Officials' Associations

8.1.1 The officiating of interscholastic contests in the state of Delaware which involve one (1) or more member schools shall be under the control of the DIAA and such control may include, but not be restricted to, giving examinations, evaluating officials, setting game fees, determining the number of officials per game, and assigning officials.

8.1.2 An official's association which desires to officiate middle school and/or high school contests shall request recognition and approval from DIAA by submitting the following documents to the DIAA Officials' Committee:

8.1.2.1 A letter of request indicating the association's willingness to abide by DIAA rules and regulations.

8.1.2.2 A brief history of the association.

8.1.2.3 A copy of the association's constitution and bylaws including a statement that it does not discriminate on the basis of age, gender, race, religion, etc.

8.1.2.4 A description of the association's evaluation and rating system.

8.1.2.5 A description of the association's recruiting and training programs for new members.

8.1.2.6 A membership roster indicating the number of years of experience at the sub-varsity, varsity, and state tournament levels for each member and also his/her most recent rating in a previous association.

8.1.2.7 If applicable, letters of recommendation or names of references from leagues which the association has serviced during the past year.

8.1.3 The Officials' Committee shall review the aforementioned documents and, if necessary, meet with the officers of the association to discuss their petition.

8.1.4 The Officials' Committee shall reserve the right to consult with any other interested parties during the evaluation process.

8.1.5 The Officials' Committee shall report its findings to the DIAA Board of Directors and recommend that the officials' association be granted recognition, granted recognition with conditions, or denied recognition.

8.1.6 The president of the officials' association or his/her designee shall petition the DIAA Board of Directors and the Board shall render a decision.

8.1.7 If more than one association is approved to officiate a particular sport, a conference or, in the absence of a conference affiliation, an individual school shall determine which association shall provide the officials for its home contests.

8.2 Required Use of Officials

8.2.1 Member schools and tournament sponsors shall be required to use officials approved by DIAA for interscholastic contests. Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine per game per non-approved official.

8.2.1.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

8.3 Attendance at Rules Clinics

8.3.1 Officials shall be required each year to both attend the DIAA rules interpretation clinic and to pass the rules examination provided by the DIAA office for the sport(s) they officiate.

8.3.2 Failure on the part of an official to attend the DIAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be placed on probation and to lose his/her eligibility to officiate a state tournament contest during that season.

8.3.3 Failure to satisfy both requirements in the same season for two (2) consecutive years shall cause the official to lose varsity officiating status during the second season. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to sub-varsity contests until both requirements have been satisfied in the same season.

8.3.4 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

8.3.5 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DIAA rules interpretation clinic, he/she may view a videotape of the DIAA clinic or, in

the absence of a videotape, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

8.3.5.1 No later than the day of the DIAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

8.3.5.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

8.3.5.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

9.0 Awards and Scholarships

9.1 Awards

9.1.1 Member schools and support groups affiliated with a member school, such as an alumni association or booster club, shall be allowed to present recognition awards for team and/or individual accomplishments. The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic, no more than \$150.00. Member schools and/or support groups affiliated with member schools are also permitted to sponsor banquets.

9.1.2 A non-profit group such as a coaches association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school. Non-profit groups shall also be permitted to sponsor banquets.

9.1.3 Commercial organizations shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

9.1.4 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms, and similar items if properly inscribed (reference to the team or individual athletic accomplishment) are also acceptable. The awards shall have symbolic value only, awards with utilitarian value are prohibited. The aggregate retail value of the award shall not exceed \$150.00 per team or per recipient and shall require prior approval of the Executive Director.

9.2 Scholarships

9.2.1 Member schools and support groups affiliated with member schools shall be permitted to present post-secondary scholarships.

9.2.2 Non-profit organizations co-sponsoring a tournament shall be allowed to give post-secondary scholarships to participating schools provided they are not

awarded on the basis of team or individual performance in the tournament. Scholarship monies shall be administered in accordance with DIAA and NCAA regulations.

10.0 Use of Influence for Athletic Purposes

10.1 Definition: The use of influence for athletic purposes shall include, but not be limited to, the following:

10.1.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or court appointed legal guardian(s).

10.1.2 Offer of waiver/reduction of tuition or financial aid if based, even partially, on athletic considerations.

10.1.3 Preference in job assignments or offer of compensation for work performed in excess of what is customarily paid for such services.

10.1.4 Offer of special privileges not accorded to other students.

10.1.5 Offer of financial assistance including free or reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her parent(s), legal guardian(s) or Relative Caregiver to change residence.

10.2 Illegal Contact with Students, Legal guardians, or a Relative Caregiver

10.2.1 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s), legal guardian(s) or a Relative Caregiver in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters, questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

10.2.2 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s), legal guardian(s) or a Relative Caregiver, the former must refer the individual(s) to the principal or school personnel responsible for admissions.

10.3 Permitted Activities

10.3.1 A school employee or Board approved volunteer may do the following:

10.3.1.1 Discuss the athletic program with a prospective student or his/her parent(s), legal guardian(s) or Relative Caregiver during an open house or approved visit initiated by the parent(s), legal guardian(s) or Relative Caregiver.

10.3.1.2 Provide information concerning sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or advantageous for the prospective student to participate in athletics at his/her school.

10.3.1.3 Conduct an informational presentation at a feeder school.

10.4 School Choice

10.4.1 If the number of applicants under the Delaware School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

10.5 Penalties

10.5.1 The use of influence or illegal contact including but not limited to, violations of 10.1 and 10.2 by a person(s) employed by or representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in that school for athletic purposes may render the student ineligible for up to 1 full school year from the date the charge is substantiated. In addition, the offending school may be placed on probation, as determined by the DIAA Board of Directors, and the offending employee, if a coach, may be suspended for up to one (1) full school year from the date the charge is substantiated.

DEPARTMENT OF EDUCATION

PROFESSIONAL STANDARDS BOARD

Regulatory Implementing Order

Regulation 1516 Standard Certificate

I. Summary Of The Evidence And Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** §1516 Standard Certificate from the *Regulations of the Department of Education*. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to include recognition of educator preparation programs approved using NASDTEC standards. It is further amended to reflect the establishment of PRAXIS II scores by the Standards Board and the State Board.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on November 26, 2003, in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute regarding the certification of educators.

III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del. C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del. C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** §1516 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL
STANDARDS BOARD THE 6TH DAY of MAY, 2004

Harold Roberts, Chair
Sharon Brittingham
Heath Chasanov
Patricia Clements
Edward Czerwinski
Karen Gordon
Barbara Grogg
Bruce Harter

Leslie Holden
Carla Lawson
Mary Mirabeau
John Pallace
Karen Schilling Ross
Carol Vukelich
Geraldine A. Williams

FOR IMPLEMENTATION BY THE DEPARTMENT
OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 20th Day Of March, 2004

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire

Valarie Pepper
 Dennis J. Savage
 Dr. Claibourne D. Smith

1516 Standard Certificate

1.0 Content.

1.1 This regulation shall apply to the issuance of a Sstandard Certificate, pursuant to 14 **Del.C.** §1220(a).

2.0 Definitions.

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

“**Certification**” means the issuance of a certificate, which may occur regardless of a recipient’s assignment or employment status.

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

“**Educator**” means a public school employee who holds a license issued under the provisions of 14 **Del.C.**, Chapter 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 **Del.C.** §1203, but does not include substitute teachers.

“**Examination of Content Knowledge**” means a standardized test which measures knowledge in a specific content area.

“**License**” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“**Standard Certificate**” means a credential issued to certify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

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

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

3.0 The Department shall issue a Sstandard Certificate to an educator who holds a valid Delaware Initial, Continuing or Advanced License; or Limited Standard, Standard, or Professional Status Certificate issued prior to August 31, 2003, who has:

3.1 Acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Sstandard Certificate is requested; or

3.1.2 Meeting the requirements set forth in the relevant Department or Standards Board regulation governing the issuance of a Sstandard Certificate in the area

for which a Sstandard Certificate is sought; or

3.1.3 Graduating from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in the area of the Sstandard Certificate requested, or

3.1.4 Graduating from a state approved educator preparation program offered by a regionally accredited college or university, with a major in the area of the Sstandard Certificate requested, where the state approval body employed the appropriate NCATE specialty organization standards.

3.2 Graduating from an educator preparation program offered by a Delaware higher education institution approved by the Department pursuant to 14 **DE Admin. Code** 399, with a major in the area of the Sstandard Certificate requested; or

3.3 Achieving a passing score, as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on a Praxis II examination in the area requested. ~~This section is subject to the establishment of passing scores for Praxis II examinations by the Department and their approval by the Standards Board, with concurrence from the State Board;~~ or

3.4 Holding a valid and current certificate from another state in the area for which a standard certificate is sought.

3.4.1 A “valid and current certificate from another state” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.

3.4.2 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation’s resolution.

3.4.2.1 “Immorality” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness.

4.0 Educators may hold certificates in more than one area.

5.0 An applicant for a Sstandard Certificate shall submit:

5.1 Official transcripts; or

5.2 Official scores on the Praxis II examination; or

5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate; or

5.4 An official copy of the out-of-state license or

certification, if applicable.

5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

6.0 If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill and/or education required for the additional Standard Certificate requested is required.

7.0 This regulation shall apply to all requests for issuance of a standard certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current professional status certificate or standard certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License. The Department shall also recognize a limited standard certificate or temporary certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the limited standard or temporary certificate. Requirements must be completed by the expiration date of the limited standard or temporary certificate, but in no case later than December 31, 2009.

8.0 A standard certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's initial, continuing, or advanced license or limited standard, standard, or professional status certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

9.0 The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a standard certificate on an individual basis and grant a standard certificate to an applicant who otherwise does not meet the requirements for a standard certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.

Regulatory Implementing Order

Amendment Administrative Certificates 1530, 1531, And 1532

I. Summary Of The Evidence And Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code §1530 Certification Administrative – Principal/Assistant Principal, §1531 Certification Administrative – School Leader I, and §1532 Certification Administrative – School Leader II. The regulations apply to the certification of educators as school administrators, as established by 14 Del.C. §1220(a). The regulations are being amended to include that educator preparation programs must be approved, either through NCATE or by states employing appropriate standards in the review of programs. The requirement that school administrators complete approved programs will help to ensure adherence to recognized national standards for educational administrators and will hold school administrators to high standards. The regulations will be renamed Standard Certificate to make them consistent with other regulations of the Professional Standards Board

Notice of the proposed adoption of these regulations was published in the News Journal and the Delaware State News on March 29, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend these regulations to comply with changes in statute regarding the licensure and certification of educators.

III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulations. Therefore, pursuant to 14 Del. C. §1205(b), the regulations attached hereto as Exhibit "B" are hereby amended. Pursuant to the provision of 14 Del. C. §122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the regulations adopted shall be in the form

attached hereto as Exhibit "B", and said regulations shall be cited as 14 **DE Admin. Code** §1530, §1531, and §1532 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL
STANDARDS BOARD THE 6TH DAY OF MAY, 2004.

Harold Roberts, Chair	Leslie Holden
Sharon Brittingham	Carla Lawson
Heath Chasanov	Mary Mirabeau
Patricia Clements	John Pallace
Edward Czerwinski	Karen Schilling Ross
Karen Gordon	Carol Vukelich
Barbara Grogg	Geraldine A. Williams
Bruce Harter	

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 20th Day Of March, 2004

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
 Jean W. Allen, Vice President
 Richard M. Farmer, Jr.
 Mary B. Graham, Esquire
 Valarie Pepper
 Dennis J. Savage
 Dr. Claibourne D. Smith

Regulation 1530 ~~Certification Administrative Standard~~ Certificate – School Principal/Assistant Principal

1.0 Content.

1.1 This regulation shall apply to the issuance of a Sstandard Certificate for school principal and assistant principal, pursuant to 14 **Del.C.** §1220.

2.0 Definitions.

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

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

“Standard Certificate” means a credential issued to verify that an educator has the prescribed knowledge, skill

and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

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

“Teaching experience” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any pK-12 setting.

3.0 The following shall be required for the Standard Certificate for the Pprincipal or Aassistant Pprincipal of an elementary or intermediate school, a middle school, a high school, or a school for exceptional students.

3.1 Educational requirements

3.1.1 A master's degree in educational leadership from an NCATE or state approved program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards from a regionally accredited college or university, or

3.1.2 A master's degree in education offered by an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards from a regionally accredited college or university and a current and valid Pprincipal or Aassistant Pprincipal certificate from another state, or

3.1.3 A master's degree in any field from a regionally accredited college or university and successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternative routes to certification program occurs, candidates completing the Sstandard Certificate in accordance with 3.1.3.1 of this regulation shall fulfill the following requirements.

3.1.3.1 A three semester hour graduate level course in each of the following areas:

- 3.1.3.1.1 School Administration (at the level to be initially assigned),
- 3.1.3.1.2 Supervision/Evaluation of Staff,
- 3.1.3.1.3 Curriculum Development,
- 3.1.3.1.4 School Business Management,
- 3.1.3.1.5 School Law/Legal Issues in Education,
- 3.1.3.1.6 Human Relations, and,
- 3.1.3.1.7 ~~if not taken at the undergraduate level,~~ Child/Adolescent/Human Development, if not taken at the undergraduate level.

3.2 Experience requirements

3.2.1 A minimum of three (3) years of teaching experience at the level to be initially assigned as a school

Principal or Assistant Principal, except at the middle level, where the teaching experience may be at any pK-12 level, or as a Principal or Assistant Principal of a school for exceptional students, where the teaching experience must have been with one or more of the categories of exceptional children served by the school.

Regulation 1531 ~~Certification Administrative Standard Certificate~~ -- School Leader I

1.0 Content.

1.1 The following shall apply to the issuance of a Standard Certificate for Directors, Supervisors, Administrative Assistants, Coordinators, and Managers in instructional areas, pursuant to 14 Del.C. §1220.

2.0 Definitions.

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

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

“Standard Certificate” means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

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

“Teaching Experience” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any pK-12 setting.

3.0 The following shall be required for the Standard Certificate for Directors, Supervisor, Administrative Assistants, Coordinators, and Managers in instructional areas.

3.1 Educational requirements

3.1.1 A master's degree in educational leadership from an NCATE or state approved program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards from a regionally accredited college or university, or

3.1.2 A master's degree in education offered by an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NCATE specialty organization standards from a regionally accredited college or university and a current and valid equivalent central office administrative certificate from another state, or

3.1.3 A master's degree in any field from a regionally accredited college or university and successful completion of a Delaware approved alternative routes to

certification program for school leaders. Until approval and implementation of an alternatives routes to certification program occurs, candidates completing the Standard Certificate in accordance with 3.1.3.1 of this regulation shall fulfill the following requirements;

3.1.3.1 A minimum of twenty-four semester hours of graduate level course work, completed either as part of the master's degree or in addition to it, in administration, to include at least one course in each of the following areas:

3.1.3.1.1 Curriculum Development,

3.1.3.1.2 Supervision/Evaluation of Staff,

3.1.3.1.3 Human Relations, and

3.1.3.1.4 School Law/Legal Issues and

3.1.3.1.5 In the area(s) to be supervised (may include courses in curriculum, instruction, and/or methods), and

3.2 Experience requirements

3.2.1 A minimum of three (3) years of teaching experience at the pK-12 level. Teaching experience for Directors, Supervisors, Administrative Assistants, Coordinators, and Managers of programs for exceptional children must have been with exceptional children.

Regulation 1532 ~~Certification Administrative Standard Certificate~~ - School Leader II

1.0 Content.

1.1 This regulation shall apply to the issuance of a Standard Certificate for School District Superintendents and Assistant Superintendents, pursuant to 14 Del.C. §1220.

2.0 Definitions.

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

“Full-Time School Leadership” means full-time experience as a principal or assistant principal or as a district level administrator.

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

“Standard Certificate” means a credential issued to verify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

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

“Teaching Experience” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any pK-12 setting.

Regulatory Implementing Order

3.0 The following shall be required for the Standard Certificate for School District Superintendents and Assistant Superintendents.

3.1 Educational requirements.

3.1.1 A doctoral degree in educational leadership from an NCATE or state approved program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards offered by an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards from a regionally accredited college or university, or

3.1.2 A master's or doctoral degree in education from a regionally accredited college and a current Superintendent or Assistant Superintendent certificate from another state, or

3.1.3 A master's or doctoral degree in any field from a regionally accredited college and successful completion of a Delaware approved alternative routes to certification program for school leaders/superintendents. Until approval and implementation of an alternative routes to certification program occurs, candidates completing the Standard Certificate in accordance with 3.1.3 of this regulation shall provide evidence of graduate course work in the following areas, either as part of the master's or doctoral degree program or in addition to it.

3.1.3.1 Personnel Administration

3.1.3.2 Supervision/Evaluation of Staff

3.1.3.3 Curriculum Development and Instruction

3.1.3.4 School Business Management

3.1.3.5 School Law/Legal Issues in Education

3.1.3.6 Human Resource Management

Relations

3.1.3.7 Organizational Management

3.1.3.8 Child or Adolescent Development, if not taken at the undergraduate level.

3.2 Experience requirements

3.2.1 A minimum of five (5) years of teaching experience at the pK-12 level; or

3.2.2 A minimum of five (5) years of full-time pK-12 leadership experience; or

3.2.3 Any combination of these types of experience which totals a minimum of five (5) years.

3.2.4 The required experience may be acquired at either the building or district level.

Regulation 1556 Standard Certificate – Primary Teacher**I. Summary Of The Evidence And Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** §1556 Standard Certificate – Primary Teacher. This regulation applies to the requirements for a Standard Certificate for an Elementary Teacher as established by 14 **Del. C.** §1220(a). The amendment to this regulation is necessary to change the grade span of the certificate from K-4 to K-6. This change aligns with No Child Left Behind and is also aligned with configuration of Delaware elementary schools. It will also be renamed Standard Certificate Elementary Teacher (Grades K-6) to be more reflective of its subject.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on March 29, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. Comment was received from the University of Delaware regarding maintaining a K-4 certificate for a particular group of students. This issue will be resolved without changing the proposed regulation.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute regarding the licensure of educators.

III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del. C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del. C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** §1556 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 6TH DAY OF MAY, 2004

Harold Roberts, Chair	Leslie Holden
Sharon Brittingham	Carla Lawson
Heath Chasanov	Mary Mirabeau
Patricia Clements	John Pallace
Edward Czerwinski	Karen Schilling Ross
Karen Gordon	Carol Vukelich
Barbara Grogg	Geraldine A. Williams
Bruce Harter	

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 20th Day Of March, 2004

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
 Jean W. Allen, Vice President
 Richard M. Farmer, Jr.
 Mary B. Graham, Esquire
 Valarie Pepper
 Dennis J. Savage
 Dr. Claibourne D. Smith

1556 Standard Certificate Primary Elementary Teacher (Grades K-4-6)

1.0 Content

1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Primary Elementary Teacher (Grades K-4-6).

2.0 Definitions

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

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

“**License**” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“**Standard Certificate**” means a credential issued to certify that an educator has the prescribed knowledge, skill,

and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as an primary Elementary Teacher to an applicant who holds a valid Delaware initial, continuing, or advanced license; or standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Degree Requirement

3.1.1 Bachelor's degree from a regionally accredited college or university in any field and 45 semester hours of general content courses. These courses may be part of the Bachelor's degree, but if not, then the courses shall be taken in addition to the degree.

3.1.1.1 Nine semester hours of English including an upper level composition course and a literature course

3.1.1.2 Twelve semester hours of science including one course each in Life/Environmental, Earth/Space and Physical Sciences

3.1.1.3 Nine semester hours of social sciences including World History, American History and Geography.

3.1.1.4 Nine semester hours of Mathematics

3.1.1.5 Six semester hours of Fine Arts; ~~or~~

and,

~~3.1.2 A total of 45 semester hours of course work, which may be taken as part of a bachelor's degree, but, if not, then the courses shall be taken in addition to the degree, to include the following courses as specified:~~

~~2.1.1.1 Child Development~~

~~2.1.1.2 Identifying and Teaching Exceptionalities~~

~~2.1.1.3 Effective Teaching Strategies~~

~~2.1.1.4 Curriculum and methods (21 semester hours to include 3 semester hours in each of the following areas: science, social studies, and mathematics);~~

~~2.1.1.5 Literacy reading/language arts, including children's literature (12 semester hours);~~

~~2.1.1.6 Exploring Contemporary Cultural and Social Issues;~~

~~3.1.2 3.1.1.6] Courses which reflect accomplishment of the NCATE specialty organization standards for elementary teacher education to develop pedagogical content knowledge and professional and pedagogical skills~~

~~3.1.2] A Bachelor's degree in elementary education from an NCATE specialty organization or state approved program, where the state employed the appropriate NASDTEC or NCATE specialty organization standards for elementary teacher education, from a regionally accredited college or university, in the field of Education and;~~

~~3.2 Professional Education~~

~~3.2.1 An approved program in Primary Education or,~~

~~3.2.2 An approved program in Elementary Education to include 18 semester hours of coursework or the equivalent thereof in each of the following areas, as specified:~~

~~3.2.2.1 Children's Growth, Development, and Learning (6 semester hours);~~

~~3.2.2.2 Parent, Family Community Interactions (3 semester hours);~~

~~3.2.2.3 Early Childhood Curriculum Development, Content, and Implementation (6 semester hours);~~

~~3.2.2.4 Professional Issues in Early Childhood Education (3 semester hours) or,~~

~~3.2.3 An approved program in Early Childhood Education, Birth through age 8, to include an additional 15 semester hours of coursework as indicated:~~

~~3.2.3.1 Nine semester hours in curriculum and methods in the following areas: Science, Social Studies and Mathematics.~~

~~3.2.3.2 Six semester hours in Literacy including reading, writing, and children's literature.~~

~~3.2.3.2 All coursework indicated in 3.2.3.1 and 3.2.3.2 shall focus on: integrated curriculum approaches, use of technology as an instructional tool, appropriate assessment strategies for the young child, culturally responsive curriculum and instruction, principles of developing and organizing curriculum for classroom organization and management techniques for children in K-4 or,~~

~~3.2.4 An approved program in Middle Level Education and, an additional 15 semester hours of coursework related to K-4, to include 3 semester hours in each of the following areas:~~

~~3.2.4.1 Children's Growth, Development, and Learning-~~

~~3.2.4.2 Parent, Family Community-~~

~~3.2.4.3 Early Childhood Curriculum Development, Content, and Implementation (6 semester hours);~~

~~3.2.4.4 Professional Issues in Early Childhood Education or,~~

~~3.2.5 A minimum of 60 semester hours of coursework to include a total of 45 semester hours of specific courses to be taken in addition to requirements stated in 3.1.1 and to include the following courses as specified:~~

~~3.2.5.1 A total of 45 semester hours of specific courses to be taken in addition to requirements stated in 1.1.1 and to include the following courses as specified:~~

~~3.2.5.1.1 Child Development (3 semester hours);~~

~~3.2.5.1.2 Identifying and Teaching~~

~~Exceptionalities (3 semester hours);~~

~~3.2.5.1.3 Effective Teaching Strategies (3 semester hours);~~

~~3.2.5.1.4 Curriculum and Methods (21 semester hours) to include: 3 semester hours in each of the following areas: science, social studies, math and 12 semester hours of literacy reading/language arts, including 3 hours of children's literature);~~

~~3.2.5.1.5 Exploring Contemporary Cultural and Social Issues (3 semester hours);~~

~~3.2.5.2 An additional 15 semester hours of coursework related to K-4, to include 3 semester hours in each of the following areas: Children's Growth, Development, and Learning, Parent, Family Community Interactions, Early Childhood Curriculum Development, Content, and Implementation, Professional Issues in Early Childhood Education and an elective related to the above areas or any area that deals with teaching K-4 students.~~

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a primary an Elementary Teacher after that date must comply with the requirements set forth in 14 **DE Admin. Code** 1516.

Regulatory Implementing Order

Regulation 1557 Standard Certificate – Middle Level Teacher

I. Summary Of The Evidence And Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** §1557 Standard Certificate – Middle Level Teacher. This regulation applies to the requirements for a Standard Certificate for a Middle Level Teacher as established by 14 **Del. C.** §1220(a). The amendment to this regulation is necessary to change the grade span of the certificate from 4 - 6 to 6 - 8. This change aligns with No Child Left Behind and is also aligned with configuration of Delaware elementary schools.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on March 29, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute regarding the licensure of educators.

III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 Del. C. §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 Del. C. §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code §1557 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 6TH DAY OF MAY, 2004

Harold Roberts, Chair	Leslie Holden
Sharon Brittingham	Carla Lawson
Heath Chasanov	Mary Mirabeau
Patricia Clements	John Pallace
Edward Czerwinski	Karen Schilling Ross
Karen Gordon	Carol Vukelich
Barbara Grogg	Geraldine A. Williams
Bruce Harter	

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 20th Day Of March, 2004

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire

Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

1557 Standard Certificate Middle Level Teacher (Grades 5 6 - 8)

1.0 Content

1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Middle Level Teacher (Grades 5 6-8), ~~except for mathematics and science in grades 7-8 (See 14 DE Admin. Code §§ 1541 and 1542.~~

2.0 Definitions

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

"Department" means the Delaware Department of Education.

"Major or its Equivalent" means a minimum of thirty (30) credits in the content area to be taught.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Middle Level Teacher to an applicant who holds a valid Delaware initial, continuing, or advanced license; or standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Degree Requirement

3.1.1 Bachelor's degree from a regionally accredited college or university with a major or its equivalent in any the field content area to be taught; and ~~and 45 semester hours of general content courses. These courses may be part of the Bachelor's degree, but if not, then the courses shall be taken in addition to the degree.~~

3.1.1.1 ~~Nine semester hours of English including an upper level course and a literature course~~

3.1.1.2 ~~Twelve semester hours of science including one course each in Life/Environmental, Earth/Space and Physical~~

3.1.1.3 ~~Nine semester hours of Social Sciences including World History, American History and Geography.~~

3.1.1.4 ~~Nine semester hours of Mathematics~~

3.1.1.5 ~~Six semester hours Fine Arts; or~~

3.1.1.1 Appropriate pedagogical content

courses consistent with the NASDTEC or NCATE specialty organization standards for middle school or the content specialization to be taught [;or]

3.1.2 Bachelor's degree from a regionally accredited college or university in the field of an NCATE specialty organization or state approved program, where the state employed the appropriate NASDTEC or NCATE specialty organization standards in Elementary or Middle School Education.

3.2 Professional Education

3.2.1 An approved program, in Middle Level Education or,

3.2.2 An approved program, or a Standard License in Elementary Education and an additional 15 semester hours of coursework or the equivalent thereof, including instruction in: Adolescent Development and Behavior, Curriculum and Instruction Strategies for Middle Grades, Classroom Management Techniques, Student Advising, Mentoring and Counseling Techniques and Reading in the Content Area, or,

3.2.3 An approved program or Standard Certificate encompassing any segment of Birth through age eight and,

3.2.3.1 An additional 15 semester hours of coursework to include courses in each of the following areas related to the adolescent child: Adolescent Development and Behavior, Curriculum and Instruction Strategies for Middle Grades, Classroom Management Techniques, Student Advising, Mentoring and Counseling Techniques, and Reading in the Content Area.

And, an additional 15 semester hours of coursework as indicated:

3.2.3.2.1 Nine semester hours in Curriculum and Methods in areas of Science, Social Studies and Mathematics.

3.2.3.2.2 Six semester hours in Literacy including reading, writing, and children's literature.

3.2.3.2.3 All coursework indicated above, shall include an instructional focus which includes the following: Integrated Curriculum Approaches, Use of Technology as an Instructional Tool, Appropriate Assessment Strategies for the Young Child, Culturally Responsive Curriculum and Instruction, Principles of Developing and Organizing Curriculum for Children and Classroom Organization and Techniques for Children or,

3.2.4 An approved program or Standard certificate in Primary Education and an additional 15 semester hours of course work, to include each of the following areas related to the adolescent child:

3.2.4.1 Adolescent Development and Behavior, Curriculum and Instruction Strategies for Middle Grades, Classroom Management Techniques, Student Advising, Mentoring and Counseling Techniques and Reading in the Content Area or,

3.2.5 For the Middle Level Endorsement, an approved program or Standard License in Secondary Education and an additional 15 semester hours of coursework, to include each of the following areas related to the adolescent child:

3.2.5.1 Adolescent Development and Behavior, Curriculum and Instruction Strategies for Middle Grades, Classroom Management Techniques, Student Advising, Mentoring and Counseling Techniques, and Reading in the Content Area, or

3.2.6 A minimum of 60 semester hours of coursework to include 45 semester hours of specific courses to be taken in addition to requirements stated in 3.1.1 and to include the following:

3.2.6.1 Child Development (3 semester hours);

3.2.6.2 Identifying and Teaching Exceptionalities (3 semester hours);

3.2.6.3 Effective Teaching Strategies (3 semester hours);

3.2.6.4 Curriculum and Methods (21 semester hours) to include: 3 semester hours in each area of Science, in Social Studies and in Mathematics and 12 semester hours of Literacy (reading/language arts, including 3 semester hours of children's literature)

3.2.6.5 Exploring Contemporary Cultural and Social Issues (3 semester hours);

3.2.6.6 An additional 15 semester hours of course work in middle level education, to include 3 semester hours in each of the following areas related to the adolescent child: Adolescent Development and Behavior, Curriculum and Instruction Strategies for Middle Grades, Classroom Management Techniques, Student Advising, Mentoring and Counseling Techniques and Reading in the Content Area.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Sstandard Certificate as a middle level teacher after that date must comply with the requirements set forth in 14 **DE Admin. Code** 1516.

Regulatory Implementing Order

Regulation 341 Certification Trade And Industrial Teacher

I. Summary Of The Evidence And Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** §341 Certification Trade and Industrial (T &

I) Teacher. This regulation applies to the requirements for a Standard Certificate for a Trade and Industrial Teacher as established by 14 **Del. C.** §1220(a). The amendment to this regulation is necessary to comply with changes in statute regarding licensure and certification of educators. The regulation seeks to define “two years of college or technical training” and to clarify the requirements for course work by trade and industrial teachers. The amended regulation will be renumbered 1559 to denote its movement to the Professional Standards Board section of the *Administrative Code of Regulations* for the Department of Education.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on March 29, 2004, in the form hereto attached as Exhibit “A”. The notice invited written comments. No comments were received.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute regarding the licensure of educators.

III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del. C.** §1205(b), the regulation attached hereto as Exhibit “B” is hereby adopted. Pursuant to the provision of 14 **Del. C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit “B”, and said regulation shall be cited as 14 **DE Admin. Code** §1559 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 6TH DAY of MAY, 2004

Harold Roberts, Chair	Leslie Holden
Sharon Brittingham	Carla Lawson
Heath Chasanov	Mary Mirabeau

Patricia Clements
Edward Czerwinski
Karen Gordon
Barbara Grogg
Bruce Harter

John Pallace
Karen Schilling Ross
Carol Vukelich
Geraldine A. Williams

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 20th Day Of March, 2004

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

[1559] ~~341~~ Standard Certificate on Trade and Industrial Education (T & I) Teacher

Effective July 1, 1993

~~1.0 The following shall be required for the Standard License for grades 9-12 and is valid for grades 7-8 for the specific trade area only.~~

1.0 Content

1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Trade and Industrial Education Teacher.

2.0 Definitions

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

“**Current Trade Experience**” means successful, full-time employment within the last ten years in an occupation directly related to the specific occupational area to be taught.

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

“**Department Approved**” means approved by the Department of Education in consultation with DOE’s supervisor for Trade and Industrial Education.

“**License**” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“**Standard Certificate**” means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

“**Two Years of College or Technical Training**” means

a minimum of a high school diploma or its recognized equivalent and the satisfactory completion of the requirements for any one, or an appropriate combination, of the following options in the occupational area to be taught equaling (1) an associate's degree with a major in the specific occupational area to be taught; (2) two years of college majoring in the specific occupational area to be taught with at least 50% of the major courses required for a bachelor's degree satisfactorily completed; (3) a state-issued certificate indicating completion of apprenticeship hours and apprentice-related training (e.g. journey papers); (4) four years of sequential Delaware Trade Extension courses; (5) four years of National Center for Construction Education and Research's *Contren* documented training; (6) nine high school credits of career and technical high school training; (7) passage of the State of Delaware Licensing Test, offered through the Division of Professional Regulation; (8) 576 hours of military training; (9) 576 hours postsecondary trade school training; (10) completing the written and performance teacher tests for the National Occupational Competency Testing Institute at or above the minimum score set by the Department; (11) industry-recognized certification of technical competence and/or journeyperson status, or (12) DOE approved equivalents.

3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Trade and Industrial Education Teacher (required for grades 9-12, and valid in grades 7-8 in a middle level school) to an applicant who holds a valid Delaware initial, continuing, or advanced license; or standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

1.1 General Education

1.1.1 Bachelor's degree from an accredited college or,

1.1.2 A high school diploma and 15 semester hours of general preparation from an accredited college in the areas of Science, mathematics, Social Studies, English/Communications, and Computer Literacy and;

3.1 1.2 Professional Education

Bachelor's degree in vocational education in the specific field of endorsement or, A minimum of 51 semester hours as follows:

3.1.1 1.1.1 Bachelor's degree from an regionally accredited college or university in the occupational area to be taught ~~or~~ and two (2) years of current trade experience in the area to be taught, and

1.2.2.1 Required 24 semester hours from the following: Educational Psychology or Human Development, analysis Techniques and Course Construction, Methods of Teaching Vocational Education, Vocational Safety (as appropriate to the occupation being taught), Identifying/Treating Exceptionalities, Effective Teaching Strategies,

Multicultural Education, Student Testing and Evaluation and;

3.1.1.1 Required Courses: 24 semester hours of course work, taken either as part of a degree program or in addition to it, from the following:

3.1.1.1.1 Educational Psychology or Human Development;

3.1.1.1.2 Career/Technical Education Assessment and Course Construction;

3.1.1.1.3 Methods of Teaching Career/Technical Education I or Materials and Approaches to Career/Technical Education I;

3.1.1.1.4 Methods of Teaching Career/Technical Education II or Materials and Approaches to Career/Technical Education II;

3.1.1.1.5 Introduction to/Education of Exceptional Children;

3.1.1.1.6 Behavior management or Classroom Management;

3.1.1.1.7 Instructional Technology;

and
3.1.1.1.8 Multicultural Education or Diversity in the Classroom; and

3.1.1.2 1.2.2.2 Required Electives -- 27 12 semester hours of college-level ~~and prior approved in-service~~ course work, taken either as part of a degree program or in addition to it, or the equivalent of 12 semester hours of documented industry/skills training, or a combination thereof, taken ~~/skills documentation~~ determined by the local district superintendent and/or the appropriate Department of Education staff to assist the teacher in maintaining current craftsmanship and teaching skills in the vocational area covered by the license that includes: ~~Vocational Guidance, Shop Organization and Management, History and Philosophy of Vocational Education, Student Organizations, Special Education, Behavior or Classroom Management, Development of Vocational Teaching Aids, Trade Competency Exam in Area, Appropriate Trade School Courses, Appropriate Manufacturer's Service School Courses and;~~

3.1.1.2.1 Student Organizations in the Curriculum;

3.1.1.2.2 History and Regulations of Career/Technical Education;

3.1.1.2.3 Student Testing/Evaluation;

3.1.1.2.4 Education of Exceptional Children (at a level above any previous course work)

3.1.1.2.5 Career/Technical Guidance;

3.1.1.2.6 DOE-approved

apprenticeship, military, or trade school/extension courses appropriate to the area taught or National Occupational Competency Testing (NOCTI) Written and Performance Tests or DOE-approved industry certification;

3.1.1.2.7 National Center for

Construction Education and Research (NCCER) Instructor Certification course or DOE-approved Instructor's Certification course(s);

3.1.1.2.8 DOE-approved test-based Professional Municipal License;

3.1.1.2.9 DOE-approved test-based Professional Municipal License Preparation course; or

3.1.1.2.10 College courses in the occupational area to be taught; or

3.1.2 Associate's degree from a regionally accredited college or university in the occupational area to be taught and four (4) years of current trade experience in the area to be taught; and

3.1.2.1 Required Courses: 24 semester hours of course work, taken either as part of a degree program or in addition to it, from the following:

3.1.2.1.1 Educational Psychology or Human Development;

3.1.2.1.2 Career/Technical Education Assessment and Course Construction;

3.1.2.1.3 Methods of Teaching Career/Technical Education I or Materials and Approaches to Career/Technical Education I;

3.1.2.1.4 Methods of Teaching Career/Technical Education II or Materials and Approaches to Career/Technical Education II;

3.1.2.1.5 Introduction to/Education of Exceptional Children;

3.1.2.1.6 Behavior Management or Classroom;

3.1.2.1.7 Instructional Technology; and

3.1.2.1.8 Multicultural Education or

Diversity in the Classroom; and

3.1.2.2 Required Electives – 12 semester hours of college-level course work, taken either as part of a degree program or in addition to it, or the equivalent of 12 semester hours of documented industry/skills training, or a combination thereof, taken to assist the teacher in maintaining current craftsmanship and teaching skills in the career/technical area covered by the certificate that include:

3.1.2.2.1 Student Organizations in the Curriculum;

3.1.2.2.2 History and Regulations of Career/Technical Education;

3.1.2.2.3 Student Testing/Evaluation;

3.1.2.2.4 Education of Exceptional Children (at a level above any previous course work)

3.1.2.2.5 Career/Technical Guidance;

3.1.2.2.6 DOE-approved

apprenticeship, military, or trade school/extension courses appropriate to the area taught or National Occupational Competency Testing (NOCTI) Written and Performance Tests or DOE-approved industry certification;

3.1.2.2.7 National Center for

Construction Education and Research (NCCER) Instructor Certification course or DOE-approved Instructor's Certification course(s);

3.1.2.2.8 DOE-approved test-based Professional Municipal License;

3.1.2.2.9 DOE-approved test-based Professional Municipal License Preparation course; or

3.1.2.2.10 College courses in the occupational area to be taught; or

3.1.3 Two (2) years of college or technical training, plus 6 years of current trade experience in the area to be taught; and

3.1.3.1 Completion of a DOE-approved Trade and Industrial teacher education associate's and/or bachelor's degree program; or

3.1.3.2 ~~1.2.2.1~~ Required Courses 24 semester hours of course work from the following: Educational Psychology or Human Development, Analysis Techniques and Course Construction, Methods of Teaching Vocational Education, Vocational Safety (as appropriate to the occupation being taught), Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, Student Testing and Evaluation and

3.1.3.2.1 Educational Psychology or Human Development;

3.1.3.2.2 Career/Technical Education Assessment and Course Construction;

3.1.3.2.3 Methods of Teaching Career/Technical Education I or Materials and Approaches to Career/Technical Education I;

3.1.3.2.4 Methods of Teaching Career/Technical Education II or Materials and Approaches to Career/Technical Education II;

3.1.3.2.5 Introduction to/Education of Exceptional Children;

3.1.3.2.6 Behavior Management or Classroom Management;

3.1.3.2.7 Instructional Technology;

and

3.1.3.2.8 Multicultural Education or Diversity in the Classroom; and

3.1.3.3 ~~1.2.2.2~~ Required Electives -- ~~27~~ 12 semester hours of college-level ~~and prior approved in-service~~ course work ~~and/or industry training/skills documentation determined by the local district superintendent and/or the appropriate Department of Education staff~~ to assist the teacher in maintaining current craftsmanship and teaching skills in the vocational area covered by the license that includes: ~~Vocational Guidance, Shop Organization and Management, History and Philosophy of Vocational Education, Student Organizations, Special Education, Behavior or Classroom Management, Development of Vocational Teaching Aids, Trade Competency Exam in Area, Appropriate Trade School~~

~~Courses, Appropriate Manufacturer's Service School Courses and,~~

3.1.3.3.1 Career/Technical Student Organizations in the Curriculum;

3.1.3.3.2 History and Regulations of Career/Technical Education;

3.1.3.3.3 Student Testing/Evaluation;

3.1.3.3.4 Education of Exceptional Children (at a level above any previous course work);

3.1.3.3.5 Career/Technical Guidance;

3.1.3.3.6 DOE-approved

apprenticeship, military, or trade school/extension courses appropriate to the area taught or National Occupational Competency Testing (NOCTI) Written and Performance Tests or DOE-approved industry certification;

3.1.3.3.7 National Center for Construction Education and Research (NCCER) Instructor Certification course or DOE-approved Instructor's Certification course(s);

3.1.3.3.8 DOE-approved test-based Professional Municipal License;

3.1.3.3.9 DOE-approved test-based Professional Municipal License Preparation course; or

3.1.3.3.10 College courses in the occupational area to be taught; and

3.1.3.4 Required General Education – 15 semester hours of general preparation from a regionally accredited college or university, with at least one course in each of the following area:

3.1.3.4.1 Science;

3.1.3.4.2 Mathematics;

3.1.3.4.3 Social Studies;

3.1.3.4.4 English/Communications;

and

3.1.3.4.5 Computer Literacy.

3.2 4.3 Skilled Trade Experience

3.2.1 A minimum of six years of successful, full-time work/training experience, at least two years of which must have been within the last ten years, at an apprenticeship level, or two years beyond the learning period* in the trade or industrial occupation to be taught. and, Full-time teaching or direct supervision in the trade or industrial occupation qualifies as current work experience, provided the applicant has at least six (6) years of successful, full-time prior work/training experience.

3.3 4.4 Professions and Occupations License.

3.3.1 In teaching trade or industrial occupations areas where a state license or registration is required by law, the all applicants, except applicants for electrician's or plumber's trade and industrial certification must present the a valid and current Delaware license or registration upon application for a standard license certificate. Applicants for an electrician's or a plumber's trade and industrial certification must present a valid and current Delaware

license as part of completing certification requirements. The state license or registration must be renewed as required by law.

1.4.1 A Trade Competency Examination may be required by the Delaware State Department of Education for applicants whose work experience is not properly verified or whose experience appears to be outdated

1.4.2 * "Learning period" is defined as one of the following: Registered apprentice program State licensure program; i.e. Registered Nurse, LPN, Cosmetology, Barbering Approved high school vocational program, plus an associate's degree in an appropriate vocational area Satisfactory completion of an appropriate Trade Competency Examination (as approved by the Department of Education A Bachelor's degree in an appropriate vocational field (related to the occupational field to be taught).

2.0 Licenses that may be issued for this position include Standard, Standard Endorsement and Limited Standard.

2.1 The Limited Standard license may be issued upon request of a Delaware public school district for a teacher employed for this position who meets the standards set forth in 2.3 or regulation 301 General Regulations for Certification of Professional Public School Personnel.

Regulatory Implementing Order

382 Certification School Social Work Services

I. Summary Of The Evidence And Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** §382 Certification School Social Work Services. This regulation applies to the requirements for a Standard Certificate for a School Social Worker, as established by 14 **Del.C.** §1220(a). The amendment to this regulation is necessary to comply with changes in statute regarding the licensure and certification of educators. The amended regulation deletes a section which permits non-degreed social workers to practice, as they would be ineligible for an Initial or Continuing License. It also deletes job responsibilities for social workers, as this is a responsibility of the employing authority, not the Office of Professional Accountability. The amended regulation will be renumbered 1582 and renamed Standard Certificate – School Social Worker to reflect its movement to the Professional Standards Board portion of the *Administrative Code of Regulations* for the Department of Education.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on March 29, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. Comments were received from the State Council for Persons with Disabilities supporting the changes in requirements, but questioning the need for an internship. The comments were considered, but it was decided to maintain the internship as an important aspect of school social workers' preparation.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute regarding the licensure of educators.

III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 Del. C. §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 Del. C. §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code §1582 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 6TH DAY of MAY, 2004

Harold Roberts, Chair	Leslie Holden
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FOR IMPLEMENTATION BY THE DEPARTMENT

OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 18th Day Of March, 2004

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1582 382 Standard Certification School Social Worker Services

Effective July 1, 1994

1.0 Content.

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for School Social Worker.

2.0 Definitions.

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

"Certification" means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

"Department" means the Delaware Department of Education.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a School Social Worker to an applicant who holds a valid Delaware initial, continuing, or advanced license; or standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements.

1.0 The following shall be required for the Standard License for individuals with this assigned responsibility (as described in the attachment) within the public school setting, K-12, whether assigned to a specific building(s) or at large.

1.1 Licensed School Social Worker (LSW)

1.1.1 Master's degree in Social Work from a regionally accredited college and,

1.1.2 Two years experience as a social worker

and;

1.1.3 State of Delaware license as a Licensed Clinical Social Worker (LCSW) and

1.1.4 One year of supervised experience in a school setting, or a one-year internship of 1000 hours approved by the Department of Education and supervised by an appropriate school designee.

~~3.1~~ 1.2 Master's Degree School Social Worker (MSW)

3.1.1 ~~1.2.1~~ Master's degree in Social Work (MSW) from a regionally accredited college or university and,

3.1.2 ~~1.2.2~~ Two years successful full-time work experience as a social worker, and

3.1.3 one year of supervised experience in a school setting, or a one-year internship of 1000 hours approved by the Department of Education and supervised by an appropriate school designee.

1.3 Bachelor's Degree School Social Worker (BSW)

1.3.1 Bachelor's degree in Social Work (BSW) a closely related field and;

1.3.2 Two years experience in social work if Bachelor's degree is in social work or;

1.3.3 Five years experience in social work if degree is in a related field and;

1.3.4 One year of supervised experience in a school setting, or a one-year internship of 1000 hours approved by the Department of Education and supervised by an appropriate school designee.

1.4 Specialist

1.4.1 High school diploma and five years experience in the field of family services facilitation.

2.0 Licenses that may be issued for this position include Standard and Limited Standard.

2.1 The following shall be required for the Limited Standard License

2.1.1 Meeting all requirements in 1.1.1, 1.1.2, 1.1.3 or 2.1.1 and 2.1.2 or

3.0 Job Responsibilities for Licensed School Social Worker (LSW)

3.1 Services to pupils and parents that include crisis intervention, conflict resolution strategies, case management, case history, administering workload, clinical assessment and treatment, individual, family, and/or group counseling, family therapy, development of treatment plans and analyzing /assessing progress related to plan.

3.2 Services to school personnel that include consultation with school professionals, developing and evaluating program success and supervision of interns.

3.3 Services to the school community that include training, student advocacy, education team participation and third party

payments.

3.4 Qualifications that include a Masters Degree in School Social Work (MSW), 2 years experience as a practicing social worker, a State of Delaware license as a Licensed Clinical Social Worker (LCSW) and one year approved by the Department of Education.

4.0 Job Responsibilities for a Master's Degree School Social Worker (MSW)

4.1 Services to pupils and parents that include crisis intervention, conflict resolution strategies, case management, case history, administering workload, clinical assessment and treatment, individual, family, and/or group counseling, family therapy, development of treatment plans and analyzing /assessing progress related to plan.

4.2 Services to school personnel that include consultation with school professionals, developing and evaluating program (success) and supervision of interns.

4.3 Services to the school community that include training, student advocacy and education team participation.

4.4 Qualifications that include a Masters Degree in School Social Work (MSW), 2 years experience as a practicing social worker, internship in a school setting or one year approved by the Department of Education.

5.0 Job Responsibilities for Bachelor's Degree School Social Worker (BSW)

5.1 Services to pupils and parents that include first event/initial screening, referrals/coordination of services, special programs (student training) and referral to appropriate resources for service delivery when such training is out of the scope of personal expertise

5.2 Services to school personnel that include training of local school personnel related to role and function served.

5.3 Services to school community that include liaison to the school/community, support groups and general needs assessment.

5.4 Qualifications that include Bachelor's Degree in School Social Work (BSW) or a related area, 2 years experience in social work if degree is a BSW, 5 years experience in social work if the degree is in a related field and an Internship of 1000 hours approved by the Department of Education.

6.0 Job Responsibilities for Specialist

6.1 Services to pupils and parents that include advocating for children and families, interviewing, preliminary information gathering, scheduling appointments, parent training (minimum skills), transportation, and telephone calls.

6.2 Services to school personnel that includes training of local school personnel.

6.3 Services to the school community that includes specific needs assessment related to food, clothing and other

basic needs

6.4 Qualifications that include a high school diploma and five years of experience in family services facilitation.

Vincent P. Meconi, Secretary, 5/17/2004

Summary Of Evidence

A public hearing was held on March 24, 2004 at 9:30 a.m. in the Third Floor Conference Room of the Jesse Cooper Building located on Federal and Water Streets, Dover, Delaware before David P. Walton, Hearing Officer. The purpose of the hearing was to discuss the proposed amendments to the Department of Health and Social Services (DHSS) Hearing Aid Loan Bank Program 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. JoAnn Baker from Community Health Care Access (CHCA) Section of the Division of Public Health (DPH) made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding the proposed regulations. Two individuals gave testimony at the hearing and three letters were received commenting on the proposed Regulations. All comments were received during the public comment period (March 1 through March 31, 2004). Organizations that commented included:

- Delaware Developmental Disabilities Council
- State Council for Persons with Disabilities
- Governor's Advisory Council for Exceptional Citizens
- Delaware Infant Hearing Assessment and Intervention Program
- Delaware State School for the Deaf

All public comments and the DHSS (Agency) responses are as follows:

Section 3.1.4: This section requires a parent with private insurance to obtain an actual denial letter. This requirement could cause an unnecessary delay and is overly restrictive considering a parent could produce a benefits package description excluding hearing aid coverage, which should be acceptable. Additionally, an audiologist may have sought preauthorization which was rejected by phone without issuance of a formal letter. It is recommended that the requirement to produce a denial letter be deleted from this section. By deleting this phrase, this section will also be co-terminus with Section 3.3.1.

Agency Response: Although Section 3.1.4 of the Regulation requires an insurance company denial letter, the lack of such a denial letter upon application for a hearing aid will not in an of itself delay the loaning of a hearing aid to an eligible child in need.

Section 3.2.4: This section requires the donee to, "be

DEPARTMENT OF HEALTH & SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 26A, Section 2631 (16 Del.C. §2631)

ORDER

Nature Of The Proceedings:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt State of Delaware Hearing Aid Loan Bank Program 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 26A, Section 2631.

On March 1, 2004 (Volume 7, 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 March 31, 2004, or be presented at a public hearing on March 24, 2004, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

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 minor modifications from those published in the March 1, 2004, 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 Hearing Aid Loan Bank Program Regulations are adopted and shall become effective June 10, 2004, after publication of the final regulation in the Delaware Register of Regulations.

responsible for any damage to or loss of the hearing aid”. As the parent of a child with an orthodontic retainer will attest, kids can be expected to misplace or lose valuable items. To expect a 1-2 year old toddler to display adult prudence and care of a hearing aid defies reality. The section essentially makes the donee an “insurer” of the device, responsible for damage or loss regardless of the exercise of care by the parent/donee. Since only parents without the ability to pay for a hearing aid are eligible for the program, it is doubtful that the parent or guardian will have the ability to repay for a lost or damaged hearing aid. Recommend this provision either be deleted or amended to read, “. . . be responsible for any damage to or loss of the hearing aid, apart from normal wear and tear, due to the intentional or gross negligence of the parent or guardian . . .”.

Agency Response: Based on this comment and after careful review of Section 3.2.4, the Agency amended this section as recommended by this comment. Additionally, as part of this program the Agency will consider insurance coverage for the hearing aids.

Section 3.3.3: This section of the Regulation creates an additional “hurdle” for a parent seeking an extension of the 6 month initial loan by requiring “proof of making reasonable efforts to obtain immediate access to another hearing aid, such as pursuing insurance coverage for hearing aids or pursuing alternate financial assistance to cover the hearing aid.” If a parent does not have Medicaid, CHIP, or private insurance coverage and is poor, that should suffice. The State should not require the parent to prove exhaustion of charitable institutions (Church; Lion’s Club; Delaware PVA; Needy Family Fund) or bank loans. Recommend deletion of this provision.

Agency Response: The requirement that the parent or guardian is making reasonable efforts to obtain access to another hearing aid is established in law [16 Del.C., Chapter 26A, Section 2630(b)(3)]. It is not the intention of the Agency to create an additional hurdle or require the parent or guardian to exhaust all charitable organizations for donations. The Hearing Aid Loan Bank Program is a temporary loaner program and as such the Program Manager will actively assist parents and guardians with their search to obtain a permanent hearing aid.

The age of eligibility needs to be clarified. Some regulations contemplate eligibility for children “under the age of (3) years”[Section 2.0 “Eligible Child” Definition; Section 3.1]. We read this as meaning up to the child’s third birthday, i.e., “under” age 3. However, Section 3.3.4 permits up to 2 extensions “during the third year of life” suggesting potential loan periods up to the fourth birthday. If that is the intent, it is recommended that the Agency amend the definition of “Eligible Child” in Section 2.0 to read:

“Eligible Child” means a child who is a resident of the

State, identified by a licensed audiologist as having a hearing impairment, has no immediate access to a hearing aid, *and is either under the age of three (3) years or qualifies for an extension up to age four (4) consistent with Section 3.3.4.*

Agency Response: An “Eligible child” is defined in 16 Del.C., Section 2627(c)(4) as under the age of 3 years. The Agency does not have the authority to go beyond that definition when determining initial eligibility. However, the law does provide the Agency with some latitude when it comes to extending the original loan period [16 Del.C., Section 2630(b)]. In Section 3.1.4 of the Regulation, the Agency is not suggesting loan period extensions up to age 4, it is merely placing a reasonable limit on hearing aid loan extensions.

Section 4.0: What is the purpose of including this section in these Regulations? If this is a supplement to Section 3.2.4, a parent whose child lost a hearing aid would ostensibly be compelled to both pay for the hearing aid and pay a fine of up to \$1,000.00. In combination, this certainly has an “in terrorem” effect which should deter any logical person from using this program.

Agency Response: The Agency has a responsibility to be a good steward of taxpayer’s money and as such must clearly specify consequences to those who choose to disregard rules established for the benefit of those in need. Section 4.0 of the Regulation is not supplement to Section 3.2.4 or meant to have an “in terrorem” effect as suggested in this comment. Additionally, Section 3.2.4 of the Regulations has been amended to only make the parent or guardian responsible for damage or loss of the hearing aid due to the intentional or gross negligence of the parent or guardian.

Section 3.2.4: Rather than making the parent or guardian responsible for damage or loss of the hearing aid (total cost), recommend the Division of Public Health carry additional loss and damage insurance on the hearing aid and make the parent or guardian responsible for the deductible for that insurance. The deductible would be less costly and more reasonable than making the parent or guardian responsible for the cost of the hearing aid.

Agency Response: The Agency amended Section 3.2.4 of the Regulation based on a previous comment, making the parent or guardian only responsible for damage or loss as a result of intentional or gross negligence of the parent or guardian. The Agency will consider additional insurance coverage as suggested in this comment.

In addition to the comments listed above there was a general comment commending the Agency, legislators and all those involved for establishing such a program.

The public comment period was open from March 1,

2004 to March 31, 2004.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

108 Hearing Aid Loan Bank Program Regulations

1.0 Purpose

1.1 The program is established for the purpose of lending hearing aids on a temporary basis to a parent or legal guardian of an eligible child to ensure that children under the age of three (3) years will have maximum auditory input during the critical period of language learning.

2.0 Definitions

2.1 The following words shall have the meanings indicated:

"Director" means the Director or designee of the Division of Public Health, Department of Health and Social Services.

"Division" means the Division of Public Health, Department of Health and Social Services.

"Eligible Child" means a child who is a resident of the State, identified by a licensed audiologist as having a hearing impairment, has no immediate access to a hearing aid, and is under the age of three (3) years.

"Licensed Audiologist" means an individual who is licensed to practice audiology under Chapter 37 of Title 24 of this Code.

"Loan Bank" means hearing aid loan bank.

"Loan Period" means time periods to include initial (up to six months) and extension for additional three month periods, with required documentation.

"Program" means the Hearing Aid Loan Bank Program.

"Program Manager" means the program manager of the Hearing Aid Loan Bank Program.

3.0 Eligibility

3.1 A child under three (3) years of age is eligible if confirmed through:

3.1.1 A prescription from a licensed audiologist;

3.1.2 Birth certificate or other documentation for proof of age;

3.1.3 Address of residence to document Delaware residency;

3.1.4 No immediate access to another hearing aid under Medicaid, the State children's health program or private insurance, as per insurance denial letters; and

3.1.5 Proof of the parent or legal guardian's inability to pay for the hearing aid based on:

3.1.5.1 Proof of family income by review of three of the most recent consecutive pay stubs for each

parent or legal guardian, using the Federal Poverty Guidelines as the reference. If such pay stubs are not available, documents as approved by program manager must be submitted.

3.1.5.2 Documentation of insurance coverage, and/or medical assistance status.

3.2 A parent or legal guardian who borrows a hearing aid for an eligible child shall:

3.2.1 be the custodian of the hearing aid;

3.2.2 return the hearing aid immediately to the loan bank upon the expiration of the loan period or receipt of a suitable permanent hearing aid, whichever occurs first;

3.2.3 be responsible for the proper care and use of the hearing aid;

3.2.4 be responsible for any damage to or loss of the hearing aid[, apart from normal wear and tear, due to the intentional or gross negligence of the parent or guardian]; and

3.2.5 sign a written agreement provided by the program manager that states the term and conditions of the loan.

3.3 For a child to be eligible for one or more extensions of the initial six month loan period, a parent or the guardian of the child must show:

3.3.1 That there is no immediate access to another hearing aid under Medicaid, the State children's health program or private insurance;

3.3.2 The child's parent or legal guardian currently does not have the financial means to obtain immediate access to another hearing aid; and

3.3.3 Proof of making reasonable efforts to obtain immediate access to another hearing aid, such as pursuing insurance coverage for hearing aids or pursuing alternate financial assistance to cover the hearing aid; and

3.3.4 Has met initial eligibility criteria prior to age three; not to exceed two extensions during the third year of life.

4.0 Penalty for Non-Compliance

Under the Authority granted to the Department of Health and Social Services in 16 Del. C. Section 107, "whoever refuses, fails or neglects to perform the duties required under this chapter, or violates, neglects or fails to comply with the duly adopted regulations or orders of the Department of Health and Social Services, shall be fined not less than \$100 and not more than \$1,000, together with costs, unless otherwise provided by law."

DEPARTMENT OF LABOR
OFFICE OF LABOR LAW ENFORCEMENT
Statutory Authority: 19 Delaware Code,
Sections 105, 114 (19 Del. C. §§105, 114)

ORDER

Nature Of The Proceedings

1. Pursuant to notice in accordance with 29 Del.C. § 10115, the Department of Labor proposed a regulation under the Wage Payment and Collection Act to consider whether payroll debit cards, as a form of wage payment is the functional equivalent of cash or a check pursuant to the Act. A copy of the proposed regulation is attached as Exhibit "A".

2. A public hearing was held at 9:00 a.m. on Friday, January 23, 2004, at the Department of Labor Annex, 19 Lea Boulevard, Wilmington, Delaware, the time and place designated to receive written and oral comments.

3. A second public hearing scheduled for 9:00 a.m. on Monday, January 26, 2004, at the Department of Health & Social Services Office, 18 North Walnut Street, Milford, Delaware, was cancelled due to inclement weather conditions. A second public hearing was held at 9:00 a.m. on Tuesday, March 2, 2004, in the 2nd Floor Conference Room, at the Department of Labor Office Building, 24 N.W. Front Street, Milford, Delaware, the time and place designated to receive written and oral comments.

4. As designated by the Secretary of Labor, Harold E. Stafford, James G. Cagle, Jr., Director of the Division of Industrial Affairs, and Keri L. Williams, Administrator of the Office of Labor Law Enforcement, were present to receive testimony and evidence at the hearings.

Summary of the Evidence

5. Those individuals testifying at the January 23, 2004 hearing in Wilmington, Delaware, and a summary of said testimony is as follows:

6. Mr. Peter Isberg, Director of Government Affairs for Automatic Data Processing, Inc. (ADP), provided general comments regarding ADP and the benefits and appropriateness of payroll debit cards for employees and the benefits to employers. He offered the following suggestions:

In Section 3.0, there are several references to individual bank accounts. Mr. Isberg stated that the payroll debit card is not a bank account. Each card is not covered individually by FDIC insurance of up to \$100,000. He suggested that where the term "bank account" appears, that the term payroll debit card should be used in its place.

Mr. Isberg submitted a written copy of his comments which is made a part of the record.

7. Ms. Lisa Peerman, Vice-President and deputy chief counsel for Comdata Networking, offered the following suggestions:

Ms. Peerman stated that, the payroll debit card option should not be limited to unbanked employees. Any reference to unbanked employees should be stricken from the proposed regulation. Ms. Peerman further stated that she agreed with the suggestion made by Mr. Isberg regarding replacing the term "individual bank account" with the term "payroll debit card."

8. Ms. Carol Ford, Vice-President of Sales for Comdata Networking, offered general comments regarding the benefits of a payroll debit card system. Ms. Ford stated that, Comdata has 24-hour customer service access for customers, as do most providers. Further, Ms. Ford stated that employers today are at a disadvantage trying to find places for employees to cash checks. A payroll debit card system will alleviate these problems.

9. The individuals testifying at the March 2, 2004 hearing in Milford, Delaware, and a summary of said testimony is as follows:

10. Mr. Andrew McDevitt, Manager of Government Relations for the American Payroll Association offered the following comments and suggestions:

Mr. McDevitt provided an introduction regarding the American Payroll Association. He proposed that the term "unbanked employee" be stricken from the proposed regulation. He stated that it is difficult to ascertain which employees have bank accounts and which do not. Further, there is no validation process to obtain this information and that the payroll debit card system option should not be limited to unbanked employees.

Mr. McDevitt further commented on the usage of the term "individual bank account". He stated that it is a misnomer to refer to payroll debit card accounts as bank accounts. It is dependant on how the employer sets up the program. It was recommended that the usage of the term "individual bank account" be replaced with the term "payroll debit card."

12. There was no other testimony. Ms. Williams stated that the record would be held open until the end of the day Friday, March 5, 2004, in order to receive further written submissions.

13. Following the January 23, 2004, hearing, written submissions supporting the proposed regulation were received from:

Richard G. Elliot, Jr., Esquire, on behalf of Comdata Networking.

Robert F. Stewart, Jr., Esquire, Dilworth Paxson, LLP on behalf of the Employee Relations Committee of the Delaware State Chamber of Commerce.

Karen E. Peterson, Delaware State Senator.

These submissions have been made a part of the record.

Findings of Fact and Conclusions of Law

Recommendations were given to the Secretary of Labor following the public hearing process and consideration of all oral testimony and written documentation received. The Department of Labor's findings regarding the issues raised at the hearings are as follows:

14. Generally, the public comments suggest that the references to individual bank accounts are inappropriate and a misnomer. The payroll debit card system does not provide individual bank accounts but rather provides an efficient and safe means for wage payment that comports with the law. Regulations that reference the term "individual bank accounts" in conjunction with a payroll debit card system is inappropriate.

15. Public comments further suggest that a payroll debit card system should not be limited to unbanked employees and that the use of such a term within the proposed regulation is confusing. Payroll debit card systems generally do not offer individual bank accounts for unbanked employees. Regulations that distinguish between banked and unbanked employees in conjunction with a payroll debit card system is inappropriate and confusing.

16. Lastly, the comments made by Mr. McDevitt, acknowledging that a payroll debit card system is dependant upon the employers' choice of programs, succinctly states the Department of Labor's interest in proposing a regulation that affords employers and employees the efficiency of a payroll debit card while emphasizing the employer's responsibility to do so without offending the substantive rights of the Wage Payment and Collection Act.

17. The Department of Labor appreciates the comments received from the interested parties and emphasizes that the onus is on the employer to create a payroll debit card system which complies with all the substantive requirements under the Wage Payment and Collection Act at 19 Del.C. Ch. 11. The only purpose of this regulation is to recognize that a payroll debit card which is the substantial equivalent of cash or check payable on demand under the law, will not be actionable under the Wage Payment and Collection Act.

18. Based upon the oral testimony and written submissions from the hearing, the Department of Labor wishes to amend the proposed regulations under the Wage Payment and Collection Act. The Department will delete the definition of unbanked employee under section 1.0 and will delete section 3.0 in its entirety.

Decision to Adopt

It is the decision and order of the Department of Labor that the proposed regulation under the Wage Payment and Collection Act, a true and correct copy of which is attached hereto as Exhibit "B" is hereby **ADOPTED AS AMENDED** to become effective June 14, 2004.

SO ORDERED, this 14th day of May, 2004.

Harold E. Stafford, Secretary of Labor

**Wage Payment & Collection Act
Payroll Debit Cards**

The Department of Labor finds payroll debit cards to be beneficial and acceptable as a form of wage payment under the Wage Payment and Collection Act. Under all circumstances, the use of payroll debit cards as a form of wage payment must comply with all conditions set forth in the Act including, but not limited to the following:

- a. Employers must inform new employees in writing, at the time of hire, when the employer will fulfill the exchange rate obligations (§1108 (1));
- b. Employers must pay the employee within 7 days from the close of the pay period for the work performed (§1102 (b));
- c. Employers must pay the employee no less than once a month on a day designated in advance by the employer (§1102 (a));
- d. Employers must pay the employee in legal tender of cash, check payable on demand, or by credit to the employee's bank account when requested in writing by the employee (§1102(a));
- e. Employers must pay the full wages owed on the regular payday and account for lawful deductions specified under §1107 and related regulations; and
- f. Employers must provide a written record reciting the hours worked, hours paid, benefits accrued, lawful deductions, and any information for historical purposes effecting the wage arrangement for three years (§1108 (4) and (6)).

1.0 Definitions

1.1 ATM means the automatic teller machine activated by a magnetically encoded card and the transmission of a code which allows card holders to perform routine banking transactions including the withdrawal of cash.

1.2 Cash means lawful money.

1.3 Credit means the amount of money which is added to an employee's bank account.

1.4 Demand Deposit Account means funds that an employee or card holder may withdraw from a bank with no advance notice usually by writing a check or using an automatic teller machine.

1.5 Direct Deposit means automatic deposit of wages or benefits into an employee's bank account.

1.6 Exchange Rate means the rate agreed upon by the employer and employee as compensation for the performance of work by the employee.

1.7 Functional Equivalent means a change in the form

of the payment of wages without impacting the substantive rights or value of the employee's wages. For example, a debit card in lieu of cash, check, or credit must provide the full amount of wages without cost to the employee on the regular payday.

1.8 **Payroll Debit Card** is a card that provides an employee with the appropriate means of obtaining all wages earned in a defined pay period in a form that is the equivalent of payment by cash, check, or direct deposit.

1.9 **Unbanked Employee** means an employee who does not transact banking business under their own individual account.

2.0 Payroll Debit Card in Lieu of Cash or Check

Delaware's Wage Payment & Collection Act requires the payment of wages to employees in lawful money or checks payable on demand, "provided suitable arrangements are made by the employer for cashing such checks for the full amount of the wages due at a bank or other business establishment convenient to the place of employment. Employers may comply with this requirement by issuing a payroll debit card which provides the functional equivalent of cash or a check. It is the employers' responsibility to effectuate a payroll debit card system which will allow full payment of wages on the employee's regular payday and without cost to the employee. Employers may use a pre-paid debit card or general payroll fund account to establish suitable arrangements for converting wages into employee's disposable income.

3.0 Payroll Debit Card and Account Option for the Unbanked Employee

Delaware's Wage Payment & Collection Act allows for, but does not require a voluntary program of automatic deposit or credit to a designated bank account of the employee. For employers who presently honor such a system, the employer may offer a similar option to unbanked employees upon the written request for the benefit of the employee who desires an individual bank account in their name. Employees are required to provide a written authorization to the employer for the transfer of wages into the individual bank account. All employees shall have notice that direct deposit into individual account programs are initiated and terminated by the employees' written requests. Costs associated with accounts established for the unbanked employee who voluntarily participates in the payroll debit card individual account program must be reasonable under the circumstances.

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

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

Secretary's Order No.: 2004-A-0023

**Proposed Revisions to the State Implementation Plan
(SIP) To Change the Mid-Course Review date to 12/31/04**

Date of Issuance: April 21, 2004

Effective Date of the SIP Revision: June 11, 2004

I. Background

A public hearing was held on January 28, 2004, in the AQM Conference Room of the Priscilla Building, 156 South State Street, Dover, Delaware, to receive comment on a proposed non-regulatory action to amend Delaware's Phase II Attainment Demonstration State Implementation Plan (SIP) by changing the Mid-Course Review (MCR) date to December 31, 2004.

The Clean Air Act Amendments of 1990 (CAAA) requires Delaware to submit to the U.S. Environmental Protection Agency (EPA) a SIP Revision to demonstrate its capability of attaining the 1-hour National Ambient Air Quality Standard (NAAQS) for the ground-level ozone in Kent and New Castle Counties in 2005. This SIP Revision, termed the Phase II Attainment Demonstration, was initially submitted to the EPA in May 1998 and amended in October 1998, January 2000, December 2000, October 2001 and June 2003. In order to settle a complaint filed by six environmental groups in U.S. District Court, EPA required, as a condition of approval of the Phase II Attainment Demonstration SIP of each state in the Philadelphia-Wilmington-Trenton non-attainment area, that a MCR be conducted. This MCR would evaluate the progress being made toward attainment of the 1-hour ozone standard, and be used to determine if any additional controls would be necessary to ensure attainment by 2005. Pursuant to this EPA requirement, Delaware committed to its January 2000 SIP revision to perform a MCR by December 31, 2003.

Following this, the U.S. Court of Appeals for D.C. Circuit delayed the implementation of the EPA NOx Transport SIP Call from 2003 to 2004. Because the NOx Transport SIP Call is a significant part of the overall 1-hour ozone attainment strategy, EPA allowed states to revise their MCR due date to a date after May 31, 2004. The later MCR date better serves the MCR purpose, as it enables states to consider the significant impacts of the NOx Transport SIP Call in their analysis.

The purpose of this proposed SIP Revision is to amend Delaware's Phase II Attainment Demonstration to revise its MCR date to December 31, 2004. In addition to the EPA rationale of delaying the MCR to allow for inclusion of the implementation of the NO_x Transport SIP Call in the analysis, the Department believes that additional rationale for a delay is to put Delaware on the same time line with other states in the region to enable Delaware to work cooperatively and to conduct the MCR as a regional effort. No specific segment of the public will be directly impacted by this proposed action, and no one from the public attended this hearing. Proper notice of this hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a Hearing Officer's Report to the Secretary dated April 16, 2004, and that Hearing Officer's report is expressly incorporated herein by reference.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Report dated April 16, 2004 are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the proposed Mid-Course Review SIP Revision be promulgated in the manner and form provided for by law, as recommended in the Hearing Officer's Report.

IV. Reasons

The proposed Mid-Course Review SIP Revision will enable Delaware to remain on the same time line with other states in the region and work cooperatively with them to conduct the MCR as a regional effort. Furthermore, the MCR is a planning analysis to ensure that Delaware is on track to attain compliance with the 1-hour ozone standard in 2005, and will help contribute to the improvement of air quality in the State while maintaining consistency with applicable Federal requirements, in furtherance of the policies and purposes of 7 Del.C. Chapter 60.

John A. Hughes, Secretary

Amendments To Delaware Phase II Attainment Demonstration For The Philadelphia - Wilmington - Trenton Ozone Non-Attainment Area Including A Revision Of The Mid-Course Review Schedule June 2004

List of References

1. *Federal Clean Air Act*, 42 U.S.C.A. 7401 et seq., as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.
2. *Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area*. Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, May 1998, as amended in January 2000, December, 2000, July 2001, and June 2003.
3. *Notice of Proposed Action on Attainment Demonstrations for the 1-Hour National Ambient Air Quality Standard for Ozone*. Federal Register Vol. 64, No. 241, pp 70317-70319, December 16, 1999.
4. *Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration*. Guidance Memorandum from L.N. Wegman, Director, Air Quality Strategies and Standard Division, and J.D. Mobley, Acting Director, Emission Monitoring and Analysis Division, Office of Air Quality Planning and Standards, US EPA, March 28, 2002.
5. *Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard, US EPA*. Federal Register Vol. 68, No. 105, pp 32802-32870, June 2, 2003.

1. Introduction

Under the Clean Air Act Amendments of 1990 (CAAA, Reference 1), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour National Ambient Air Quality Standard (NAAQS) for ground-level ozone. The CAAA requires Delaware to submit to the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to demonstrate that the 1-hour ozone standard can be attained in 2005 in these two counties with necessary and adequate control measures for VOC and NO_x emission sources. That SIP revision, entitled "Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area," was originally submitted to EPA in May 1998, and amended in October 1998, January 2000, December 2000, October 2001, and June 2003 (Reference 2).

In order to settle a complaint filed by six environmental groups in U.S. District Court, EPA required, as a condition of approval of the Phase II Attainment Demonstration SIP of each state in the Philadelphia-Wilmington-Trenton non-

attainment area, that a mid-course review (MCR) be conducted to evaluate the progress being made toward attainment of the 1-hour ozone standard (Reference 3). The results of the MCR were required to be submitted to EPA by December 31, 2003, and would be used to determine if any additional controls would be necessary to ensure the attainment by 2005. Pursuant to this EPA requirement, Delaware committed in its January 2000 SIP revision to perform an MCR by December 31, 2003. This MCR requirement was also imposed on other states with severe 1-hour ozone non-attainment areas.

Following this, an order of the U.S. Court of Appeals for D.C. Circuit delayed the implementation of EPA's NOx Transport SIP Call from 2003 to 2004. The NOx Transport SIP Call is a significant part of the overall 1-hour ozone attainment strategy. In response to this court order, EPA allowed states to revise the MCR due date to a date after May 31, 2004. The later MCR date is believed to better serve the MCR purpose (i.e., to enable states to evaluate the adequacy of their attainment strategy, and to facilitate initiation of additional control measures if necessary). Many states affected by the NOx SIP Call emission reductions have revised their commitment to conduct and submit the MCR on a schedule later than May 31, 2004 (Reference 4).

2. Proposed Action

The document proposed herein is to revise the date of Delaware's MCR from December 31, 2003 to December 31, 2004. In addition to EPA's afore-mentioned rationale of postponing the MCR process to allow for inclusion of the implementation of the NOx SIP Call in the analysis, Delaware believes that the following reasons further validate the proposed action:

(1) To give EPA more time to develop final guidance on performing the MCR.

In the recent proposed rule to implement the 8-hour ozone standard, EPA has indicated that it is updating the 1-hour MCR policy and technical guidance to include the 8-hour matrices, and the final MCR guidance will be available around the end of year 2003 (Reference 5). Delaware is anticipating that the final MCR guidance from EPA will provide detailed procedures on how to effectively conduct the MCR, in particular, to connect efforts of attaining the 1-hour standard in 2005 to efforts of implementing the 8-hour rule beyond 2005.

(2) To put Delaware on the same time-line with other states.

According to EPA, many states affected by the NOx SIP Call have rescheduled their MCR due date after May 31, 2004 (Reference 4). These states include those in the Ozone Transport Region (OTR). The new MCR schedule proposed herein will enable Delaware to work cooperatively with these states, and to conduct the MCR as a regional effort to better addressing attainment of the 1-hour ozone standard.

3. Contact Information

The agency with direct responsibility for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section (AQM), under the direction of Ali Mirzakhali, Program Administrator. The working responsibility for this document falls within the Planning and Community Protection (PCP) Branch of AQM, under the management of Raymond H. Malenfant, Program Manager II, and Ron Amirikian, Planning Supervisor. The following staff member of PCP is responsible for the preparation of this document:

Frank Gao, Ph.D., P.E., Environmental Engineer
Principal Author and Project Leader

Comments and/or questions regarding this document should be addressed to F. Gao at (302)323-4542, e-mail Frank.Gao@state.de.us, or R. Amirikian at (302)739-4791, e-mail Ronald.Amirikian@state.de.us, Air Quality Management Section, DAWM-DNREC, 156 South State Street, Dover, DE 19901.

DIVISION OF AIR AND WASTE MANAGEMENT WASTE MANAGEMENT SECTION

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

Secretary's Order No.: 2004-A-0028

Regulations Governing Aboveground Storage Tanks 2004

Date of Issuance: May 4, 2004

Effective Date of the Amendment: June 11, 2004

I. Background

On March 30, 2004, a public hearing was held regarding the proposed Regulations Governing Aboveground Storage Tanks. The Department evaluated all of the comments generated during the hearing and post-hearing phases in a Response Document dated April 14, 2004, and a Hearing Officer's Report was submitted on April 28, 2004. Proper notice of the hearing was provided as required by law.

II. Findings and Conclusions

1. Proper notice of the hearing was provided as required by law.
2. The Department's Response Document, dated April

14, 2004, provides a thorough summary of the record and is incorporated herein for that purpose as recommended by the Hearing Officer.

3. Suggested resolutions of the issues discussed in the Response Document are well-reasoned based on the record and are incorporated into this Order as specific findings on each of these matters, in accordance with the Hearing Officer's Report.

4. The record shows that the proposed regulations, as amended through the hearing process, are consistent with 7 Del.C. Chapter 74A, the Jeffrey Davis Aboveground Storage Tank Act.

III. Order

In view of the above findings, it is hereby ordered that the proposed **Delaware Regulations Governing Aboveground Storage Tanks**, as amended to reflect hearing comments, be promulgated in final form in accordance with the customary procedures as required by law.

IV. Reasons

The record shows that these regulations were developed in a careful manner after exhaustive reviews among numerous experts so as to satisfy all requirements in 7 Del.C. Ch. 74A, in furtherance of the policies and purposes of that legislation.

John A. Hughes, Secretary

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
TANK MANAGEMENT BRANCH
391 LUKENS DRIVE
NEW CASTLE, DE 19720

MEMORANDUM

Summary of the Regulations Governing Aboveground Storage Tanks promulgated pursuant to Title 7 Del.C. Ch. 74A, The Jeffrey Davis Aboveground Storage Tank Act.

The Delaware Department of Natural Resource and Environmental Control is responsible for protecting, preserving and enhancing the environmental quality of water, air and land of the State. In addition, the General Assembly of the State of Delaware has found "that it is therefore necessary to provide for more stringent control of the installation, operation, retrofitting, maintenance, repair, abandonment, and/or removal of aboveground storage tanks

(ASTs) to prevent releases and where releases occur, to detect and remediate them at the earliest possible stage, thus minimizing further degradation of soil, air, surface water, and groundwater and promoting public safety."

The *Regulations Governing Aboveground Storage Tanks* are intended to address existing and potential sources of pollution that may result from ASTs. To ensure the prevention and early detection of a release of a regulated substance should one occur, new tanks are required to meet acceptable design and installation criteria and existing tanks are required to upgrade by a schedule set forth to comparable standards. AST design criteria promulgated under these Regulations will minimize the risk of Regulated Substances impacting the environment. Release confirmation and remediation standards are set forth to require the clean-up of any Release that does occur.

The Regulations are divided into five sections.

Part A includes registration requirements including fees, a list of standards referenced in the Regulations, alternative procedures approval requirements, release preparedness plan, release indication and reporting requirements, and specifications for confidentiality claims.

Part B details the specific requirements governing the design and construction of new aboveground storage tanks, including requirements for secondary containment, overflow and spill prevention, leak detection and inerting requirements for ullage volumes of new ASTs without a floating roof. Requirements for the upgrade of existing aboveground storage tanks, requirements for out of service ASTs and requirements for removal, permanent closure in place and permanent change in contents are included in this section.

Part C details the requirements for the inspection, monitoring, testing and record keeping for all aboveground storage tanks.

Part D details the requirements for showing proof of financial responsibility by owners and operators of aboveground storage tanks.

Part E details the requirements for conducting site assessments and remediation of sites with contamination resulting from a release of a regulated substance from an aboveground storage tank.

Changes made after Public Hearing

Part A, §3.3.1.8 – Added referenced standard API, RP1615 *Installation of Underground Petroleum Storage Systems*

Part A, §3.7.3 - Added referenced standard, ASTM D-2583, *Standard Test Method for Indentation Hardness of Rigid Plastics by Means of a Barcol Impressor*

Part A, §6.4 – Added "Any information submitted to the Department in which a confidential business information designation is requested shall be subject to Part A §9 of these Regulations and the *Freedom of Information Act Regulations*

adopted Pursuant to 29 Del.C. Ch. 100 as amended.”

Part A, §7.1.1.8 – Removed the requirement that home phone numbers be submitted in the Release Preparedness Plan.

“The Plan shall list names, addresses, and [office] phone numbers [office and home] of all persons qualified to act as emergency coordinator and this list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates. A Facility emergency coordinator shall be available to respond at all times.”

Part A, §9.4 – Added “Any information submitted to the Department in which a confidential business information designation is requested shall be subject to the *Freedom of Information Act Regulations* adopted Pursuant to 29 Del.C., Chapter 100 as amended.”

Part B, §3.7 All metallic Shop-Fabricated ASTs installed after the effective date of these Regulations shall provide a method of Leak Detection in accordance with §9 of this Part.~~[capable of detecting a leak before contamination of the soil not associated with secondary containment, or surface water or groundwater occurs].~~

Part B, §3.12 The completed installation of every metallic Shop-Fabricated AST installed after the effective date of these Regulations is to be inspected and certified by an inspector familiar with Shop-Fabricated ASTs [such as certified STI-SP001 Inspectors and qualified by experience for such inspections].

Part B, §4.5.2 An Impervious geosynthetic liner [installed in accordance with manufacturer’s recommendations] such as a 60 mil unreinforced liner, 40 mil reinforced liner, or a material of similar or more stringent specifications and that is compatible with the Regulated Substance being stored.

Part B, §4.8 ~~[All non-metallic ASTs installed after the effective date of these Regulations constructed for the purpose of storing Regulated Substance with corrosive properties shall be subject to additional design consideration]~~ Installation of all non-metallic ASTs installed after the effective date of these Regulations constructed for the purpose of storing sulfuric acid, Spent Acid or Spent Caustic or other Regulated Substances with similar corrosive properties shall be subject to additional design consideration including but not limited to NACE Standard RP0294, material compatibility, coating requirements and additional non-destructive examination (NDE).

Part B, §4.9 All non-metallic ASTs installed after the effective date of these Regulations shall provide a method of Leak Detection in accordance with §9 of this Part ~~[capable of detecting a leak before contamination of the soil not associated with secondary containment, or surface water or groundwater occurs.]~~

Part B, §4.12 All non-metallic ASTs installed after the effective date of these Regulations shall be tested in accordance with industry standards [and manufacturer’s recommendations] before being placed in service.

Part B, §7.1.2 Secondary Containment shall not be used to store materials. ~~[The containment structure]~~ **The Secondary Containment** will be used to collect spills or Leaks, which shall then be promptly removed, in accordance with appropriate disposal and safety procedures.

Part B, §7.2.4.1.2 Leak Detection **[as required in §9 of this Part;**

Part B, §11.1.7.1 Leak Detection equipment **[in accordance with the requirements of §9]** of this Part or alternate method approved by the Department

Part B, §11.2.1 Within ten (10) years of the effective date of these Regulations, all existing Underground Piping that does not meet the requirements for new underground piping as required in ~~[§6 5]~~ of this Part shall be upgraded to meet such Requirements.

Part B, §13.2.2 An AST Owner and Operator who reactivates an AST which has been Out-of-Service per ~~[§13.1.1. 13.2.1]~~ shall notify the Department by amending the AST registration form required by Part A, §4, ten (10) days prior to putting the AST back into service.

Part B, §14 An Owner and Operator shall notify the Department of the scheduled removal or permanent Closure in place of an AST or Permanent Change in Contents on a form provided by the Department not later than ten (10) days prior to removal or permanent Closure in place ~~[or Permanent Change in Contents]~~ of an AST.

Part D, §2.1 Owners and Operators of ASTs ~~[are required to shall]~~ comply with the requirements of this Part ~~[120 days after promulgation of these Regulations by June 1, 2005.]~~

Part D, Appendix B (8) (e) Bodily ~~[damage injury]~~

Part D, Appendix O (7) (e) Bodily ~~[damage injury]~~

DUE TO THE LENGTH OF THE REGULATION THE FULL TEXT IS NOT BEING PUBLISHED. THE REGULATION IS AVAILABLE FROM THE REGISTRAR OR ONLINE.

Aboveground Storage Tank (PDF Version)
Aboveground Storage Tank (HTML Version)

DIVISION OF PARKS AND RECREATION

Statutory Authority: 7 Delaware Code,
Section 4702 (16 Del.C. §4702(c))

Secretary's Order No.: 2004-P-0027

Date of Issuance: May 3, 2004

Effective Date of the Amendment: June 11, 2004

I. Background

On Wednesday, October 29, 2003 a public hearing was held in the DNREC Auditorium in Dover to receive comment on proposed amendments to the Division of Parks and Recreation's Rules and Regulations. Under Title 7, Del.C. §4701(a)(4), the Division of Parks and Recreation may make and enforce regulations relating to the protection, care and use of the areas which it administers. A public workshop concerning these proposed changes was held immediately preceding this public hearing on October 29th. Public comments were received on the Department's proposed changes during the pre-hearing, hearing and post-hearing phases of this rulemaking procedure. The Division of Parks and Recreation responded to these comments, both verbally at the public hearing and in a separate memorandum to the Hearing Officer dated February 17, 2004. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Unfortunately, however, due to a promulgation error within the Department, a second public hearing had to be held on April 28, 2004, in order to effectuate formal publication of the notice of the public hearing in the Delaware Registry. No members of the public attended the aforementioned second hearing of April 28, 2004, nor were there any additions made to the record as a result of the same. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Report to the Secretary dated April 29, 2004, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated April 29, 2004, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the proposed amendments to the **DNREC Division of Parks and Recreation's Rules and Regulations** be promulgated and

implemented in the manner and form provided for by law pursuant to the changes proposed during this rulemaking process and as recommended in the Hearing Officer's Report.

IV. Reasons

Adopting the proposed amendments to the **Division of Parks and Recreation's Rules and Regulations** will be beneficial to the State of Delaware, in that these amendments will add consistency and/or clarification to the existing regulations. Additionally, some of these amendments will enable the State of Delaware to improve and/or enhance the overall performance of the State Parks' management program. Furthermore, the adoption of these amendments will permit the State of Delaware to further the purposes of Title 7, **Delaware Code**, Chapter 47.

John A. Hughes, Secretary

Delaware State Park Rules And Regulations**1.0 Definitions**

"Activity Charge" means any fee assessed to offset the costs associated with a particular program or activity."

"Activity Engaged in Surf Fishing" means when a person is taking all reasonable and necessary actions to maximize the probability of hooking and landing game fish by rod, reel and line attached to a baited rig, artificial lure or artificial fly. A person is also actively engaged in surf fishing when they are within 50 feet of their fishing equipment and are tending, casting and recasting their fishing equipment.

"Alcoholic Liquor", "Alcoholic Beverages" include the 4 varieties of liquor defined in 4 Del.C. §101 (alcohol, spirits, wine and beer) as well as every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being and any liquid or solid containing more than 1 of the 4 varieties defined in 4 Del.C. §101 is considered as belonging to that variety which usually has the higher percentage of alcohol.

"Authorized Agent" shall mean any employee of the Division or volunteer who has been delegated the authority to perform or cause to be performed, certain designated acts or functions within the scope of his duties.

"Commission" means the Commission created under 4 Del.C. Ch. 3, under the name of "The Delaware Alcoholic Beverage Control Commission".

"Department" shall mean the Department of Natural Resources and Environmental Control.

"Director" shall mean the Director of the Division of Parks and Recreation.

"Division" shall mean the Division of Parks and Recreation of the Department of Natural Resources and

Environmental Control.

"Drug Paraphernalia" for the purposes of this chapter shall be defined in 16 Del.C. §4701.

"Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

"Hunter Registration Card" means a document issued by the Division which confers eligibility to participate in hunting programs on parks subject to special restriction.

"License" means any license, temporary instructor's permit or temporary license issued under the laws of the state pertaining to the licensing of persons to operate motor vehicles or vessels. "License" shall also mean any document issued by the State for hunting or fishing.

"Motorized Vehicle" means every vehicle which is self-propelled including, but not limited to, mopeds, motorcycles, all terrain vehicles (ATV) and other two, three, three or four-wheel vehicles.

"Operator" means any person who is in actual in physical control of any motor vehicle, vessel, snowmobile or other means of conveyance.

"Owner" means a person who holds legal title to a vehicle, vessel or snowmobile.

"Permit" shall mean any written license issued by the Department permitting the performance of a specified act or acts.

"Resident" shall mean any person, persons or corporations owning a motor vehicle(s) duly registered by the Delaware Motor Vehicle Division of the Department of Public Safety and possessing a valid Delaware Motor Vehicle operator's license.

"Restaurant" means any establishment, provided with special space and accommodation, where, in consideration of payment, food is habitually furnished to a park visitor, and does not include the following types of establishments defined in 4 Del.C. §101, tavern or taproom.

"Restricted Use Parking Area" means those parking areas which may be set aside and reserved for use by persons patronizing certain facilities within the park. Such areas will be signed designating type of use: i.e., Restaurant Parking, Marina Parking, etc.

"Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control.

"Snowmobile" means a motor vehicle designed to travel over ice or snow supported in whole or in part by skis, belts, or cleats, or an engine-driven vehicle of a type which uses sled-type runners or skis or an endless belt tread or any combination of these or other similar means of contact with the surface upon which it is operated, but does not include any farm tractor, highway or other construction equipment or any military or law enforcement vehicle.

"State" shall mean the State of Delaware.

"Surf Fishing Vehicle Permit" means the owner's copy of the written permit and a surf fishing vehicle plate with current year validation sticker affixed.

"Vending" means to: solicit or receive an order for; keep or expose for sale; deliver or value in any other way than purely gratuitously; keep with intent to sell; traffic in; or for any valuable consideration, promise or obtain, directly or indirectly, or under any pretext or by any means whatsoever, procure, or allow to be procured for any other person.

"Vendor" means a person who is in the act of vending as defined in these regulations.

"Vessel" includes every description of water craft, other than a seaplane on water, used or capable of being used as a means of transportation.

2.0 General Information

2.1 Purpose. It shall be the intent and purpose of the Division of Parks and Recreation to adopt only those minimal Rules and Regulations that are essential to the protection of Park resources and improvements thereto and to the safety, protection and general welfare of the visitors and personnel on properties under its jurisdiction.

2.2 Scope. Unless otherwise provided by statute, the following shall constitute the Rules and Regulations of the Division of Parks and Recreation and shall govern the use of all applicable lands, recreation areas, historic sites, natural areas, nature preserves, rights as grantee to conservation easements, marinas, waters and facilities administered by the Division of Parks and Recreation. No Rule or Regulation herein shall preclude the enforcement of any statute under the Delaware Code.

2.3 Regulation Authority. In accordance with Title 7 Del.C. §4702(c), of the Delaware Code Annotated, the Administrative Procedures Act, all Rules and Regulations of the Department of Natural Resources and Environmental Control, Division of Parks and Recreation, shall have the effect of law and shall be published in at least two newspapers, of general circulation in the territory to be affected, 30 days prior to the date the Rules and Regulation become effective, except in the case of an emergency, the Department or Division shall give such advance notice as deemed necessary or desirable.

2.4 Construction

2.4.1 No Rule or Regulation herein shall be interpreted or construed in such a manner as to prevent or delay authorized personnel of the Department or other state, county or municipal agencies from completing official duties or emergency services.

2.4.2 In special circumstances, events or emergencies, the Secretary or Director may, when it is deemed to be in the public interest, waive a specific Rule, Regulation or fee.

2.4.3 Failure to enforce a specific Rule or Regulation at a particular instance or instances shall not

affect the validity of any other Rule or Regulation or affect the validity of such Rule or Regulation at any other time.

2.5 Park Policies

2.5.1 ~~The Director, Manager of the Operations and Maintenance Section, Park Administrators and Superintendents;~~ In order to promote the safety and welfare of park visitors and protect and manage property in the parks, the Director, Chief of Enforcement, Park Administrators and Superintendents shall have the authority to develop reasonable policies for State Parks that are not in conflict with 7 Del.C. Ch. 47 and these Rules and Regulations. These policies must be approved by the Director and posted in a conspicuous place in the park prior to their becoming effective. Copies of all policies shall also be maintained in the office of the Park Superintendent or Park Administrator and the Central Office.

2.5.2 Violation of any park policy shall be grounds for eviction from the park and the denial, revocation or suspension of any permit issued or privilege granted by the Division.

2.5.3 The Division shall have the authority to enforce safety rules and/or policies developed in accordance with 2.5.1 of these Regulations for the protection of visitors and property.

2.6 Severability. If any section, subsection, paragraph, sentence, phrase or word of these Rules and Regulations are declared unconstitutional by a court of competent jurisdiction, the remainder of these Rules and Regulations shall remain unimpaired and shall continue in full force and effect, and proceedings thereunder shall not be affected.

2.7 Terms

2.7.1 Any term contained in these Rules and Regulations shall be construed as follows:

2.7.1.1 Any term in the singular shall include the plural and vice versa;

2.7.1.2 Any term in the masculine shall include the feminine and neuter;

2.7.1.3 The prohibition of an act shall tend to include an attempt to commit such act and the causing and/or the procuring directly or indirectly of such act;

2.7.1.4 No provision contained in these Rules and Regulations and no act performed by an officer or employee of the Department in the line of duty or in the scope of employment, or any act performed by a person, his agents, or employees in the performance or execution of the terms of an agreement with the Department shall be cause to be deemed unlawful; and

2.7.1.5 Any reference to the Director, Park Administrator, Superintendent or Marina Manager shall include their authorized agent.

2.8 Permit Violation Penalties. The violation of, or the refusal to obey, any Law, these Rules and Regulations, Park Policies or the terms or conditions of any permit issued or privilege granted by the Division shall be grounds for the

suspension or revocation of any permit issued or privilege granted by the Division, the removal or eviction from State Park lands and/or the denial of future entry to, or the denial or future permits or privileges within State Parks. Any and all applicable permit fees shall be forfeited to, and retained by, the Division. Any such suspension, revocation, removal, eviction or the denial of entry, permit or privilege shall not preclude the prosecution of any person for violation of any Law or these Rules and Regulations.

3.0 Rules and Regulations

3.1 Use Restriction/Trespassing

3.1.1 The Director may limit or close specific public use areas, lands, waters and/or facilities and/or temporarily prohibit certain activities, including possession and/or consumption of alcoholic beverages within those areas when such action is deemed necessary for property management, protection of flora, faunas and their habitats and/or when it is in the best interest of the health, safety, and the general welfare of the visitors.

3.1.2 Entering or remaining on lands under the jurisdiction of the Division when such lands are closed or entering or remaining within any building, structure or facility when such building, structure or facility is closed, shall be prohibited without a written permit permission from the Director, or designee.

3.1.3 No person shall enter upon or be present upon lands administered by the Division, except as authorized by statute, regulation or written permission from the Director.

3.1.4 No structure, facility, building or area administered by the Division shall be used for any activity other than that for which it was intended ~~without the prior written permission of the Director.~~

3.1.4.1 No person(s) shall sleep or attempt to sleep or otherwise be present and are not engaged in the activity for which the 24 hour facility or area is used for.

3.1.5 No person shall use or attempt to use a State Park campground or marina as a principle residence or as a base of operations for conducting any type of business either on a permanent or temporary basis.

3.1.6 Use of metal detectors on lands under the jurisdiction of the Division shall be prohibited except during normal park hours in the following areas:

3.1.6.1 Lums Pond State Park swimming area beach; and

~~3.1.6.2 Trap Pond State Park swimming area beach;~~

~~3.1.6.3 Holts Landing State Park beach; and~~

3.1.6.42 Ocean beaches east of the dune line.

3.1.7 No person shall collect, excavate, injure, destroy or appropriate prehistoric or historic artifacts or human skeletal remains from lands under the jurisdiction of

the Division except with written permission from the Director. Violations under this paragraph may be charged under the provisions of 7 Del.C. §5306 or 7 Del.C. §5411.

3.1.7.1 Possession or use of tools or devices specifically designed for the excavation and removal of artifacts or human skeletal remains shall be deemed prima facie evidence of a violation of this Regulation and will be confiscated, held as evidence and be subject to forfeiture upon conviction.

3.1.8 In areas where activities such as rock climbing, rappelling or similar activities are permitted on lands administered by the Division a program fee/registration may be required.

3.1.9 The Division maintains exhibits at the Brandywine Zoo, various Nature Centers and temporary exhibits to provide recreational interpretation to the public. The following regulations apply in these areas:

3.1.9.1 No person shall bring pets or other animals into the Zoo.

3.1.9.2 No person shall throw any object(s) at animals or into the animal enclosures.

3.1.9.3 No person shall feed or attempt to feed any animal other than persons designated by the Zoo Director.

3.1.9.4 No person shall harass or attempt to harass any of the zoo animals by making unreasonable sounds, gestures, movements or use any object to touch the animals.

3.1.9.5 No person shall attempt to cross any safety barriers to prevent the animals from coming into contact with the general public.

3.1.9.6 No person shall put or attempt to put any body parts in the animal enclosures.

3.1.9.7 No person shall throw any object(s) into any exhibit.

4.0 Campground Policy

4.1 The Division shall develop policies as necessary pursuant to Section 2.5.1 of these Regulations to ensure the safe and efficient operation of its campgrounds. Copies of the Campground Policy shall be kept on file in the park offices, posted in the campgrounds and will be made available to campers at the time of registration.

5.0 Vessel Regulations

5.1 No person shall launch or recover vessels from waters within or bordering on State Park lands except at designated boat-launch areas or docks.

5.2 No person shall operate a vessel except at slow-no-wake speed on any pond, lake, canal or within any marina under the jurisdiction of the Division.

5.2.1 No person shall launch or operate a vessel powered by an internal combustion engine on Trussum Pond and Raccoon Pond.

5.3 All laws, rules and regulations as established by the Department governing boating in the State of Delaware shall apply to all ponds, lakes, rivers, canals, waterways, and marinas owned, leased, licensed or under the jurisdiction of the Division.

5.4 No person shall operate or use vessels of any type, including inflatable rafts, sailboats, rowboats and canoes on waters administered by the Division without one (1) Coast Guard approved lifejacket ~~or seat cushion~~ on board for each person.

5.4.1 Operators and passengers of Division rental canoes, sailboats, or kayaks or other watercraft rented or provided by the Division must wear a Coast Guard approved life jacket in the manner prescribed at all times while aboard such craft.

5.5 No person shall operate any vessel within fifty (50) feet of or through any designated public swimming area within any inland pond under the Division's jurisdiction.

5.6 No person shall operate any vessel within one hundred (100) feet of a swimmer, surfer, or any designated swimming or surfboarding area, any swimmer or surfer or the coastline of any ocean beach or inland bay unless designated for such purpose.

5.7 Vessels and/or trailers shall not be anchored, moored, beached, stored or left unattended between the hours of sunset and 8 a.m. on lands or waters administered by the Division without authorization of the Park Administrator, Superintendent or Marina Manager.

5.8 Swimming or diving from any vessel, including a seaplane is prohibited in waters under the jurisdiction of the Division.

5.9 A person renting a vessel from the Division shall comply with the manufacturer's rated capacity for such vessel.

5.10 Operation of a vessel in a negligent or reckless manner which could endanger life, limb, or property is prohibited.

5.11 Vessels shall not be permitted to dock at Cape Henlopen State Park fishing pier, Holts Landing State Parks fishing pier or at Fort Delaware dock except in an emergency or when in distress. The following stipulations must be adhered to:

5.11.1 Approval for emergency docking must be obtained from the Park Superintendent or Administrator either prior to docking or within eight (8) hours after docking.

5.11.2 A docking fee based on prevailing rates in the area will be paid by vessels docking at Cape Henlopen fishing pier, Holts Landing fishing pier, or at Fort Delaware Dock.

5.11.3 The owner and/or vessel master shall be responsible for any damage to the docks.

5.12 The parking or leaving of vessels, or vessel trailers in marina parking lots or marina areas overnight shall

be prohibited unless prior written permission is given by the Marina Manager. This shall not apply to vessels and trailers legally stored within designated vessel storage areas or if the area is designated as a 24-hour facility by the Division.

6.0 Marinas

6.1 Any vessel entering the waters of any marina administered, operated, leased or licensed by the Division shall immediately come under the jurisdiction of the Division. All rules and regulations of the Division, in addition to the laws, rules and regulations governing vessels established by the Department and the U.S. Coast Guard shall apply.

6.2 No person shall dock or anchor a vessel within the waters of a marina complex administered, operated, leased or licensed by the Division unless the owner-master of such vessel pays such fees as required for dockage. Dockage contracts may be obtained from the marina office or from the Marina Manager. This regulation shall not apply to vessels docking at refueling stations to take on fuel.

6.2.1 In addition to any penalties assessed for violations of this Regulation, the owner or operator of the vessel shall also pay the dockage or anchorage fee.

6.3 Docking or anchoring of vessels will be permitted only in areas designated by the Marina Manager.

6.4 No major repair work, other than minor repairs and routine maintenance shall be performed on any vessel within a marina complex administered, operated, leased or licensed by the Division without the approval of the Marina Manager.

6.4.1 No major repair work shall take place on any vessel, except in such areas as designated by the Marina Manager.

6.5 Refueling of vessels will be permitted only at the designated refueling bulkhead stations. Distributors shall not deliver fuel to vessels docked in a marina administered, operated, leased or licensed by the Division.

6.5.1 No vessel shall dock or anchor at a refueling station except to take on fuel.

6.5.2 Vessels docked at refueling stations to take on fuel shall not be left unattended and shall be removed immediately upon completion of refueling.

6.5.3 Only the owner, master or a crew member shall remain on board during refueling. All passengers must disembark until refueling operations are completed.

6.5.4 All engines must be shut down during refueling.

6.5.5 Smoking or open flames are prohibited within fifty (50) feet of the refueling stations.

6.5.6 No person shall use any refueling station for the purpose of loading or unloading supplies or passengers, except when complying with 6.5.3 above.

6.5.7 No gasoline or diesel fuel shall be pumped or siphoned from any vessel within the marina complex without the Marina Manager's prior approval and then only

within an approved area designated by the Marina Manager. Under no circumstances will fuel be removed while the vessel is docked within a slip.

6.6 No refuse, trash, oil or effluents shall be thrown or pumped overboard into the waters of a marina, channel approaches or other areas administered by the Division or Department.

6.6.1 Waste oil and used oil filters shall be transported in sealed containers and deposited in a waste oil tank located within the marina. Waste oil filters will be deposited in an oil filter receptacle located adjacent to the waste oil tank or other authorized recycle centers.

6.7 Disorderly conduct by vessel owners, their crew or guests shall be cause for cancellation of a pier dockage agreement and any assigned dock or mooring space.

6.8 Safety precautions must be observed and complied with in all marina areas administered by the Division.

6.8.1 Swimming or diving is prohibited from all piers, docks, bulkheads and vessels within marina waters.

6.8.2 Running or horseplay is prohibited on all piers, docks and bulkheads within the marina.

6.8.3 Fishing is prohibited from all piers, docks, bulkheads and vessels within marina waters.

6.8.4 Use of barbecue grills or other types of portable open flame cooking devices are prohibited on docks or vessels moored within the marina complex.

6.9 Fish cleaning is prohibited within a marina complex, except at authorized fish cleaning facilities that may be provided.

6.9.1 It is prohibited to throw or dump any fish remains, parts or pieces thereof, into the waters or onto the grounds of the marina except in receptacles provided for such purposes.

6.10 No person shall go aboard any vessel docked, anchored or stored within a marina complex, unless such person is accompanied by the owner or master, or has written permission from the owner or master of such vessel.

6.11 No person shall enter upon the grounds, waters, docks or piers of a marina from one-half (½) hour after sunset until one-half (½) hour before sunrise except authorized persons such as vessel owners, masters, crew members and passengers returning from or embarking on boating excursions for fishing or pleasure, or authorized persons residing aboard a vessel.

6.12 The parking or leaving of vessels or vessel trailers in marina parking lots or marina areas overnight shall be prohibited unless prior written permission is given by the Marina Manager. This shall not apply to vessels and trailers legally stored within designated vessel storage areas.

7.0 Water sports

7.1 Persons swimming or sunbathing in areas administered by the Division shall be attired in acceptable swimwear, worn so as to prevent any indecent or lewd

exposure of the person.

7.1.1 Males - must cover buttocks and genitals

7.1.2 Females - must cover buttocks, breasts and genitals

7.2 Swimsuits must be worn when using Division swimming pools. Cut-off jeans, trousers or other clothing not designed and sold as swimwear will not be permitted.

7.3 Lifeguards shall have the authority to enforce safety rules or policies that are deemed necessary for the protection of the public. Such rules shall be posted in a conspicuous place and shall be on file in the Park Administrator/Superintendent's office. Lifeguards shall have the authority to expel any person or persons who violate the Park Rules, Regulations and Policies. ~~Swimming outside of designated swimming areas is prohibited.~~

7.4 ~~No surfboarding surfboards, sailboards, kayaks or similar watercraft shall be allowed in other than designated guarded surfboarding swimming areas without permission of the Park Superintendent/Administrator unless approved by the Director or their designee.~~

7.5 Water skiing or towing of any persons on any type of device, other than on another vessel, shall be prohibited on all non-tidal waters administered by the Division, except by written permission of the Director or designee.

7.6 Use of scuba diving equipment shall be prohibited in all waters administered by the Division, unless written permission is given by the Director. ~~or his authorized agent.~~

7.7 The possession of glass containers within any swimming area or on any beach administered by the Division shall be prohibited.

8.0 Ice Skating

8.1 No person shall ice skate or enter upon any frozen pond, lake or stream administered by the Division except on areas as may be designated by the Division.

8.2 Areas where ice skating is permitted by the Division shall be marked and no person shall be permitted on the ice outside of such designated area.

9.0 Snowmobiles

9.1 Snowmobiles used or operated on lands under the jurisdiction of the Department must be registered with the Department State of Delaware. Exempt from this requirement are snowmobiles owned by non-residents evidenced by a valid registration of another state, province, county or political subdivision thereof, or the United States.

9.2 Registration of a snowmobile hereunder shall not be deemed to grant permission for operation of a snowmobile on any public roadway or highway or on private property.

10.0 Surf Fishing Vehicles

10.1 The Division through its authorized agents shall collect an annual fee and issue an appropriate permit

for each four (4) wheeled vehicle equipped for travel upon sand beaches for the purpose of surf fishing at Cape Henlopen State Park, Delaware Seashore State Park, Fenwick Island State Park, and Beach Plum Island.

10.1.1 Surf Fishing Vehicle Permits shall be issued only to those vehicles duly registered and licensed to operate on public highways.

10.1.2 Four (4) wheeled vehicles for purposes of this Section shall mean a vehicle equipped with four (4) wheels which makes contact with the road surface.

10.1.3 No Surf Fishing Permit shall be issued to any vehicle which measures less than seven (7) inches between the lowest point of the vehicle and the ground.

10.1.4 Surf fishing vehicles must be equipped with a shovel, jack, tow rope or chain, board or similar support for the jack and a low-pressure tire gauge.

10.1.5 Failure to possess adequate saltwater fishing tackle, bait and/or lures commonly used for surf fishing shall be deemed prima facie evidence of a violation of this regulation.

10.2 No person shall operate a vehicle upon the beach areas or dune crossings administered by the Division without a permit for such vehicle as set forth in Section 10.1.

10.3 The surf fishing vehicle plate must be properly displayed on the vehicle for which the permit was issued prior to operation on beach areas administered by the Division.

10.3.1 The surf fishing vehicle plate shall be affixed to the front of the vehicle.

10.3.2 The owner's copy of the permit receipt shall be available for inspection at all times when the vehicle is being operated on such beach areas.

10.4 It shall be unlawful to operate any vehicle on any authorized dune crossing or on any beach area administered by the Division at any speed that is greater than is reasonable and prudent under the conditions, and having regard to the actual and potential hazards then existing, but never exceeding 15 m.p.h. In every event, speed shall be controlled and limited to that speed necessary to maintain traction and steering.

10.5 ~~Operation or use of any permitted surf fishing vehicle on the beaches administered by the Division except for traveling to and from fishing areas for the purpose of actively engaging in surf fishing is prohibited. The capacity of the beaches administered by the Division to absorb the impact of vehicles, without substantial environmental degradations and decreased quality of experience for all visitors is limited. Therefore, vehicle use on the designated beaches is restricted to persons actively engaged in surf fishing. Permitted surf fishing vehicle operation on the beaches administered by the Division for reasons other than traveling to and from fishing areas for the express purpose of actively engaging in surf fishing, is prohibited. Any permitted surf fishing vehicle parked for any period of time~~

on the beaches administered by the Division, without one or more persons who arrived in that vehicle being actively engaged in surf fishing is prohibited. When no one who arrived in the surf fishing vehicle is actively engaged in surf fishing, the surf fishing vehicle shall exit the beach immediately. In addition to other penalties prescribed in these rules and regulations and by statute, violation of this subsection is grounds for suspension or revocation of the permit.

10.5.1 Use of a surf fishing permit for the purpose of commercial bait fishing is permitted on the beaches administered by the Division provided all conditions and requirements of said permit are met and a bait fishing permit is obtained from the Director.

10.6 The Division shall designate areas for surf fishing vehicle use on beaches under its jurisdiction. These areas shall be marked with symbol signs indicating 24-hour access, limited access and no access. Operation of a vehicle in an area not authorized for such use or during times and/or dates that the area is closed to vehicles shall be a violation of this regulation.

10.7 The use or operation of any vehicle whatsoever, on, over, or across the sand dunes on Division lands is expressly prohibited, except when it is a vehicle displaying a valid Delaware Surf Fishing Vehicle Permit and is crossing dunes at authorized dune crossings, which are designated and maintained for that purpose by the Division.

10.7.1 Any other use or operation of a vehicle on, over or across the primary sand dunes, except at authorized crossings, is expressly prohibited. Violators of this regulation may be charged under 7 Del. C. §6805(b) which carries a penalty of \$200 to \$5,000 or imprisonment for up to two years or both, in addition to reimbursing the Department for reasonable expenses in remedying damages created.

10.8 Beach areas, including surf fishing areas, may be closed to pedestrians and vehicles, in whole or in part, for resource protection or for health, welfare, and/or safety reasons for such a period as may be determined by the Department. Unauthorized entry into a posted and/or barricaded closed area shall be a violation of this regulation.

10.9 It shall be a violation of this Section to loan a Surf Fishing Vehicle Permit, or to use or attempt to use a Surf Fishing Vehicle Permit on any vehicle other than the vehicle it is assigned to. In addition to other action that may be taken, the permit will be confiscated and held as evidence.

10.10 The Director shall have the right to suspend Surf Fishing Vehicle Permits for up to 90 days or to revoke permits for up to three (3) years for conviction of reckless operation of a surf fishing vehicle or operation of a surf fishing vehicle under the influence of alcoholic beverages and/or drugs on lands administered by the Division or for violations of these regulations.

11.0 Vehicles

11.1 Vehicles operated on lands administered by the Division shall be in compliance with all State statutes, laws, rules and regulations.

11.1.1 No person shall operate any motorized vehicle upon any lands administered by the Division, unless said vehicle is licensed for use upon public highways and roadways.

11.1.2 Vehicles operated on lands administered by the Division must be properly equipped with brakes, headlights, tail lights, tag light, turn signal, and horn all in good working order.

11.1.3 Towed trailers must have an adequate towing hook-up, complete with safety chains. They must also be equipped with operating tail lights, turn signals, tag light, and be currently registered to be towed on public roads.

11.2 No person shall operate a motor vehicle, motorcycle, motor bike or other two or three-wheeled motor driven vehicle upon any lands administered by the Division, unless said person has been issued and is the holder of a valid license or permit to operate said vehicle on public highways and roadways.

11.2.1 The license or permit shall be in the immediate possession of the licensee at all times when driving a motor vehicle, motorcycle, motor bike or other two or three-wheeled motor driven vehicle and he/she shall display same upon demand of Department Enforcement personnel.

11.3 No person shall authorize or permit a motor vehicle of any type owned by him or under his control to be driven by any person on lands administered by the Division, knowing that said person has no legal right to do so, or shall authorize or permit said vehicle to be driven in violation of any of the provisions of the Division's Rules and Regulations.

11.4 When on lands administered by the Division, the driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle, the traffic and the condition of the roadway or area.

11.5 Every driver shall yield preferential right-of-way at an intersection or other place indicated by stop signs or yield signs authorized and installed by the Division.

11.5.1 Except when directed to proceed by an enforcement officer or traffic control device, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall come to a complete stop before entering the intersection.

11.5.2 The operator of any vehicle who has come to a full stop, as provided in 11.1.1 of this Regulation, shall not enter upon or across such intersection until such movement can be made in safety.

11.6 Specific motor vehicle speed limits on lands administered by the Division:

11.6.1 Every driver shall observe all posted speed limits. When no special hazard exists the following speed shall be lawful, but any speed in excess of such limits shall be absolute evidence that the speed is not reasonable or prudent and that it is a violation of this Section:

11.6.1.1 25 m.p.h. -- on roads administered by the Division unless otherwise posted or stated in Regulations.

11.6.1.2 10 m.p.h. -- in parking, camping and congested areas unless otherwise posted.

11.7 No person shall operate a motor vehicle on lands administered by the Division in a ~~careless or imprudent manner without due regard for road, weather and traffic conditions~~ willful or wanton disregard for the safety of person or property.

11.7.1 No person shall operate a motor vehicle on lands administered by the Division in a careless, inattentive or imprudent manner without due regard for road, weather and traffic conditions.

11.7.2 The intentional accelerating of a motor vehicle causing spinning of tires or what is commonly known as "burning rubber" on any park facility or roadway within an area administered by the Division is prohibited and shall be a violation of this Section.

11.8 An operator and/or passenger of a motorcycle under the age of 18 must wear a safety helmet of a type approved by the Secretary of Public Safety.

11.9 An operator of a motor vehicle shall not permit any person riding upon any bicycle, coaster, roller skates, sled or toy vehicle to attach same or himself to any motor vehicle being operated on lands administered by the Division.

11.10 While on lands administered by the Division, no person, shall ride upon any vehicle without the consent of the driver, and when any person is riding on any vehicle with the driver's consent, no part of the person's body may protrude beyond the limits of the vehicle.

11.11 No person shall drive or operate a motor vehicle on lands administered by the Division, unless such motor vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise.

11.12 No vehicle shall be driven, moved or parked on any lands administered by the Division unless so loaded or constructed as to prevent its contents from dropping, sifting, leaking or otherwise escaping.

11.13 It shall be unlawful for any person to operate any motor vehicle or any other type of vehicle within any area administered by the Division except on such roads or areas specifically designated by the Division for such purpose.

11.14 No driver shall at any time drive to the left of a

solid center line on a roadway when operating a vehicle on lands administered by the Division.

11.15 Where traffic control devices establish one-way traffic, it shall be unlawful to drive in the opposite direction unless directed by a Law Enforcement Officer.

12.0 Parking Violations

12.1 It shall be unlawful to stop, park or leave unattended any motor vehicle on any roadways, berms, trails, no parking zones or in any other areas not specifically designated as a parking area on lands administered by the Division.

12.1.1 No person shall park any vehicle in a parking space marked or signed as a designated handicap parking space unless such vehicle bears a special handicap license plate or displays an authorized identification card indicating that the vehicle is a vehicle of the handicapped and bearing the license number of the vehicle to which it was issued.

12.1.2 No person shall ~~allow~~ park a vehicle and allow said vehicle to remain parked in an area longer than the posted time limit.

12.1.3 No person shall park in any parking space that is signed and marked as reserved for a Park Ranger, emergency vehicles or employee parking.

12.1.4 No person shall park in a "Restricted Use Parking Area" unless parking is for the use of the facility so designated.

12.1.5 No person shall park in any fire lane or within fifteen (15) feet of a fire hydrant.

12.1.6 No person shall park a vehicle in any designated area without first having paid the appropriate rate, fee or charge established by the Division or Department.

12.2 It is said to be unlawful for any vehicle to remain on lands administered by the Division after "closing hours" for any day-use areas closed from sunset until 8 a.m.

12.3 It shall be unlawful to leave any motor vehicle unattended on lands administered by the Division for a period exceeding 24 hours, without prior notification to the Park Administrator or Superintendent or written approval from the Director.

12.4 Any officer empowered to enforce Division Rules and Regulations during the performance of his duties may remove or cause to be removed from any lands administered by the Division, at the owner's or operator's expense, any motor vehicle, camping unit, or part thereof, parked or standing illegally or in violation of these regulations.

12.4.1 No vehicle or camping unit removed or caused to be removed pursuant to this Section shall be released until payment is made for such removal and/or storage and proper authority to process and operate said vehicle, camping unit or part thereof displayed by the person

attempting to recover said vehicle, camping unit or part thereof.

12.4.2 No liability shall occur to the Division or its authorized agents for any damage or loss caused by such removal or storage.

12.5 A summons in appropriate form adopted by the Division may be attached to an unattended vehicle found in violation of any of the provisions of these Rules and Regulations.

12.5.1 If the identity of an operator of an unattended vehicle in violation is not otherwise apparent, the person in whose name the vehicle is registered shall be held prima facie responsible.

13.0 Bicycles

13.1 Anyone riding a bicycle or propelling a vehicle by human power shall have all the rights and all the duties applicable to the operator of any other vehicle referenced within these Regulations and shall be in compliance with all State laws, rules and regulations when operating on lands administered by the Division.

13.1.1 Bicycling is permitted only on roadways designated for public use, designated and signed bike paths and multiple-use trails designated and signed for such use.

13.1.2 Bicycles must be ridden as far to their right as possible on roadways.

13.1.3 Bicyclists must give hand signals when stopping or turning on Park roadways.

13.1.4 Bicycles operated on designated bike trails/paths shall yield right of way at all locations where the trail or path intersects with any roadway.

13.1.5 Bicycles operated at night shall be equipped with:

13.1.5.1 a lamp on the front which shall emit a white light and be visible for 500 feet.

13.1.5.2 Reflectors or reflectorized material on the rear and both sides visible from 600 feet.

13.1.6 No one shall operate a bicycle on Park roadways with ear plugs in both ears or while wearing a headset covering both ears.

14.0 Roller Skating, Skateboards, Roller Skis

14.1 Using roller skates, skateboards, roller skis or similar devices is prohibited on lands administered by the Division except in areas that may be designated for such use.

14.2 No person shall operate a motorized scooter, moped or similar device not defined in 21 Del.C. §101(53).

14.3 Persons on skateboards, roller skates, coasters, sleds or toy vehicles are prohibited from being towed or propelled by a motor vehicle on lands administered by the Division.

15.0 Aviation

15.1 No person shall voluntarily bring, land or cause

to descend or alight on or upon any lands or waters administered by the Division any aircraft, flying machine, balloon, parachute or other apparatus for aviation except with the prior consent of the Director. "Voluntarily" shall mean for purposes of this paragraph anything other than a forced or emergency landing.

15.2 Flying of radio-controlled model aircraft or the launching of model rockets shall not be permitted in areas administered by the Division except in areas set aside and designated for such purposes. Special policies regarding insurance and operating conditions will be posted.

16.0 Domesticated Animals/Pets

16.1 No person shall ride or lead a horse through any area or upon any roadway, trail or path administered by the Division unless such area, trail, roadway or path is designated for such use by the Division.

16.1.1 Animal-drawn vehicles are permitted upon roadways and parking areas and shall be granted all the rights and shall be subject to all the regulations applicable to motor vehicles except for those regulations which by their very nature can have no application.

16.2 ~~Horses shall be permitted on ocean beach areas administered by the Division provided they stay within the same boundaries as those designated for surf fishing vehicles under 10-6. In areas where horses are permitted on ocean beaches administered by the Division, owners/riders must stay within the parameters outlined in the Horseback Riding Policy.~~

16.2.1 ~~On State Park ocean beach areas, horses must use the surf fishing vehicle crossings for access to the beach. Use of pedestrian crossings or crossing the dunes at other areas is prohibited.~~ On State Park ocean beach areas, horses must use the designated crossings as outlined in the Horseback Riding Policy.

16.2.2 Vehicle and trailers used to transport horses shall be parked in accordance with the Division's Horseback Riding Policy.

16.3 Except guide dogs accompanying blind and/or deaf persons, dogs and other domesticated animals, shall not be permitted within or upon designated picnic areas, nature trails, public buildings, structures and any other designated areas administered by the Division.

16.3.1 Except guide dogs accompanying blind and/or deaf persons, dogs and other domesticated animals shall not be permitted upon or within any Division-administered swimming area, or swimming area beach or surfboard/sailboard areas at anytime, day or night, from May 1 through September 30 each year, 7 Del.C. §1715.

16.3.2 ~~On areas where such animals are permitted, person(s) having custody of said animal must have it restrained on a leash not to exceed six (6) feet in length and must be under proper control and not left~~

~~unattended.~~ Leashes are not required when lawfully hunting when lawfully hunting with a dog or when training dogs within designated and authorized hunting and/or dog training areas.

16.3.3 In areas where such animals are permitted, person(s) having custody of said animal must keep it restrained on a leash not to exceed six (6) feet in length and must be under proper control

16.3.4 Areas where such animals are permitted person(s) having custody of said animal shall not leave the pet unattended.

16.3.5 Any person(s) with a dog or other domesticated animal or pet, which that creates a nuisance or disturbance, or who fails to properly control such animals, may be evicted without refund or reduction of fee.

16.3.6 Owners or persons having custody of dogs or other domesticated animals shall be responsible for the clean up and removal of any animal feces deposited by the animal.

17.0 Conduct

17.1 Disorderly conduct is unlawful and enforcement action may be ~~enforced~~ taken against any person who intentionally causes public inconvenience, annoyance, nuisance, or alarm to any other person who creates a risk thereof by:

17.1.1 Engaging in fighting or in violent, tumultuous or threatening behavior;

17.1.2 Making an unreasonable noise or an offensively coarse utterance, gesture or display or addressing abusive language to any person present;

17.1.3 Disturbing any lawful assembly or meeting of persons without lawful authority;

17.1.4 Obstructing vehicular or pedestrian traffic;

17.1.5 Congregating with other persons and refusing to comply with a lawful order of an enforcement officer to disperse;

17.1.6 Creating a hazardous or physically offensive condition which serves no legitimate purpose; or

17.1.7 Engaging with at least one other person in a course of disorderly conduct, which is likely to cause substantial harm or serious inconvenience, annoyance or alarm and refuses or knowingly fails to obey an order to disperse made by an enforcement officer to the participants.

17.2 No person shall expose themselves in any manner which would be considered as indecent exposure or perform any lewd act which they know is likely to be observed by others who would be affronted or alarmed by such act or exposure on lands or waters or in facilities administered by the Division.

17.2.1 The disposal of human body waste is prohibited except within designated facilities provided for that purpose.

17.3 Gambling is prohibited and no person shall

bring any implement or device commonly used or intended for gambling purposes into any area administered by the Division, with the intention of engaging in a game of chance for money or other valuables.

17.4 Practicing, playing or using equipment pertaining to archery or golf on lands administered by the Division is prohibited except in those areas specifically designated for such use.

17.5 The playing of games on lands administered by the Division involving thrown objects such as hardballs, frisbees, horseshoes, etc. shall be restricted to such areas set aside for such activities.

17.6 While on lands administered by the Division shall, without a valid written permit, use any radio or other sound-producing device or article that, in any way, may annoy or disturb a reasonable person of normal sensitivities.

17.7 While on lands administered by the Division, no person shall at any time use a horn other than as a reasonable warning signal or make any unnecessary or unreasonable harsh sound by means of a horn or other amplified warning devices.

17.8 Reasonable quiet must be maintained at all times within all overnight facilities, particularly between the hours of 10 p.m. and 7 a.m. Unnecessary loud noises or disturbances of any nature, that are disturbing to others, shall be prohibited.

18.0 Fires

18.1 No person shall kindle, build, maintain or use a fire on lands administered by the Division, unless there is written permission from the Director or designee. Said fire ~~is~~ shall be in in a designated area and confined within fireplaces, grills, fire rings or other equipment designed for the purpose of containing cooking fires.

18.1.1 Any fire shall be under the care and direction of a competent person from the time it is kindled until it is extinguished.

18.1.2 All fires must be properly extinguished and the ashes, embers or coals disposed of in receptacles provided for such purpose, so as to cause no danger whatsoever to persons, structures, animals, ~~or~~ plant life, or vehicles.

18.1.3 Fires shall be prohibited on designated swimming/surfing ~~area~~ beaches administered by the Division.

18.1.4 No fires larger than necessary for cooking purposes shall be permitted.

18.1.5 Fires of any type or the use or possession of lanterns which use inflammable fuel, are not permitted on fishing piers.

~~19.0 Fireworks and Explosives~~

~~19.1~~ 18.2 The possession, explosion or discharge of any firecrackers, torpedoes, rockets or other fireworks or explosives in areas administered by the Division is

prohibited, except with prior written permission of the Director.

20.0 Fuel Containers

~~20.1~~ 18.3 No person shall leave fuel containers open and/or unattended within boat launch areas, docks, piers, bulkheads or on lands under the jurisdiction of the Division.

19.0 Property Violations

19.1 It shall be unlawful to place, dump, deposit, throw or leave any garbage, refuse, trash, cans, bottles or other debris of any kind within or upon any public beach, lands or waters administered by the Division, except in receptacles provided for such purpose.

19.1.1 No person shall bring into a State Park from an area outside of the Park any garbage, refuse, waste, rubbish or obnoxious materials for the purpose of disposing of such in park litter receptacles.

19.2 Disposing or discharging of solid waste on lands or waters under the jurisdiction of the Division is prohibited. Violators may be charged under 7 Del.C. §6025(b).

19.3 Unless specifically authorized by the Department for management, research or educational purposes, the cutting, injuring or removal of trees, shrubs, wildflowers, ferns, mosses, or other plants from lands administered by the Division ~~and the defacing, damaging, removing or altering any structures, buildings, natural land features, or other park property or equipment, or the willful harming, collecting, or possessing of wildlife, flora or fauna~~ is strictly prohibited.

19.4 Removal or defacing, damaging, removing or altering of any structures, buildings, natural-land features, or other park property or equipment from the lands administered by the Division is strictly prohibited.

19.5 The willful, harming, collecting, harassing or possessing of wildlife, flora, or fauna on lands administered by the Division is strictly prohibited.

19.6 Walking on, over or across a primary dune administered by the Division, except at locations specified by the Department or Division for such use, shall be prohibited.

19.7 Operating a motor vehicle in such a manner as to cause willful, wanton or reckless damage to lands administered by the Division, commonly known as "turfing", is prohibited and shall be a violation of this Section.

19.8 Use of dedicated state nature preserves shall be limited to posted trails and permitted activities. Property violations are enforceable under these Rules and Regulations and 7 Del.C. Ch. 73.

20.0 Multiple Use Trails

20.1 Bicycle riders shall yield to horseback riders and/or hikers encountered on multiple use trails administered by the Division. Bike riders shall come to a complete stop

and allow horseback riders and/or hikers to pass.

20.2 Horseback riders shall yield to hikers encountered on multiple use trails administered by the Division. The horseback rider shall stop and remain stopped until the hiker passes.

21.0 Public Assemblies, Meetings, Distribution and Posting of Printed Matter

21.1 In order to maintain the recreational nature of State Parks as a haven for the public from the rigors of work and the commercial environment, and to promote the State's interest in its concessions and sales to the public, no commercial advertising by the distribution or posting of printed matter, other than by the State or its concessionaires, shall be permitted in State Parks.

21.2 Public meetings, assemblies, gatherings, demonstrations and/or the distribution or posting of printed matter are permitted on lands administered by the Division provided that a permit or approval to do so has been issued by the Park Administrator or Superintendent.

21.3 An application for such a permit shall set forth the name of the applicant, the name of the organization (if any), the date, time, duration and the number of persons expected to attend or participate, the location of the proposed distribution or posting of printed matter, and a statement designating the equipment and facilities to be used in connection therewith. The application shall be submitted to the Park Administrator or Superintendent at least 72 hours in advance of the proposed event, distribution or posting.

21.4 Within 48 hours the Park Administrator or Superintendent shall ~~within 48 hours~~ issue a permit unless:

21.4.1 A prior application for a permit for the same time and location has been made, which has been or will be granted; and the activities authorized by that permit do not reasonably allow multiple occupancy of the particular area;

21.4.2 It appears that the event or the distribution or posting of printed matter will present a clear and present danger to the health or safety of park visitors and/or general public by inciting riots of public disturbances, or by encouraging injury to others, damage to property, or the violation of other's civil rights; or

21.4.3 The event or the distribution or posting is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for considering possible damage to park resources or facilities, impairment of a protected area's atmosphere of peace and tranquility, interference with Park program activities or impairment of public use facilities.

21.5 The Park Superintendent or Administrator shall designate on a map, which shall be available in the Park office, the locations available for public assemblies and/or distribution or posting of printed matter. Locations may be designated as not available only if such activity would:

21.5.1 cause injury or damage to Park resources;

21.5.2 be contrary to the purposes for which the natural, historic, development and special use zones are maintained;

21.5.3 unreasonably interfere with interpretive, visitor service or other program activities or with the administrative function of the area; or

21.5.4 substantially impair the operation of public use facilities or services of concessionaires or contractors.

21.6 The permit may contain such conditions as are reasonably consistent with protection and use of the area for the purposes for which it is maintained.

21.7 Persons engaged in the distribution or posting of printed matter under this Section shall not obstruct or impede pedestrians or vehicles, harass visitors with physical contact or verbal demands, misrepresent the purposes or affiliations of those engaged in the distribution or misrepresent whether the printed matter is available without cost or donation.

21.8 A permit may be revoked under any of those conditions as listed in paragraph d of this Section which constitutes grounds for denial of a permit, or for violation of the terms or conditions of the permit, Park Regulations or Park Policies. Such a revocation shall be made in writing with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made, to be followed by a written confirmation.

22.0 Solicitations and Concessions

22.1 Vending of merchandise, services or food upon lands administered by the Division is prohibited without the express written approval of the Director.

22.2 No person shall solicit for money or goods or services on any lands administered by the Division without the written permission of the Director.

22.3. No person, group of persons, nor any business or commercial entity shall utilize parks or their facilities for business gain, whether for profit or otherwise, except those concessionaires or groups who have followed procedures, met established requirements, paid appropriate program charges and have been authorized by the Director.

23.0 Alcoholic Beverages and Drugs

23.1 The sale of alcoholic beverages without a permit from the Division of Alcoholic Beverage Control and written permission from the Director is prohibited on lands and waters administered by the Division.

23.2 No person under the age of twenty-one (21) years shall possess or consume alcoholic beverages of any type. Any person suspected of being in violation of this subsection, and who fails to provide sufficient identification to prove otherwise may, in addition to any other action taken,

be evicted without refund of any fee.

23.3 No person who is of legal age to possess or consume alcoholic beverages shall sell, give or in any way provide alcoholic beverages to a person under the age of twenty-one (21) years.

23.4 No person under the influence of alcohol, narcotics or any other drug, to the extent of being considered publicly intoxicated, shall enter or remain upon or within lands or waters administered by the Division.

23.5 The unlawful possession, use or consumption of narcotics, drugs, drug substances, or controlled substances and/or drug paraphernalia as listed and defined in Title 16, Delaware Code is expressly prohibited upon lands or waters or within facilities administered by the Division.

23.6 Unless authorized by the Director the possession, consumption, or public display of alcoholic beverages or intoxicating liquors within or upon the following areas is prohibited:

23.6.1 Brandywine Creek State Park -- Prohibited on all areas.

23.6.2 Fort Delaware State Park -- Prohibited on all areas.

23.6.3 Wilmington State Parks-Prohibited in all areas.

24.6.4 Fox Point State Park-Prohibited in all areas.

23.6.5 Specific Areas Within all State Parks -- All nature trails, nature preserves, youth camps public restrooms, bath houses, parking facilities, roadways, designated swimming areas, pools, surfboarding beach areas or other areas designated by the Director.

23.7 No person shall operate or be in actual physical control of any motorized vehicle, vessel, bicycle or any other means of conveyance while under the influence of alcohol or any drug.

23.7.1 Possession and/or use of any alcoholic beverage and/or drugs while aboard Division rental vessels shall be prohibited.

23.8 The bringing in of draft beer in kegs or by a vehicle equipped to dispense draft beer shall not be permitted upon lands administered by the Division without prior written permission from the Director.

24.0 Hunting, Fishing and Wildlife Management

24.1 No person shall hunt, pursue, trap, shoot, injure, kill or molest in any way by gun, archery equipment or dog any wild bird or animal on lands or waters administered by the Division, nor shall any person have any such wild bird or animal in his possession; provided however, that such wild bird or animal was not hunted, pursued, trapped, injured or killed by gun, archery equipment or dog in areas designated by the Division for hunting when such hunting is lawful.

24.2 Hunting may be permitted in certain areas as

designated at times authorized by the Division. ~~during legal game seasons set forth by the Division of Fish and Wildlife.~~ Hunting shall be in accordance with State and Federal laws, rules and regulations.

24.3 It shall be unlawful to display, possess or discharge firearms of any description, air rifles, B.B. guns, sling shots or archery equipment upon any lands or waters administered by the Division, except by those persons lawfully hunting in those areas specifically designated for hunting by the Division, or those with prior written approval of the Director.

24.4 ~~A Division Hunting Permit, A hunter registration card issued by the Division~~ in addition to a valid Delaware hunting license, is required for hunting on lands administered by the Division that are opened for hunting. ~~Permits~~ Hunting registration cards shall be issued by the Park Administrator or Park Superintendent and shall be valid for the entire hunting season unless revoked for violations of hunting laws, rules or regulations. All hunting activities shall be regulated by ~~permit~~ the registration card and all ~~permit card holders~~ shall abide by the conditions of ~~said permit(s) the registration card.~~ ~~The permit~~ This hunting registration card shall not be valid for deer hunting on any park where a drawing is held for assignment of deer stands or hunting areas. A special ~~permit~~ registration card is required in areas that regulate deer hunting by lottery. ~~Persons hunting on State Park lands without a valid Division Hunting Permit or a special Deer Hunting Permit, when required, shall be in violation of these Regulations.~~

24.4.1 ~~Ø~~In areas where elevated deer stands are provided, hunters must remain on their assigned stand during the shotgun season. Archery deer hunters must stay within the area assigned to their stand.

24.4.2 Trapping is prohibited except for management purposes as authorized by the Director.

24.4.3 Raccoon hunting is restricted to chase by dogs only, with firearms prohibited. Firearms are prohibited while raccoon hunting.

24.5 Persons under the influence of alcoholic beverages, liquors or drugs or possessing and/or consuming alcoholic beverages, liquors or drugs shall not be permitted to hunt on Division lands.

24.6 Fishing shall be permitted, in accordance with the laws and regulations as set forth by the Division of Fish and Wildlife. A fishing license is required for non-tidal waters.

24.6.1 Fishing is not permitted in designated swimming areas and surfboard areas during day-use hours.

24.7 The disturbance of nesting or interference with the raising of young of wildlife, including amphibians, reptiles, birds or mammals on any lands or waters administered by the Division is prohibited.

24.7.1 The heronry at Pea Patch Island Nature Preserve shall be closed to the public ~~from April 15 to~~

~~October 15 of each year round.~~ Entry without specific prior written authorization by the Division Director is prohibited.

24.8 No person, pet or vehicle shall be permitted to enter an area designated and posted by the Division as a bird-nesting/breeding area.

24.9 It shall be prohibited for any person to bring in or otherwise introduce any species of domestic or wild animal onto lands administered by the Division.

25.0 Rates, Fees and Charges

25.1 No person shall use or gain admittance to, or attempt to use or gain admittance to, any area or facilities for which a rate, fee, or charge is made by the Division or Department unless he/she pays the rate, fee or charge established by said Division or Department.

25.2 The purchase or resale of a daily entrance fee ticket, except through an authorized Division agent, is prohibited.

25.3 The use or attempt to use any altered daily entrance fee ticket is prohibited.

25.4 The vehicle permit for entering a State Park shall be affixed to a conspicuous place on the vehicle as designated by the Division. Adhesive backing on the permit shall be used to attach the permit to the vehicle. Use of any other material or device to attach the permit shall be prohibited.

26.0 Facility Rentals and Special Events

26.1 No person shall make use of or attempt to make use of any State Park pavilion or other facility which has been reserved, unless they are a member of the family or group reserving the pavilion or facility.

26.2 No person, group, or organization shall schedule, hold or conduct an activity or event that requires special arrangements, considerations and/or planning by the staff unless a written request is submitted to the Director or their designee for approval at least ~~72 hours~~ 7 days prior to ~~the holding of~~ the activity or event. ~~Such~~ Additional costs may be charged for special arrangements, considerations and/or planning may include but not be limited to traffic and crowd control, parking, special equipment use, and the use of facilities for activities other than their intended purposes.

27.0 Enforcement Powers

27.1 In accordance with the provision set forth in 7 **Del.C.** §4701(a)(8), the Division may employ personnel who shall have all the powers of investigation, detention and arrest, conferred by law on peace officers, sheriffs, or constables for the enforcement of the Division Rules and Regulations.

27.2 Powers, duties and functions of ~~Environmental Protection Officers~~ Law Enforcement Officers of the Department of Natural Resources and Environmental Control:

27.2.1 In accordance with 29 Del.C. §8003(a), ~~Environmental Protection Officers Law Enforcement Officers of the Department of Natural Resources and Environmental Control~~ shall see to the enforcement of all laws, regulations, rules, permits, licenses, orders and program requirements of the Department of Natural Resources and Environmental Control.

27.2.2 ~~Environmental Protection Officers Law Enforcement Officers of the Department of Natural Resources and Environmental Control~~ shall have police powers similar to those of sheriffs, constables, peace officers and other police officers when enforcing the laws, rules, regulations, permits, licenses, orders and program requirements of the Department of Natural Resources and Environmental Control. Such police powers shall include, but not be limited to, powers of investigation, search, seizure, detention and arrest, conferred by law on sheriffs, constables, peace officers and other police officers.

27.2.3 ~~Environmental Protection Officers Law Enforcement Officers of the Department of Natural Resources and Environmental Control~~ shall have the authority to serve and return summonses, subpoenas and warrants.

27.3 Each employee vested with the enforcement responsibility as authorized in paragraphs a and b shall be required to show proper identification as issued by the Department of Natural Resources and Environmental Control or other county or state law enforcement agencies.

27.4 No person shall willfully fail or refuse to comply with any lawful order or direction of any Enforcement Officer on lands or waters administered by the Division.

27.5 Anyone interfering with enforcement personnel during the performance of their duty in enforcing these regulations shall be cited for "interfering with enforcement personnel in the performance of his or her duty".

28.0 Penalty and Court Powers

28.1 In accordance with the provisions set forth in the 7 Del.C. §4702(a), violators of the Rules and Regulations promulgated by the Department of Natural Resources and Environmental Control, Division of Parks and Recreation, shall be fined not less than \$25.00 nor more than \$250.00 and costs for each offense, or imprisoned not more than thirty (30) days or both. For each subsequent like offense, he/she shall be fined not less than \$50.00 nor more than \$500.00. In addition to such fines, costs or imprisonment, any person who is convicted of any violation involving the damage, destruction or removal of property owned or administered by the State shall be required to make restitution to the Department for replacement or restoration of such property. Furthermore, in lieu of or in addition to the aforesaid penalties, the court may order violators convicted

of violations involving the damage, destruction, or removal of State Park property to perform work projects in State Parks.

28.2 Justices of the Peace shall severally ~~throughout the State~~ have jurisdiction of violations of the Rules and Regulations of the Department of Natural Resources and Environmental Control, Division of State Parks and Recreation, throughout the state, with the condition that any person arrested for such violation be taken before the closest available magistrate in the county where such violation is alleged to have occurred. An arresting officer may issue a summons to any person arrested for any violation of these Rules and Regulations and have said person appear at a subsequent date at the Justice of the Peace Court which is the nearest available Justice of the Peace to the place of arrest during the regularly scheduled hours of said court. For the purposes of this Section, the summons for later appearance shall be sufficient to grant jurisdiction over the offense to the said nearest available Justice of the Peace. A Justice of the Peace is available when he is at his office or court.

28.3 Failure to answer any summons issued for violations of these Rules and Regulations shall result in an additional charge of Failure to Answer Summons.

28.4 Nothing contained herein shall preclude an action being brought in a court of equity for injunctive or other relief.

7 DE Reg. 1768 (6/1/2004)

Effective Date:

These Amended Rules and Regulations are to take full force and effect at midnight, June 30, 2002

Adoption:

I, ~~Christophe A.G. Tulou~~, John A. Hughes, Secretary of the Department of Natural Resources and Environmental Control, hereby adopt and establish for the Division of Parks and Recreation the foregoing Rules and Regulations of the Department pursuant to Title 7, Delaware Code, Chapter 47, Subsection 4702(c).

Date John A. Hughes, Secretary
Department of Natural Resources and
Environmental Control

**DEPARTMENT OF SAFETY AND
HOMELAND SECURITY**

BAIL ENFORCEMENT AGENTS

Statutory Authority: 24 Delaware Code,
Section 5404(a) (24 Del.C. §5404(a))

ORDER

Pursuant to the Guidelines in 29 Del.C. §10118 (a)(1)-(7), the Secretary of Safety and Homeland Security ("Secretary") hereby issues this Order. Following public notice held open until April 5, 2004 on the proposed amendment of promulgated rules and regulations 1.0 - Licensing; 4.0 - Firearms Policy; 5.0 - Nightstick, PR24, Mace, Peppergas, Chemical Spray, and Handcuffs; 6.0 - Training and 9.0 - Suspensions and Revocations, the Secretary makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Secretary did not receive written evidence or information pertaining to the proposed amendment.
2. The Secretary expressed its desire to amend the rule to protect the public from a Bail Enforcement Agent that may endanger his or her safety while performing their duties.

Findings of Fact

3. The public was given notice and the opportunity to provide the Secretary with comments, in writing, on the amendment of the rule. The written comments received are described in paragraph 1.
4. The Secretary finds that the amendment of this rule will protect the public from a Bail Enforcement Agent that may endanger his or her safety while performing their duties.
5. The Secretary finds that the amendment will have no adverse impact on the public.
6. The Secretary finds that the amendment is well written and describes its intent to protect the public from a Bail Enforcement Agent that may endanger his or her safety while performing their duties.

Conclusion

7. The proposed rule amendment was promulgated by the Secretary in accord with the statutory duties and authority as set forth in 24 Del. C. Section 5504 et seq. and, in particular, 24 Del. C. Section 5504(a).
8. The Secretary deems this amendment necessary and expedient to the full and official performance of its duties under 24 Del. C. Section 5504 et seq.
9. The Secretary concludes that the amendment of this rule will be in the best interests of the citizens of the State of

Delaware.

10. The Secretary therefore adopts the amendment of this rule pursuant to 24 Del.C. Section 5504(a) and guidelines of 29 Del.C. Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979)

11. This amended rule replaces 9.0 (9.3), in its entirety, and former rule or regulation heretofore promulgated by the Secretary.

12.) The effective date of this Order shall be April 23, 2004.

13.) Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Secretary on the 23rd day of April, 2004.

James L. Ford, Jr., Secretary

APPROVED AS TO FORM:

James Hanley, Esquire
Deputy Attorney General
April 23, 2004

Bounty Hunter/Bail Enforcement Agents

Preamble

These Rules & Regulations are promulgated pursuant to 24 Del.C. Section 5504(a) and the Secretary of Public Safety delegates his regulatory authority granted by Chapter 55 to the Division of State Police.

1.0 Licensing

1.1 Any individual applying for a bail enforcement agent ID card under Title 24 Chapter 55 must meet and maintain the following qualifications:

- 1.1.1 Must not be convicted of any felony; and
- 1.1.2 Must not have been convicted, within the last seven (7) years, of any two (2) of the following misdemeanors: theft, drug offenses, offensive touching, or assault III; and
- 1.1.3 ~~Must not have been convicted of any charge that bears a relationship to the performance of the bounty hunter as determined by the Detective Licensing Section; Must not have been convicted of any charge or been involved in any conduct that may impair the performance of the bail enforcement agent and endanger public safety as determined by the Detective Licensing Section and~~
- 1.1.4 Must not have been, as a juvenile, adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25th birthday.

1.2 An individual bail enforcement agent ID card will not be issued if there is a pending charge as listed in Section 1.1.1 or a pending charge as listed in Section 1.1.2 for an applicant with one (1) conviction of specified misdemeanor listed in Section 1.1.2.

1.3 The individual bail enforcement agent applying for an ID card under Title 24 Chapter 55 must also meet the following qualifications:

1.3.1 Must be at least 21 years of age; and

1.3.2 Must complete the training qualifications set forth in Section 6.0; and

1.3.3 If carrying a weapon, must meet and maintain the qualifications set forth in Section 4.0.

1.4 The individual bail enforcement agent applying for an ID card under Title 24 Chapter 55 must submit the following for approval:

1.4.1 A fee of \$25 for a four (4) year ID card which shall expire and be renewable on the 4th anniversary date of the birth of the applicant next following the date of its issuance unless the birth date is February 29, in which event the license shall expire and be renewable on February 28 every 4th year; and

1.4.2 Any and all applications required by the Detective Licensing Section; and

1.4.3 Submit two (2) sets of fingerprints for a Delaware (CHRI) and Federal (FBI) criminal history record check. The Director of the State Bureau of Identification (SBI) determines the fee for this process. This subsection 1.4.3 does not apply to the renewal of ID cards, unless required by the Director of Detective Licensing.

1.5 The ID cards are the property of the Delaware State Police and must be returned to the Detective Licensing Section upon expiration of the ID card or at the request of the Detective Licensing Section.

1.6 A bail enforcement agent that has been issued an ID card by the Detective Licensing Section shall be required to have such card in their possession while in the performance of his or her duties.

1.7 A bail enforcement agent must not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other local, state or federal jurisdiction.

1.8 There will be no reciprocity with any other state regarding the issuing of an ID card to a bail enforcement agent.

2.0 Badges, Patches, Advertisements

2.1 No individual licensed under Title 24 Chapter 55 shall use any type of uniform or other clothing items displaying logos, badges, patches, or any other type of writing without first being approved by the Detective Licensing Section. Under no circumstances shall any item

contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.

2.2 All advertisements or other forms of publication, subsequent to their use, are subject to review by the Detective Licensing Section for potential misrepresentation. If the Detective Licensing Section does not approve the advertisement or publication, it will forward its concerns to the licensee. Failure to correct the advertisement or publication will be considered a violation of these Rules & Regulations.

2.3 The use of auxiliary lights, sirens, or any markings on vehicles is prohibited.

3.0 Use Of Animals

3.1 The use of animals is prohibited in the performance of any bail enforcement agent activity.

4.0 Firearms Policy

4.1 No person shall carry a firearm under this chapter unless the individual first completed and passed an approved 40-hour firearm course, instructed by a certified firearm instructor, recognized by the Detective Licensing Section.

4.2 All persons licensed to carry a firearm under this chapter must be re-certified yearly, by an instructor as described in Section 4.1, by shooting a minimum of three (3) qualifying shoots a year. The shoots must be scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of the three (3) shoots, there will be one mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot. All individuals must qualify with the same type of weapon that he/she will carry. The minimum passing score is 75%.

4.2.1 All renewal shoot sheets must be submitted by January 31st of each year for the previous calendar year.

4.3 All handguns must be either a revolver or semi-automatic and be maintained to factory specifications. Only the handguns with the following calibers are permitted:

4.3.1 9mm

4.3.2 .357

4.3.3 .38

4.3.4 .40

4.3.5 .45

4.4 All ammunition will be factory fresh (no re-loads).

4.5 Any person requesting to carry any shotgun, rifle, any type of weapon or apprehension device must first provide proof of training to the Detective Licensing Section for approval.

5.0 Nightstick, PR24, Mace, Peppergas, Chemical Spray, And Handcuffs

5.1 To carry the above weapons/items a bail

enforcement agent must have completed training by a Detective Licensing Section approved instructor, on each and every weapon/item carried. Proof of training, and any renewal training, must be provided to the Detective Licensing Section. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Detective Licensing Section.

6.0 Training

6.1 All bail enforcement agents licensed under Title 24 Chapter 55 must complete training in the following courses: Constitution/Bill of Rights, Laws of Arrest, Laws of Search & Seizure of Persons Wanted, Police Jurisdiction, Use of Deadly Force, and the Rules & Regulations of Bounty Hunters/Bail Enforcement Agents.

6.2 ~~This training will be waived for the initial licensing, but must be completed by January 19, 2003. Thereafter, the training must be completed prior to obtaining a license. The training must be completed prior to obtaining a license.~~

7.0 Notification Of Apprehensions

7.1 All bail enforcement agents licensed under Title 24 Chapter 55 are required to notify the police emergency 911 dispatch center (i.e., Recom, Kentcom, Suscom) of the appropriate police agency in which the apprehension will be attempted.

8.0 Notification Of Arrest

8.1 Anyone licensed under Title 24 Chapter 55 shall, excluding weekends and State holidays, notify the Detective Licensing Section within five (5) days of being arrested for a misdemeanor or felony crime. Failure to do so may result in the suspension or revocation of any individual.

9.0 Suspensions And Revocations

9.1 The Detective Licensing Section shall have the power to suspend or revoke any individual, licensed under Title 24 Chapter 55, that violates the Chapter or the promulgated Rules & Regulations.

9.2 The Detective Licensing Section may suspend or revoke any individual, licensed under Title 24 Chapter 55, that has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in Section 1.0.

9.3 Anyone whose license has been suspended, revoked, rejected, or denied is entitled to a hearing before the Secretary of ~~Public Safety [the Department of]~~ Safety and Homeland Security.

9.3.1 Anyone requesting a hearing shall notify the Detective Licensing Section, in writing, within 30 days from the suspension, revocation, rejection, or denial and the hearing shall be scheduled at the earliest possible time.

See 5 DE Reg. 1523 (1/1/02)

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER FIFTY-FOUR**

**RE: Creating Review Panels For School Assessments
And Performance Standards**

WHEREAS, academic standards in English language arts, mathematics, science and social studies were developed by large stakeholder groups comprised of public school educators, higher education representatives, parents and members of the business community; and

WHEREAS, those standards were approved by the State Board of Education in June 1995; and

WHEREAS, in 1997 the Delaware General Assembly required the development of an assessment system to measure progress toward meeting those standards; and

WHEREAS, the Delaware Student Testing Program (DSTP) in reading, writing, and mathematics has been administered to students in grades 3, 5, 8, and 10 since 1998; and

WHEREAS, the General Assembly directed the Department of Education to identify five levels of individual student performance relative to state content standards to be used for identifying levels of proficiency; and

WHEREAS, students in grades 3, 5, 8, and 10 who perform at Level II (below the standard) must participate in improvement activities and students who perform at Level I (well below the standard) must attend summer school and must show proficiency at the end of summer school in order to be promoted; and

WHEREAS, concerns have been raised about the performance of students at grades 8 and 10 on the mathematics component of the DSTP; and

WHEREAS, recent studies have shown that the DSTP is aligned to the academic content standards; and

WHEREAS, a study completed by the National Center for Education Statistics shows a correlation between the DSTP reading and the National Assessment of Education Progress (NAEP) reading; and

WHEREAS, no such study has been completed to determine a correlation between the DSTP mathematics and the NAEP mathematics assessment; and

WHEREAS, students who graduate from public high schools must meet a specific level of proficiency in order to receive one of three levels of diploma (Distinguished, Standard or Basic); and

WHEREAS, a review of student grade point averages and diploma indexes show a correlation between the two; and

WHEREAS, it is appropriate to periodically review both the content standards and the assessments as well as the

performance levels established for said assessments; and

WHEREAS, Delaware's accountability system holds students, teachers, schools and districts accountable for the academic achievement of all students; and

WHEREAS, any change to the DSTP performance levels will affect all components of the system; and

WHEREAS, the examination of the performance levels will be beneficial to the overall system;

NOW, THEREFORE, I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE DO HEREBY ORDER AND DECLARE:

1. The Delaware Department of Education shall convene a panel of three national experts in the areas of assessment, accountability, and/or standard setting. Said experts will be chosen as follows: one by Delaware Department of Education, one by the members of the Delaware Education Consortium (Delaware Chief School Officers Association, Delaware Association of School Administrators, Delaware State Education Association, Delaware School Boards Association, the State Board of Education and the Delaware Charter Schools Network) and one jointly chosen by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

2. The panel shall be provided with all applicable and related information regarding the development of the assessments, the setting of performance levels, and the design of the student accountability system from the Department of Education and from any other study or paper that has been produced by any other stakeholder groups.

3. The panel may also consider other sources of information from regional or national studies that have been conducted on related matters.

4. The panel shall also examine the levels of incentives and consequences associated with the student accountability system including requirements for student improvement activities such as Individual Improvement Plans, summer school, retention and promotion, and awarding of diplomas and scholarships.

5. The Department of Education shall also contract with three national experts to conduct a full review of the implementation of standards based curriculum in mathematics in both middle and high schools in Delaware. Said experts will be chosen in the same manner as the assessment panel, one by the Department of Education, one by the Education Consortium and one jointly chosen by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

6. To ensure public participation in the process, a posted public comment period shall be utilized to allow members of the public to submit written public comments to either or both panels.

7. The expert panel on assessment and accountability and the expert panel on curriculum shall present findings and

recommendations regarding these issues, including a timeline for proposed implementation, to the Governor and the General Assembly not later than February 15, 2005.

APPROVED: April 8, 2004

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor
Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER FIFTY-FIVE**

**RE: Creating The First State Historical Park
Task Force**

WHEREAS, the City of Dover has been the seat of government in Delaware since 1777 and is home to one of the most beautifully preserved capitol complexes in the nation, featuring many sites of historic and cultural interest; and

WHEREAS, in convention in Dover on December 7, 1787, the State of Delaware became the first of the 13 original states to ratify the U.S. Constitution, forever staking our claim to the nickname, "The First State"; and

WHEREAS, educating Delaware citizens and youth about the significant historical events and the diverse heritage of the City of Dover and the State can be a powerful tool in building our sense of community; and

WHEREAS, each year thousands of visitors come to Dover's historic area to enjoy its hidden treasures while more than 1 million cars drive past Dover - unaware of the rich historical and cultural offerings of the area; and

WHEREAS, attracting more visitors to downtown Dover will help existing businesses grow, create new jobs, and ensure the area's continued vitality; and

WHEREAS, many of the treasured sites in the downtown area are owned by the State, including Legislative Hall, the Governor's House at Woodburn, the Delaware Public Archives, the Delaware State Museums' Visitor Center, the State House Museum, the Johnson Victrola Museum, Legislative Mall, the Delaware Museum of Small Town Life and the Delaware Archaeology Museum, and the Biggs Museum of American Art is located in a State-owned building, and together these sites are operated by as many as six different agencies and organizations; and

WHEREAS, the State has not fully exploited opportunities to coordinate visitor hospitality services, hours of operation, educational programming, marketing, signage, and other infrastructure in order to improve visitor experiences, enhance Delawareans' quality of life, and grow the local economy; and

WHEREAS, the Delaware Department of State, the Delaware Department of Natural Resources and Environmental Control, and the Delaware Economic Development Office have signed a Memorandum of Understanding setting forth certain commitments to improve coordination of such visitor services.

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 22nd day of April, 2004:

1. The First State Historical Park Task Force is hereby created for the purpose of recommending to the Governor, the General Assembly and State agencies, actions that should be undertaken to develop a non-traditional "park without boundaries" encompassing the State-owned historic sites within the Dover historic district.

2. The Task Force shall consist of thirteen members, who shall be selected as follows:

- a. A representative from the Governor's Office, to be appointed by the Governor;
- b. One representative of the Delaware State Senate, to be appointed by the President *Pro Tempore*;
- c. One representative of the Delaware House of Representatives, to be appointed by the Speaker of the House;
- d. One representative of the Office of Legislative Council to be appointed by the President Pro Tem of the Senate and Speaker of the House of Representatives;
- e. A representative from the Delaware Judicial Branch, to be appointed by the Chief Justice;
- f. The Mayor of Dover, or his designee;
- g. A representative of the Downtown Dover Development Corporation, to be appointed by its Chair;
- h. A representative of Dover Main Street, to be appointed by its President;
- i. A representative of the Kent County Tourism Board, to be appointed by its President;
- j. A representative of the Biggs Museum of American Art, to be appointed by its President;
- k. A member of the Delaware Heritage Commission to be appointed by its Chairman;
- l. Two residents of the Dover community, to be appointed by the Governor;
- m. Cabinet Secretaries or their designees representing each of the following government agencies: Department of State, Department of Natural Resources and Environmental Control, and the Delaware Economic

Development Office.

3. The Governor shall appoint a Chair from among the members of the Task Force who shall serve as Chair at her pleasure. Members of the Task Force shall serve while they hold office or at the pleasure of the persons appointing them.

4. The Chair of the Task Force may form working groups that shall include members from the Task Force as well as members of the public with interest and/or expertise in the objectives of the Task Force. Each working group shall be chaired by a member of the Task Force. In addition to those agencies represented on the Task Force, all other state agencies are directed to provide reasonable support and planning assistance to the Task Force including, but not limited to, the Office of State Planning, the Office of Facilities Management, the Department of Transportation, and Capitol Police.

5. The Task Force shall develop a list of recommendations to be included with a First State Historical Park Plan currently under development by certain State agencies. A preliminary set of recommendations shall be submitted to the Governor no later than October 1, 2004. A final report and set of recommendations shall be submitted to the Governor and the Delaware General Assembly no later than March 1, 2005.

6. Recommendations shall address the following issues:

- a. Coordinated visitor hospitality services;
- b. Synchronized hours of operation, consistent look for park's signage, literature, and other forms of identity;
- c. Comprehensive visitor information at all sites;
- d. Enhanced interpretive services and complementary educational programming across sites with a focus on children and family-oriented programming throughout the park;
- e. Marketing and partnerships with tourism industry;
- f. Security;
- g. Infrastructure enhancements to enable better self-guided walking trails as well as alternative transportation modes within the historic district;
- h. Other infrastructure in order to improve visitor experiences; and
- i. Identification of long-term goals and objectives.

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Examiners of Psychologists	Ms. Diane Amery	6/20/2005
Board of Plumbing Examiners	Mr. Robert J. Briccotto, Jr. Mr. Thomas Ciconte	9/14/2004 4/19/2007
Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers	Ms. Ilene Cohen Courtright Ms. Bernadette D. Farley Mr. Michael A. Michelli	4/19/2007 1/7/2005 4/19/2007
Child Placement Review Board Executive Committee	Mr. Ronney J. Bythwood	4/19/2007
Child Placement Review Board - New Castle	Ms. Caroline N. Bither Ms. Phyllis N. Faulkner Mr. Lou Himmelreich Ms. Elma E. Jackson Ms. Clementine J. Light Ms. Yahna Talley	4/19/2007 4/19/2007 4/19/2007 4/19/2007 4/19/2007 4/19/2007
Child Protection Accountability Commission	Ms. Merrijane Pierce	Pleasure of the Governor
Council of Delaware Association of Professional Engineers	Mr. Frank Newton Mr. Dennis L. Schrader	1/14/2006 4/19/2008
Council on Forestry	Mr. Joseph C. Wick	4/19/2007
Council on Social Services	Ms. Laura B. Hummel	4/19/2007
Council on Transportation	Mr. Brian M. McGlinchey	4/16/2007
Delaware Bicycle Council	Mr. Douglas R. Mills	10/20/2006
Delaware Health Resources Board	Mr. Richard J. Cherrin Mr. Robert F. Miller Ms. Suzanne E. Raab-Long	4/19/2007 4/19/2007 4/19/2007
Delaware Perinatal Board	Ms. Betty J. Paulanka	Pleasure of the Governor
Delaware Sentencing Accountability Commission	Mr. Bernard V. Pepukayi	4/16/2008
Delaware Technology Park	Pasquale N. Confalone, Ph.D.	Pleasure of the Governor
Enhanced 911 Emergency Reporting System Service Board	Mr. Michael P. Cebrick	4/8/2007
Environmental Appeals Board	Ms. Nancy J. Shevock	Pleasure of the Governor

GOVERNOR'S APPOINTMENTS

1789

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Governor's Council on Lifestyles & Fitness	Avron Abraham, Ph.D.	4/19/2006
	Michael J. Axe, M.D.	4/19/2006
	Ms. Lisa C. Barkley	4/19/2006
	Ms. Martha C. Bogdan	4/19/2006
	Ms. Evelyn P. Burkle	4/19/2006
	The Honorable John C. Carney, Jr.	4/19/2006
	Mr. Thomas Hall	4/19/2006
	Ms. Annette Hubbard	4/19/2006
	Mr. Donald L. Kjelleren	4/19/2006
	Lynn Snyder-Mackler, Sc.D., PT	4/19/2006
	Mr. David Tiberi	4/19/2006
	Ms. Joann Wilkins	4/19/2006
	D. Allan Waterfield, Ph.D.	4/19/2006
	Public Integrity Commission	Reverend P. David Brumbaugh
State Emergency Response Commission	Mr. John C. Taylor	4/16/2006
State Examining Board of Physical Therapists	Ms. Katherine L. Daniello	4/19/2007
	Mr. Vincent J. Deleo	4/19/2007
	Ms. Sharon L. Harris	6/5/2005
Interagency Council on Adult Literacy	Ms. Sherese B. Carr	Pleasure of the Governor
	Ms. Helen Groft	Pleasure of the Governor
Violent Crimes Compensation Board	Mr. Thomas W. Castaldi	4/8/2007
Vocational Rehabilitation Advisory Council for D.V.I.	Ms. Verita A. Turner	4/19/2007

DEPARTMENT OF TRANSPORTATION

**Speed Restriction For Highways
Using Variable Speed Limit Technology**

WHEREAS, Section 141, Title 17, Delaware Code designates jurisdiction over and control of all State highways of the State outside the limits of incorporated towns and cities to the Department of Transportation for the purpose of regulating traffic and the use of vehicles thereover; and

WHEREAS, the Department of Transportation was further authorized by Section 4169, Title 21, Delaware Code, and in 73 Del.Laws, Chapter 95, Section 97(b) to install Variable Speed Limit (VSL) signs and Variable Message Signs (VMS) for major limited access and heavily traveled roads of the State; and

WHEREAS, as part of this authorization in 73 Del.Laws, Chapter 95, Section 97(b), the Department of Transportation and the Department of Public Safety (now Department of Homeland Security) were also directed to conduct broad public notification and education efforts relating to the conditions under which these signs will be used to control safe speeds on Delaware's highways; and

WHEREAS, the Department of Transportation determined on the basis of an engineering study and traffic investigation to implement the VSL and VMS sign programs, in keeping with a Memorandum of Understanding dated June 10, 2002, and a set of Standard Operating Procedures (SOPs) for this purpose, copies of which are attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED, that the Department of Transportation, in accordance with the authority so vested in it, does hereby declare that it will use the VSL SOPs and the systems now in place along those portions of State highways on which the VSL technology has been installed, namely Interstate 495 in New Castle County.

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded to the proper officials of the Department of Transportation and the Delaware State Police, and that additional copies of the resolution be posted at an appropriate location on the State of Delaware's website, as well as in the Delaware Register of Regulations, operated by the Division of Research of Legislative Council.

Donald Weber, P.E., Chief Traffic Engineer

**Memorandum of Agreement
Delaware Department Of Transportation.**

**And
Department Of Public Safety
Variable Speed Limit And Message Signs Program**

Purpose of Memorandum.

Pursuant to 73 Del. Laws, Chapter 95, Section 97(b), the Delaware Department of Transportation (DeIDOT) is authorized to install Variable Speed Limit (VSL) signs and Variable Message Signs (VMSes) for the major limited access and heavily traveled roads of the state. As part of this authorization, the Department of Public Safety (DPS) and the Department of Transportation are directed to insure broad public notification and education surrounding the conditions under which these signs will be used to control safe speeds on Delaware's highways. This Memorandum outlines how the two agencies will meet their respective responsibilities under the relevant Delaware law.

Terms of the Memorandum.

The two agencies agree as follows:

1. DeIDOT will cause to be installed the VSL signs and VMS equipment authorized under 73 Del. Laws, Chapter 95, Section 97(b).
2. DeIDOT and DPS will use a set of Standard Operating Procedures (SOPs) for the full implementation of this new program, a copy of which are attached to this Memorandum. These SOPs will permit lowering the displayed speed limit under defined conditions, including but not limited to a methodology to determine the proposed lowered speed limit; a process to notify the State Police and all users on the affected highways of any upcoming change in the posted speed limit; a mechanism to confirm that all such signs are displaying the desired speed limit; and a process to maintain an effective database record of the posted speed limits for enforcement purposes, and other relevant matters.
3. DeIDOT and DPS will prepare and distribute educational and public relations materials to explain the VSL and VMS program, prior to and after its initial implementation
4. The Delaware State Police will enforce the speed limits posted under the VSL program, in keeping with their responsibilities and procedures.

The executed signatures this 10th day of June of the respective Secretaries of the Department of Transportation and Department of Public Safety appearing below shall evidence their agreement to the terms of this Memorandum and their commitment to assure compliance with its terms on behalf of their respective staff assigned to carry out this program.

ATTEST

Christine Pochomis, Director of Administration

For The Department Of Transportation
Nathan Hayward III, Secretary

ATTEST

Amelia Maurer, Witness

For The Department Of Public Safety
James L. Ford, Secretary

APPROVED AS TO FORM

Frederick H. Schranck, Deputy Attorney General

**Variable Speed Limit (VSL) Sign System
Standard Operating Procedures (SOP's)**

The variable speed limit (VSL) sign system is part of DelTrac and is operated at the Transportation Management Center (TMC). The VSL sign system is a tool to maintain safe driving conditions on major roadways in Delaware. The VSL sign system is used to control safe speeds during traffic incidents and to lower vehicle speeds on ozone action days. The following are standard operating procedures to operate the VSL sign system.

Participating Agencies

Delaware Department of Transportation (DeIDOT)
Delaware Department of Public Safety-Delaware State Police (DSP)
Other law enforcement agencies
Elected public officials

General

The general reasons to implement the VSL sign system are,

- 1) traffic incidents,
- 2) extreme weather conditions
- 3) poor roadway surface conditions, and
- 4) ozone action days.

Traffic incidents are crashes, maintenance operations, enforcement operations, special events and other unusual, nonrecurring traffic operation events. Extreme weather conditions are heavy precipitation, high winds and fog. Poor roadway surface conditions are ice and snow covered roadways, "black ice", or foreign substances spilled on the roadway. Ozone action days are announced by public agencies during weather conditions conducive to the formation of ground level ozone concentrations that are injurious to health.

The decision to use the VSL sign system is made by the Chief Traffic Engineer or designated to the TMC manager and/or the TMC shift supervisor. The TMC operators, who

are monitoring the roadway conditions or other public safety officials, prompt the call for a decision to use the VSL sign system. The "other public safety officials" are law enforcement officers from the state, county or city; emergency operations personnel; and elected public officials. There are both emergency and scheduled incidents that will institute the use of the VSL sign system. The emergency uses will arise when there are crashes, extreme weather and extreme roadway conditions. A preplanned program developed by the respective event sponsors and DeIDOT officials at the TMC establishes VSL sign settings for scheduled programs or special events. Ozone action days will prompt predetermined settings for signs in the VSL sign system.

The procedures and guidelines to operate the VSL sign system in DelTrac are presented herein as standard operating procedures. The SOP's are part of the Memorandum of Agreement between the DeIDOT and DSP, dated June 12, 2002. The SOPs will be reviewed annually in April by both agencies for the purpose of making revisions that will improve the operations and maintenance of the system.

The DSP will enforce the varied speed limits, when posted according to these SOP's as the legal limit of travel speed the highways.

Communications

DeIDOT personnel will operate the VSL sign system, which will be part of DelTrac's incident management program, from the Transportation Management Center (TMC) in Smyrna, Delaware. The TMC operator will call the DSP at 302-577-3010 to inform the DSP of a change of the VSL sign system displays according to these SOP guidelines. The DSP will call the TMC at 659-2400 or email to request a change to the VSL system displays according to these SOP guidelines. When the VSL signs are changed the State Police will be told who authorized the change to the VSL signs, why the speeds were changed, the time they were changed, what the changed speed limit is and where they were changed. This information will be saved by DeIDOT in a retrievable database.

The VSL signs will be operated using a wireless 220 MHz radio system at the TMC that connects to radio communication towers throughout the state. A communication testing and polling process will continually monitor the signs' performance and the history of the sign's message. The TMC and DeIDOT will document the normal operation of the signs and record the speed message displayed on the VSL sign in a database for future use. A malfunction of the communications system to the signs or the sign itself will be automatically recorded and documented. The DSP may obtain written records of the speed limit displays upon request by calling or emailing the TMC for such information.

Speed Limit Variations

VSL signs shall display speed limits ranging from 45 to 65 mph. The speed limits shown shall be multiples of 5 mph. An operator at the TMC employed by DeIDOT, who will follow these written SOP guidelines and procedures to vary the speed limit sign messages, will control the speed limits shown.

Traffic Incidents

The speed limits will be varied by DeIDOT operators at the TMC by decision of the Chief Traffic Engineer or delegated to the TMC Manager or at the request of the DSP for traffic incident management.

DeIDOT will lower the speed limit the following amounts for the following conditions:

Reduce 5-10 mph

1. A roadway incident causes slower moving traffic and/or a traffic queue that presents a hazardous condition for approaching traffic. Upstream speed limits will be lowered 5-10 mph to lengthen driver perception-reaction time and reduce safe stopping distance for approaching traffic. The DSP may recommend lower speed limits. Incidents and queues will be observed and measured from TMC cameras and detectors. Experience will establish set speed limit scenarios that safely manage traffic flow past incidents.

Either the police, a roadway user calling a 911 operator or someone at the TMC will notice a crash first. The police or the TMC operator may request the use of the VSL sign system. Speed limits can be lowered upstream in both directions from the crash or incident. Lower speed limits will be posted in conjunction with information on Variable Message Signs (VMS) and traffic diversion plans created to respond to the circumstances of the incident.

DSP may request a lower speed limit for the following reasons:

Reduce 5-20 mph

1. Traffic crashes, disabled vehicles or traffic law enforcement incidents that require lower traffic speeds to safely manage bypassing traffic and/or to complete an accident investigation under lower and safer traffic speed conditions.

2. Emergency and medical treatment at a crash scene.
3. Evacuations and emergencies

Planned, nonrecurring traffic incidents -

Requests will be made and consideration given to lower speed limits for other traffic incidents of a planned, nonrecurring nature. These incidents may include but not be limited to roadway maintenance operations, law enforcement operations, traffic studies, and special events, such as official convoys or motorcades, parades, festivals or celebrations.

Extreme Weather Conditions

The speed limits will be varied by DeIDOT operators at the TMC by decision of the Chief Traffic Engineer or delegated to the TMC Manager or at the request of the DSP for extreme weather conditions.

DeIDOT will lower the speed limit the following amounts for the following conditions:

Reduce 5-20 mph

1. Heavy precipitation.
2. High winds.
3. Reduced visibility due to precipitation, fog or smoke.

DSP may request a lower speed limit for the same reasons.

Reduce 5-20mph

The DSP will maintain their discretion to ticket drivers who are traveling too fast for conditions regardless of the 'VSL posted speed.

Poor Roadway Surface Conditions

The speed limits will be varied by DeIDOT operators at the TMC by decision of the Chief Traffic Engineer or delegated to the TMC Manager or at the request of the DSP for poor roadway surface conditions.

DeIDOT will lower the speed limit the following amounts for the following conditions:

Reduce 5-20 mph

1. Ice and/or snow covered pavement
2. "Black ice" patches on pavement
3. Material and object spills on the roadway pavement or roadsides.

DSP may request a lower speed limit for the same reasons.

Reduce 5-20 mph

Ozone Action Days

The speed limits will be varied by DeIDOT operators at the TMC by decision of the Chief Traffic Engineer or delegated to the TMC Manager or at the request of public officials for ozone action days.

The speed limits may be varied by DeIDOT upon announcement from the Ozone Action Partnership and/or the Delaware Department of Natural Resources and Environmental Control (DNREC) that there is an ozone forecast for a specific code color ozone action day.

DeIDOT will lower the speed limits to reduce vehicle emissions on days when ground level ozone concentrations are expected to exceed the federal health based air quality standards. Delaware's chart for the National Ambient Air Quality Index specifies six levels of pollution. They are listed below with the corresponding speed reductions:

- | | |
|----------------------|--------------|
| 1. Green - good | No Reduction |
| 2. Yellow - moderate | No Reduction |

3. Orange - unhealthy for sensitive groups
Reduce 5-10 mph
I-95, I-295 SR 1 N., SR 1 Exp. 50mph
I-495, SR 1 S, 55mph
4. Red - unhealthy Reduce 10-15mph
I-95, I-295 SR 1 N., SR 1 Exp. 50mph
I-495, SR 1 S. 50mph
5. Purple - very unhealthy Reduce 10-20mph
I-95, I-295 SR 1 N., SR 1 Exp. 45mph
I-495, SR 1 S. 45mph
6. Brown - hazardous Reduce 10-20mph
I-95, I-295 SR 1 N., SR 1 Exp. 45mph
I-495, SR 1 S. 45mph

Documentation

DeIDOT will inform DSP immediately when there is a speed limit change on any VSL display by calling 302-577-3010.

DeIDOT will maintain and store a database of the VSL sign displays by specific sign location. DeIDOT will provide this information to the DSP upon request for the purpose of completing accident reports and for giving testimony at court appearances. The database will be kept for 2 years.

**DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION**

The Delaware Harness Racing Commission proposes amendments to Commission rules pursuant to 3 **Del.C.** §10005 and 29 **Del.C.** §10115. The Commission will accept written comments from June 1, 2004 through August 17, 2004. The Commission will hold a public hearing on the proposed rule amendments on August 18, 2004 at 10:15 a.m. at Harrington Raceway, Harrington, DE. Written comments should be submitted to John Wayne, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

The Commission proposes to amend its Rules as follows: 1) enact a new rule 5.1.8.16 setting forth requirements for maintaining the confidentiality of test reports for the human drug testing program; and 2) delete rule 8.4.3.2.1 which currently provides that buckets and water shall be furnished by the State Veterinarian in the detention area where the specimens are collected from the horses.

**DELAWARE STANDARDBRED BREEDERS'
FUND PROGRAM****NOTICE**

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund (herein "the Fund") hereby gives notice of its intention to adopt amended regulations concerning its enforcement procedures pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 **Del.C.** §4815(b)(3)b.2.D and in compliance with Delaware's Administrative Procedures Act, 29 **Del.C.** §10115. The proposed amended regulations constitute a substantial revision of its regulations and more specifically set forth the powers and duties of the Fund's Administrator, eliminate the Delaware Harness Racing Commission from the hearing process that currently exists for resolving disputes between horse owners and the Fund's Administrator substituting in its stead a public hearing before the Fund, and allowing for appeals to the Superior Court of the State of Delaware from decisions by the Fund.

The Fund requests, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*.

Any such submissions should be mailed or delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund whose address is State of

Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, June 17, 2004 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES****Public Notice
Fair Hearing Practices and Procedures**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / is proposing to amend the Division of Social Services Manual (DSSM) as it relates to fair hearing practices and procedures.

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 June 30, 2004.

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

Summary Of Proposed Change

DSSM 5311, Notification of Time and Place of Hearing. The change adds language to clarify that the ten day advance notice period in this rule refers to the date the fair hearing scheduling letter is mailed and not to the date the letter is received by certified mail.

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

REGISTER NOTICE

Title Of The Regulations:

Delaware *Regulations Governing Hazardous Waste*
(DRGHW)

Brief Synopsis Of The Subject, Substance And Issues:

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State regularly amends the DRGHW by adopting amendments previously promulgated by EPA. In addition, the State will be proposing to make miscellaneous changes to the DRGHW that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations.

Notice Of Public Comment:

The public hearing on the proposed amendments to DRGHW will be held on Wednesday June 23, 2004 starting at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

Prepared By:

Donald K. Short, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-3689

DIVISION OF FISH & WILDLIFE

REGISTER NOTICE

SAN # 2004-03

Title Of The Regulations:

Delaware wildlife and non-tidal fishing regulations

Brief Synopsis Of The Subject, Substance And Issues:

To provide additional shotgun hunting days for deer in October and add 1 day to the October muzzleloader deer season. To increase the general bag limit for deer from 2 to 4 antlerless deer. To allow squirrel hunting during deer gun hunting days in October. To require that deer checked using the automated system be tagged with the hunters name, date

of birth, date of kill and the deer registration number.

Notice Of Public Comment:

A public hearing will be held on June 30, 2004 in the DNREC Richardson and Robbins Building auditorium, 89 Kings Highway, Dover, DE starting at 7:00 p.m. Written comments for the record will be accepted for 30 days following publication of the amendments in the Delaware Register of Regulations. Written comments should be sent to The Delaware Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 Attention: Kenneth Reynolds

Prepared By:

Kenneth M. Reynolds
(302) 653-2883 May 6, 2004

**DELAWARE RIVER BASIN
COMMISSION**

The Delaware River Basin Commission will meet on Wednesday, June 2, 2004 at 10:00 a.m. in West Trenton, New Jersey. For more information contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel,, at 609-883-9500 extension 203.

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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.

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