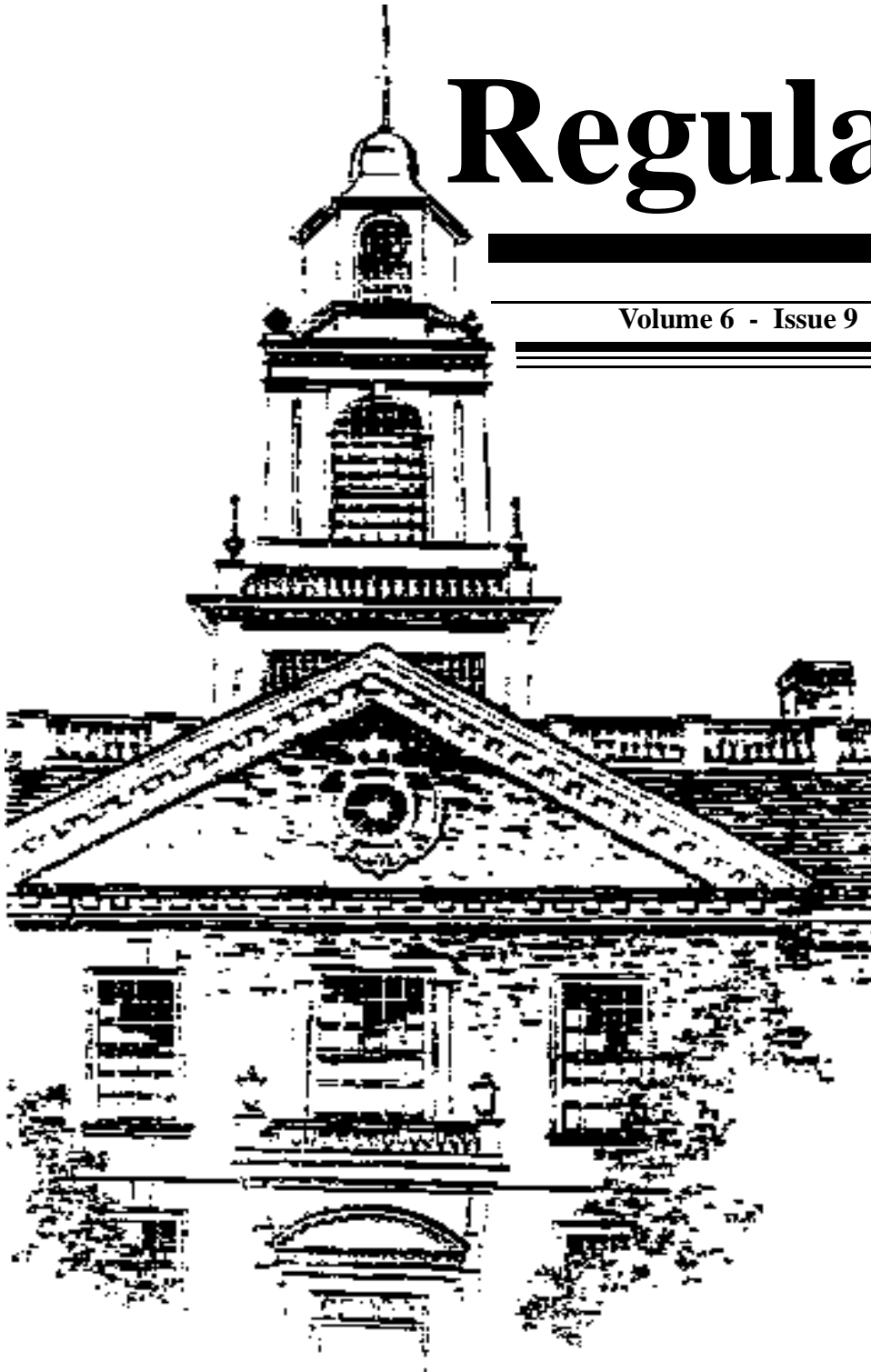


---

---

# Delaware Register of Regulations



---

Issue Date: March 1, 2003

Volume 6 - Issue 9

Pages 987 - 1251

---

---

## IN THIS ISSUE:

Regulations:

Proposed

Final

Governor

Executive Orders

Appointments

General Notices

Calendar of Events &

Hearing Notices



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

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

---

## CITATION TO THE DELAWARE REGISTER

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

**6 DE Reg. 279 - 280 (09/01/02)**

Refers to Volume 6, pages 279 - 280 of the Delaware Register issued on September 1, 2002.

---

## SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

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

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

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

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

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

Except as provided in the preceding section, no judicial review of a regulation is available

unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

---

## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

---

ISSUE DATE	CLOSING DATE	CLOSING TIME
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.
MAY 1	APRIL 15	4:30 P.M.
JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.

---

### DIVISION OF RESEARCH STAFF:

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

Cumulative Tables..... 992

Delaware Social Services Manual, 15200, Initial Eligibility  
for First Six Months..... 1166

## PROPOSED

### DEPARTMENT OF ADMINISTRATIVE SERVICES

Regulations for the Annual Prequalification of  
Contractors & Subcontractors..... 998

#### DIVISION OF PROFESSIONAL REGULATION

1400 Board of Electrical Examiners..... 1004  
2930 Council on Real Estate Appraisers..... 1009

### DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

Rule 7.0, Rules of the Race, Sections 7.6.6.3  
and 7.3.9..... 1016  
Standardbred Breeder's Fund Regulations..... 1026

### DEPARTMENT OF EDUCATION

830 Students with HIV Infection..... 1032  
877 Smoking..... 1032

### PROFESSIONAL STANDARDS BOARD

301 General Regulations for Certification of  
Professional Public School Personnel..... 1033  
1535 Certification Administrative – Administrative  
Assistant..... 1058  
1536 Certification Administrative – Director ..... 1058  
1538 Certification Administrative – Supervisor... 1058  
1502 Delaware Performance Appraisal System  
for Teachers..... 1066  
1503 Delaware Performance Appraisal System  
for Specialists..... 1066  
1504 Delaware Performance Appraisal System for  
Administrators..... 1066

### DEPARTMENT OF HEALTH & SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Public Drinking Water Systems, Regulations  
Governing..... 1140  
Public Pools, Regulations Governing..... 1142

#### DIVISION OF SOCIAL SERVICES

Delaware Social Services Manual, 15120.2, Financial  
Eligibility..... 1166

### DEPARTMENT OF INSURANCE

Regulation No. 1310, (Formerly Reg. No. 80) Standards  
for Prompt, Fair & Equitable Settlement of  
Claims for Health Care Services..... 1169

### DEPARTMENT OF LABOR

Clean Indoor Air Act Regulations..... 1171

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF AIR AND WASTE MANAGEMENT

Reg. 38, Emission Standards for Hazardous Air  
Pollutants for Source Categories, Subpart B. .... 1174  
Reg. 38, Emission Standards for Hazardous Air  
Pollutants for Source Categories, Subpart RRR... 1185

#### DIVISION OF FISH & WILDLIFE

Tidal Finfish Reg. No. 7, Striped Bass Possession  
Size Limit; Exceptions..... 1192  
Tidal Finfish Regulations, Reg. No. 10, Weakfish Size  
Limits, Possession Limits, Seasons..... 1193

## FINAL

### DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Board of Nursing..... 1195

### DEPARTMENT OF AGRICULTURE

State Forest Regulations..... 1201

#### THOROUGHBRED RACING COMMISSION

Rule 13.01, Owners Entitled, Owners Entitled..... 1205  
Rule 13.16, Claiming Privileges, Eliminated Stable ... 1205

### DEPARTMENT OF HEALTH & SOCIAL SERVICES DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Criminal History Checks & Drug Testing for Home  
Health Agencies, Regulations for..... 1208

**DIVISION OF PUBLIC HEALTH**

Birth Defect Surveillance & Registry Program  
Regulations..... 1211  
Clean Indoor Air Act Regulations..... 1216  
Production & Sale of Milk & Milk Products..... 1220

**DIVISION OF SOCIAL SERVICES**

DSSM, 3002.5, Assessment Prior to Termination  
of Benefits..... 1221  
DSSM, 3024, Citizens and Aliens Eligibility  
for TANE..... 1221  
DSSM, 9007.1, Citizenship & Alien Status..... 1224  
DSSM, 17500, 17520, 17550, Qualifying Individuals. 1226  
DSSM, 20210.71, 20620.1, 20995.1, Veterans'  
Pension Payments, Personal Needs Allowance .... 1226  
DSSM, 20910.5, Excess Shelter Allowance..... 1226

**DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF FISH & WILDLIFE**

Tidal Finfish Reg. 11, Red Drum Size Limits,  
Creel Limits..... 1229  
Tidal Finfish Reg. 28, Atlantic Ocean American  
Shad Season and Closure..... 1229  
Tidal Finfish Reg. 23, Black Sea Bass Size Limit; Trip  
Limits; Seasons: Quotas..... 1230

---

**GOVERNOR**

Executive Order 35, Recognizing and Reconstituting  
the Governor's Task Force on School Libraries ... 1234  
Executive Order 36, Reallocation of State Private  
Activity Bond Volume Cap for Calendar  
Year 2002 and Initial Suballocation of State  
Private Activity Bond Volume Cap for  
Calendar Year 2003..... 1234  
Executive Order 37, Terminating Drought Warning ... 1235  
Appointments..... 1237

---

**GENERAL NOTICE****DEPARTMENT OF HEALTH & SOCIAL SERVICES  
DIVISION OF SOCIAL SERVICES**

Implementation of All Eligibility Changes Made  
by the State Since FY 1995..... 1240

**CALENDAR OF EVENTS/HEARING  
NOTICES**

Dept. of Administrative Services, Div. of Facilities  
Management, Regulations for the Annual  
Prequalification of Contractors and Subcontractors,  
Notice of Public Hearing..... 1246  
1400 Board of Electrical Examiners, Notice of  
Public Hearing..... 1246  
Council on Real Estate Appraisers, Notice of  
Public Hearing..... 1246  
Harness Racing Commission, Notice of Public  
Hearing ..... 1247  
Standardbred Breeder's Fund Regulations, Notice  
of Public Hearing..... 1247  
State Board of Education, Notice of Monthly Meeting 1247  
DHSS, Div. of Public Health, Public Drinking Water  
Systems, Notice of Public Hearing..... 1247  
Regulations Governing Public Pools, Notice of  
Public Hearing..... 1248  
Div. of Social Services, DSSM, 15120.2, Financial  
Eligibility, Notice of Public Comment Period..... 1248  
DSSM, 15200, Initial Eligibility for First Six  
Months, Notice of Public Comment Period... .. 1248  
Dept. of Insurance, Reg. 1310, Standards for Prompt,  
Fair and Equitable Settlement of Claims for  
Health Care Services, Notice of Public Hearing .. 1249  
Dept. of Labor, Clean Indoor Air Act Regulations,  
Notice of Public Hearing..... 1249  
DNREC, Div. of Air & Waste, Reg. 38 - Emission  
Standards for Hazardous Air Pollutants for  
Source Categories Subpart B, Notice of  
Public Hearing..... 1249  
DNREC, Div. of Air & Waste, Reg. 38 - Emission  
Standards for Hazardous Air Pollutants for  
Source Categories Subpart RR, Notice of  
Public Hearing..... 1250  
Div. of Fish and Wildlife, Tidal Finfish Reg. 7  
Striped Bass Possession Size Limit; Exceptions,  
Notice of Public Hearing..... 1250  
Tidal Finfish Reg.10 Weakfish Size Limits;  
Possession Limits; Season, Notice of Public  
Hearing ..... 1250  
Delaware River Basin Commission, Notice  
of Meeting..... 1251

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the Delaware Register of Regulations.

The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the Register in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

**DELAWARE COUNCIL ON POLICE TRAINING**

Reg. II-16, Emergency Care & CPR Training.....	6 DE Reg. 722 (Prop.)
	6 DE Reg. 949 (Final)

**DELAWARE FIRE PREVENTION COMMISSION**

Sec. XVII, Ambulance Company's Intent to Discontinue Service & Sec. XVII, Basic Life Support Data Assessment Committee.....	6 DE Reg. 87 (Final)
---	----------------------

**DELAWARE RIVER BASIN COMMISSION**

Proposed Amendments to the Comprehensive Plan and the Water Code Relating to the Operation of Lake Wallenpaupack During Drought Watch, Drought Warning and Drought Conditions.....	6 DE Reg. 476 (Prop.)
--	-----------------------

**DEPARTMENT OF ADMINISTRATIVE SERVICES****DIVISION OF PROFESSIONAL REGULATION (TITLE 24 DELAWARE ADMINISTRATIVE CODE)**

300 Board of Architects, Rules and Regulations.....	6 DE Reg. 401 (Prop.)
	6 DE Reg. 850 (Final)
700 Board of Chiropractic.....	6 DE Reg. 270 (Final)
	6 DE Reg. 831 (Prop.)
1000 Board of Pilot Commissioners.....	6 DE Reg. 231 (Prop.)
	6 DE Reg. 635 (Final)
1300 Board of Examiners of Private Investigators & Private Security Agencies.....	6 DE Reg. 124 (Prop.)
	6 DE Reg. 637 (Final)
1800 Board of Plumbing Examiners.....	6 DE Reg. 571 (Prop.)
	6 DE Reg. 861 (Final)
1900 Board of Nursing.....	6 DE Reg. 722 (Prop.)
2000 Board of Occupational Therapy, Rules and Regulations.....	6 DE Reg. 270 (Final)
	6 DE Reg. 410 (Prop.)
2500 Board of Pharmacy.....	6 DE Reg. 480 (Final)
	6 DE Reg. 908 (Prop.)
2600 Board of Physical Therapists,.....	6 DE Reg. 410 (Prop.)
2700 Board of Professional Land Surveyors.....	6 DE Reg. 271 (Final)
2900 Real Estate Commission.....	6 DE Reg. 8 (Prop.)
2925 Real Estate Commission, Education Guidelines.....	6 DE Reg. 272 (Final)
	6 DE Reg. 516 (Final)
3300 Board of Veterinary Medicine.....	6 DE Reg. 273 (Final)
	6 DE Reg. 575 (Prop.)
	6 DE Reg. 950 (Final)
3500 Board of Examiners of Psychologists.....	6 DE Reg. 727 (Prop.)
3700 Board of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers	6 DE Reg. 912 (Prop.)

**Merit Employee Relations Board**

Rule 10, Certification.....	6 DE Reg. 728 (Prop.)
-----------------------------	-----------------------

**Public Service Commission**

Regulations Governing Pay phone Service Providers & Providers of Operator Services for Pay phones.....	6 DE Reg. 65 (Final)
--	----------------------

**DEPARTMENT OF AGRICULTURE**

Forest Service Regulations.....	6	<b>DE Reg.</b>		127 (Prop.)
	6	<b>DE Reg.</b>		517 (Final)
	6	<b>DE Reg.</b>		581 (Prop.)
 <b>Harness Racing Commission</b>				
Rules 6.2.9, 8.3.6, 8.7 and 10.2.7.4.....	6	<b>DE Reg.</b>		416 (Prop.)
	6	<b>DE Reg.</b>		862 (Final)
Rule 8.8, Aminocarproic Acid (Amicar).....	6	<b>DE Reg.</b>		919 (Prop.)
 <b>Thoroughbred Racing Commission</b>				
Rule 13.0, Claiming Races.....	6	<b>DE Reg.</b>		729 (Prop.)
Rule 15.0, Medication, Testing Procedures.....	6	<b>DE Reg.</b>		233 (Prop.)
	6	<b>DE Reg.</b>		641 (Final)
Rule 15.0, Medication, Shock Wave Therapy.....	6	<b>DE Reg.</b>		585 (Prop.)

**DEPARTMENT OF EDUCATION (TITLE 14 DELAWARE ADMINISTRATIVE CODE)**

275 Charter Schools.....	6	<b>DE Reg.</b>		13 (Prop.)
	6	<b>DE Reg.</b>		273 (Final)
410 Satellite School Agreements.....	6	<b>DE Reg.</b>		920 (Prop.)
525 Requirements for Vocational-Technical Education Programs.....	6	<b>DE Reg.</b>		732 (Prop.)
	6	<b>DE Reg.</b>		955 (Final)
530 Cooperative Education.....	6	<b>DE Reg.</b>		732 (Prop.)
	6	<b>DE Reg.</b>		955 (Final)
535 Diversified Occupations Programs.....	6	<b>DE Reg.</b>		732 (Prop.)
	6	<b>DE Reg.</b>		955 (Final)
540 Driver Education.....	6	<b>DE Reg.</b>		133 (Prop.)
	6	<b>DE Reg.</b>		432 (Prop.)
	6	<b>DE Reg.</b>		773 (Final)
601 School/Police Relations.....	6	<b>DE Reg.</b>		434 (Prop.)
	6	<b>DE Reg.</b>		775 (Final)
701 Unit Count.....	6	<b>DE Reg.</b>		74 (Final)
707 Salary Continuation: Operation Noble Eagle & Enduring Freedom.....	6	<b>DE Reg.</b>		398(Emer.)
	6	<b>DE Reg.</b>		436 (Prop.)
	6	<b>DE Reg.</b>		777 (Final)
729 School Custodians.....	6	<b>DE Reg.</b>		921 (Prop.)
1001 Participation in Extra-Curricular Activities.....	6	<b>DE Reg.</b>		18 (Prop.)
	6	<b>DE Reg.</b>		279 (Final)
1005 Membership in Fraternities and Sororities.....	6	<b>DE Reg.</b>		255 (Prop.)
	6	<b>DE Reg.</b>		643 (Final)
1025 Delaware Interscholastic Athletic Association.....	6	<b>DE Reg.</b>		280 (Final)
1049 DIAA Definitions.....	6	<b>DE Reg.</b>		282 (Final)
1050 DIAA Sportsmanship.....	6	<b>DE Reg.</b>		284 (Final)
1051 DIAA Senior High School Interscholastic Athletics.....	6	<b>DE Reg.</b>		6 (Errata)
	6	<b>DE Reg.</b>		288 (Final)
1052 DIAA Junior High/Middle School Interscholastic Athletics	6	<b>DE Reg.</b>		304 (Final)
1053 DIAA Waiver Procedure.....	6	<b>DE Reg.</b>		282 (Final)
1054 DIAA Investigative Procedure.....	6	<b>DE Reg.</b>		282 (Final)
1055 DIAA Appeal Procedure.....	6	<b>DE Reg.</b>		282 (Final)
1056 Recognition of Officials' Association.....	6	<b>DE Reg.</b>		282 (Final)
1102 Standards for School Bus Chassis & Bodies.....	6	<b>DE Reg.</b>		923 (Prop.)
1105 School Transportation.....	6	<b>DE Reg.</b>		256 (Prop.)
	6	<b>DE Reg.</b>		643 (Final)
 <b>PROFESSIONAL STANDARDS BOARD</b>				
301 General Regulations for Certification of Professional Public School Personnel.....	6	<b>DE Reg.</b>		235 (Prop.)
302, 304, 311, 312, 313, 314, 1535, 1536, 1538, Amendment of Certification Regulations.....	6	<b>DE Reg.</b>		734 (Prop.)
1510 Issuance of Initial License.....	6	<b>DE Reg.</b>		251 (Prop.)
1511 Issuance & Renewal of Continuing License.....	6	<b>DE Reg.</b>		135 (Prop.)
	6	<b>DE Reg.</b>		518 (Final)

1512 Issuance & Renewal of Advanced License.....	6 DE Reg.	77 (Final)
1513 Denial of Licenses.....	6 DE Reg.	253 (Prop.)
1514 Revocation of Licenses.....	6 DE Reg.	254 (Prop.)
1517 Certification Career & Technical Specialist.....	6 DE Reg.	140 (Prop.)
	6 DE Reg.	523 (Final)
1540 Certification Science Teacher.....	6 DE Reg.	19 (Prop.)
	6 DE Reg.	319 (Final)
1541 Limited Standard Certificate for Middle Level Mathematics and Science and Secondary Science, Certificate for Middle Level Science.....	6 DE Reg.	21 (Prop.)
	6 DE Reg.	321 (Final)
1594 Delaware Administrator Standards.....	6 DE Reg.	22 (Prop.)
	6 DE Reg.	322 (Final)

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**

Assisted Living Facilities, Regulations for.....	6 DE Reg.	525 (Final)
Criminal History Checks & Drug Testing for Home Health Agencies, Regulations for.....	6 DE Reg.	585 (Prop.)
	6 DE Reg.	835 (Prop.)
	6 DE Reg.	880 (Final)
Group Homes for Persons with Mental Illness, Regulations Pertaining to.....	6 DE Reg.	266 (Prop.)
	6 DE Reg.	323 (Final)
	6 DE Reg.	654 (Final)
Nursing Homes Admitting Pediatric Residents, Regulations for.....	6 DE Reg.	79 (Final)
Regulations for Assisted Living Facilities.....	6 DE Reg.	141 (Prop.)
Training & Qualifications for Nursing Assistants & Certified Nursing Assistants.....	6 DE Reg.	925 (Prop.)

**DIVISION OF PUBLIC HEALTH**

Birth Defect Surveillance & Registry Program Regulations.....	6 DE Reg.	741 (Prop.)
Cancer Registry Regulations.....	6 DE Reg.	744 (Prop.)
	6 DE Reg.	958 (Final)
Clean Indoor Air Act Regulations.....	6 DE Reg.	267 (Prop.)
	6 DE Reg.	655 (Final)
	6 DE Reg.	837 (Prop.)
Delaware Radiation Control Regulations.....	6 DE Reg.	98 (Final)
EMS Pre-Hospital Advanced Care Directive Regulations.....	6 DE Reg.	588 (Prop.)
Production & Sale of Milk & Milk Products.....	6 DE Reg.	840 (Prop.)
Regulations for Adult Day Care Facilities.....	6 DE Reg.	83 (Final)
Regulation for the Certification of Radiation Technologists/Technicians.....	6 DE Reg.	99 (Final)

**DIVISION OF SOCIAL SERVICES****DSSM**

3002 Time Limit, Temporary Welfare Program.....	6 DE Reg.	155 (Prop.)
	6 DE Reg.	528 (Final)
3002.5, Assessment Prior to Termination of Benefits.....	6 DE Reg.	841 (Prop.)
3008 & 3012 Dependent Children.....	6 DE Reg.	337 (Final)
3024, Citizens and Aliens.....	6 DE Reg.	841 (Prop.)
6103, Eligibility.....	6 DE Reg.	592 (Prop.)
	6 DE Reg.	884 (Final)
9007.1 Citizenship and Alien Status.....	6 DE Reg.	156 (Prop.)
	6 DE Reg.	530 (Final)
	6 DE Reg.	843 (Prop.)
9045 Maximum Allowable Resources.....	6 DE Reg.	158 (Prop.)
	6 DE Reg.	531 (Final)
9046, 9048, 9049 & 9051, Noncitizen Eligibility and Certification.....	6 DE Reg.	339 (Final)
9060 Income Deductions.....	6 DE Reg.	439 (Prop.)
	6 DE Reg.	780 (Final)
9085 Reporting Changes.....	6 DE Reg.	441 (Prop.)
	6 DE Reg.	780 (Final)



---

---

# CUMULATIVE TABLES

995

---

14600 Third-Party Liability.....	6 DE Reg.	158 (Prop.)
	6 DE Reg.	532 (Final)
14900 Enrollment in Managed Care.....	6 DE Reg.	533 (Final)
15160.1 Eligibility Determination.....	6 DE Reg.	534 (Final)
15200 Transitional Medicaid.....	6 DE Reg.	29 (Prop.)
	6 DE Reg.	344 (Final)
15503 Screening Requirement.....	6 DE Reg.	534 (Final)
15505 Uninsured Requirement.....	6 DE Reg.	535 (Final)
16110 Adult Expansion Population.....	6 DE Reg.	535 (Final)
16210 Limitations on Retroactive Coverage.....	6 DE Reg.	535 (Final)
16220.5 Enrollment in Managed Care-Special Requirement for Adult Expansion Population.....	6 DE Reg.	535 (Final)
16310.3 Adults.....	6 DE Reg.	536 (Final)
16500.2 Procedures for Determining Eligibility.....	6 DE Reg.	536 (Final)
17500, 17520, 17550, Qualifying Individuals.....	6 DE Reg.	845 (Prop.)
18200.2 Uninsured Requirement.....	6 DE Reg.	536 (Final)
20210.7.1, 20620.1, 20995.1, Veterans' Pension Payments, Personal Needs Allowance.....	6 DE Reg.	846 (Prop.)
20910.5, Excess Shelter Allowance.....	6 DE Reg.	846 (Prop.)
25000 Children's Community Alternative Disability Program (CCADP).....	6 DE Reg.	536 (Prop.)
Delaware State Plan for TANF.....	6 DE Reg.	525 (Final)
	6 DE Reg.	442 (Prop.)
	6 DE Reg.	781 (Final)
Regulation #02-50, Nursing Home Patient Health Care Assessments	6 DE Reg.	720 (Emer.)
Title XIX Medicaid State Plan.....	6 DE Reg.	718 (Emer.)
	6 DE Reg.	778 (Final)
Title XIX Medicaid State Plan, Attachment 4.19-B pp. 14 & 14a.....	6 DE Reg.	746 (Prop.)
	6 DE Reg.	961 (Final)
Title XIX Medicaid State Plan, Attachment 4.19-D, p. 4.....	6 DE Reg.	748 (Prop.)
	6 DE Reg.	964 (Final)
Title XIX Medicaid State Plan, Inpatient Hospital Care Reimbursement Methodology for Interim Payments.....	6 DE Reg.	593 (Prop.)
	6 DE Reg.	885 (Final)
Title XIX Medicaid State Plan, Transportation as an Administrative Expense.....	6 DE Reg.	335 (Final)
	6 DE Reg.	437 (Prop.)
	6 DE Reg.	570 (Errata)
Title XXI Delaware Healthy Children Program State Plan Sections 3.1, 6.2.10 and 6.2.11.....	6 DE Reg.	906 (Emer.)
	6 DE Reg.	935 (Prop.)

## DEPARTMENT OF INSURANCE

Regulation 905, (Formerly Reg. No. 86) Standards for Safeguarding Customer Information	6 DE Reg.	595 (Prop.)
	6 DE Reg.	966 (Final)
Regulation 906, (Formerly Reg. No.87) Use of Credit Information.....	6 DE Reg.	597 (Prop.)
Regulation 1310, (Formerly Reg. No. 80) Standards for Prompt, Fair & Equitable Settlement of Claims.....	6 DE Reg.	593 (Prop.)
Regulation 1501, (Formerly Reg. No. 41) Medicare Supplement Insurance Minimum Standards.....	6 DE Reg.	437 (Prop.)
	6 DE Reg.	800 (Final)

## DEPARTMENT OF JUSTICE

### DELAWARE SECURITIES ACT

600 Registration of Broker-Dealers.....	6 DE Reg.	461 (Prop.)
601 Registration of Broker-Dealer Agents.....	6 DE Reg.	461 (Prop.)
	6 DE Reg.	749 (Prop.)
608 Registration Exemption for Certain Canadian Broker-Dealers.....	6 DE Reg.	463 (Prop.)
	6 DE Reg.	608 (Prop.)
610 Examination Requirement.....	6 DE Reg.	467 (Prop.)
	6 DE Reg.	755 (Prop.)

700 Registration of Investment Advisors.....	6 DE Reg.	467 (Prop.)
	6 DE Reg.	755 (Prop.)

**DEPARTMENT OF LABOR****DIVISION OF INDUSTRIAL AFFAIRS**

Clean Indoor Air Act Regulations.....	6 DE Reg.	602 (Prop.)
Unemployment Insurance Appeal Board Regulations.....	6 DE Reg.	605 (Prop.)
	6 DE Reg.	887 (Final)

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF AIR & WASTE MANAGEMENT****Waste Management Section**

2002 Amendments to Delaware Regulations Governing Hazardous Waste.....	6 DE Reg.	106 (Final)
Chronic Violators Regulations.....	6 DE Reg.	936 (Prop.)
Delaware 2005 Rate-of-Progress Plan.....	6 DE Reg.	621 (Prop.)
Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Non-attainment area.....	6 DE Reg.	628 (Prop.)
Reg. No. 3, Sec. 11, Ambient Air Quality Standards.....	6 DE Reg.	609 (Prop.)
	6 DE Reg.	968 (Final)
Reg. No. 24, Section 10, Aerospace Coatings.....	6 DE Reg.	190 (Final)
	6 DE Reg.	611 (Prop.)
	6 DE Reg.	971 (Final)
6028, Reporting of a Discharge of a Pollutant or an Air Contaminant	6 DE Reg.	661 (Final)

**DIVISION OF FISH & WILDLIFE**

Shellfish Reg. S-63 Oyster Harvesting Seasons.....	6 DE Reg.	399 (Emer)
Shellfish Regulation Nos. S-63, S-65, S-67, S-69, S-71, S-73 and S-75.....	6 DE Reg.	940 (Prop.)
Tidal Finfish Reg. No. 4, Summer Flounder Size Limits; Possession Limits; Season.....	6 DE Reg.	941 (Prop.)
Tidal Finfish Reg. No. 11, Red Drum Size Limits, Creel Limits.....	6 DE Reg.	755 (Prop.)
Tidal Finfish Reg. No. 22, Tautog Size Limit.....	6 DE Reg.	848 (Prop.)
Tidal Finfish Reg. No. 23, Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas.....	6 DE Reg.	35 (Prop.)
	6 DE Reg.	348 (Final)
	6 DE Reg.	757 (Prop.)
	6 DE Reg.	941 (Prop.)
Tidal Finfish Reg. No. 24, Fish Pot Requirements.....	6 DE Reg.	35 (Prop.)
	6 DE Reg.	350 (Final)
Tidal Finfish Reg. No. 28, Atlantic Ocean American Shad Season and Closure.....	6 DE Reg.	756 (Prop.)
Wildlife & Non-Tidal Fishing Regulations		
WR-2 Method of Take.....	6 DE Reg.	162 (Prop.)
	6 DE Reg.	536 (Final)
WR-3 Federal Laws & Regulations Adopted.....	6 DE Reg.	162 (Prop.)
	6 DE Reg.	537 (Final)
WR-4 Seasons.....	6 DE Reg.	163 (Prop.)
	6 DE Reg.	537 (Final)
WR-7 Deer.....	6 DE Reg.	163 (Prop.)
	6 DE Reg.	538 (Final)
WR-14 Falconry.....	6 DE Reg.	164 (Prop.)
	6 DE Reg.	538 (Final)
WR-15 Collection or Sale of Nongame Wildlife.....	6 DE Reg.	164 (Prop.)
	6 DE Reg.	539 (Final)
WR-16 Endangered Species.....	6 DE Reg.	165 (Prop.)
	6 DE Reg.	539 (Final)
WR-17 Species of Special Concern.....	6 DE Reg.	165 (Prop.)
	6 DE Reg.	539 (Final)

**DIVISION OF WATER RESOURCES**

Delaware Regulations Governing the Control of Water Pollution.....	6 DE Reg.	474 (Prop.)
Total Maximum Daily Load (TDML) for Nutrients in the Appoquinimink Watershed.....	6 DE Reg.	350 (Final)

---

---

# CUMULATIVE TABLES

997

---

Regulations for Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers, and Pump Installers.....	6 DE Reg.	165 (Prop.)
	6 DE Reg.	801 (Final)
Shellfish Sanitation Regulations.....	6 DE Reg.	36 (Prop.)
.....	6 DE Reg.	350 (Final)
<b>DEPARTMENT OF PUBLIC SAFETY</b>		
<b>DIVISION OF HIGHWAY SAFETY</b>		
Policy Reg. 92, Standard Operating Procedures for the DUI Evaluation, Education and Outpatient Treatment Agencies.....	6 DE Reg.	758 (Prop.)
<b>DIVISION OF STATE POLICE</b>		
Nonconsensual Towing Regulations.....	6 DE Reg.	206 (Final)
<b>DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES</b>		
<b>DIVISION OF FAMILY SERVICES</b>		
Child Abuse Registry.....	6 DE Reg.	765 (Prop.)
<b>DEPARTMENT OF STATE</b>		
<b>DIVISION OF HISTORICAL &amp; CULTURAL AFFAIRS</b>		
Historic Preservation Tax Credit Program.....	6 DE Reg.	108 (Final)
<b>DEPARTMENT OF TRANSPORTATION</b>		
Statewide Long Range Transportation Plan.....	6 DE Reg.	38 (Prop.)
	6 DE Reg.	353 (Final)
<b>EXECUTIVE DEPARTMENT</b>		
<b>DELAWARE ECONOMIC DEVELOPMENT OFFICE</b>		
Co-Op Advertising Program.....	6 DE Reg.	174 (Prop.)
	6 DE Reg.	212 (Final)
	6 DE Reg.	683 (Final)
Direct Grants Program.....	6 DE Reg.	176 (Prop.)
	6 DE Reg.	685 (Final)
Matching Grants Program.....	6 DE Reg.	178 (Prop.)
	6 DE Reg.	688 (Final)
Neighborhood Assistance Act Tax Credit Program Regulation.....	6 DE Reg.	630 (Prop.)
	6 DE Reg.	943 (Prop.)
<b>GOVERNOR'S OFFICE</b>		
Appointments.....	6 DE Reg.	214
	6 DE Reg.	540
	6 DE Reg.	699
	6 DE Reg.	888
	6 DE Reg.	982
Executive Order No. 34, Terminating Drought Emergency.....	6 DE Reg.	698
<b>STATE EMPLOYEE BENEFITS COMMITTEE</b>		
Group Health Care Insurance, Proposed Revisions to Eligibility and Coverage Rules.....	6 DE Reg.	180 (Prop.)
	6 DE Reg.	634 (Prop.)
	6 DE Reg.	690 (Final)
	6 DE Reg.	948 (Prop.)

Symbol Key

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

Proposed Regulations

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

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF FACILITIES MANAGEMENT**

Statutory Authority: 29 Delaware Code  
Section 6962(c) (29 **Del.C.** §6962(c))

**Public Notice**

**Regulations for the Annual Prequalification of  
Contractors and Subcontractors**

The Department of Administrative Services (DAS) has drafted proposed Regulations for the Annual Prequalification of Contractors and Subcontractors pursuant to 29 **Del.C.** Section 6962(c)(5)(a). The proposed regulations establish the mechanism and standards by which the Department may assign classifications and maximum dollar limits to contractors and subcontractors that apply for annual prequalification pursuant to 29 **Del.C.** Section 6962(c). No existing or proposed regulations are affected by the proposed regulations herein.

**Invitation For Public Comment**

A public hearing will be held as follows:

Tuesday, March 25, 2003, 10:00 AM  
Department of Administrative Services  
Division of Facilities Management  
Thomas Collins Building, First Floor  
540 South DuPont Highway  
Dover, De 19901

For information and directions, please call Natalie Curran at (302) 739-5644

Written comments on these proposed regulations should be sent to:

Robert J. Furman  
Division of Facilities Management  
Thomas Collins Building  
540 South DuPont Highway, Suite 1  
Dover, DE 19901

Written comments will be accepted until the conclusion of the public hearing on March 25<sup>th</sup>.

**Regulations for the Annual Prequalification of  
Contractors and Subcontractors**

1.0 Purpose

1.1 The Department of Administrative Services ("Department"), Division of Facilities Management ("Division") has written these regulations for the Annual Pre-Qualification of Contractors and Subcontractors pursuant to 29 Del.C. Section 6962(c)(5)(a.). The regulations establish the mechanism and standards by which the Department may assign classifications and maximum dollar limits to contractors and subcontractors that apply for annual prequalification pursuant to 29 Del.C. Section 6962(c). However, these regulations are not inclusive of the full set of contractor and subcontractor prequalification criteria referenced in 29 Del.C. Section 6962(c).

1.2 The purpose of this regulation is threefold and is intended to accomplish the following three goals:

1.2.1 Define the mechanism and standards by

which the Department will publish classifications for which a contractor or subcontractor may apply for annual prequalification.

1.2.2 Define the mechanism and standards by which the Department shall assign a classification or classifications to a prequalification applicant.

1.2.3 Define the mechanism that sets the maximum dollar value of contracts for which the prequalified contractor or subcontractor may submit a bid.

## 2.0 Definitions

“Applicant” means the contractor or subcontractor that submits an application for annual prequalification to the Department.

“Classifications” means the trade categories for which a contractor or subcontractor may apply for prequalification. Examples of trade categories include “electrical,” “mechanical,” “roofing,” “masonry” and others that are specified by the Department in accordance with this regulation.

“Combined, maximum contract value” means the maximum contract value for which a prequalified contractor or subcontractor may submit a bid that includes the provision work, services, labor, materials, supplies and equipment associated with more than one prequalified classification.

“Contractor” means an individual, firm, corporation, partnership or other entity that enters into one or more large public works contracts with a contracting agency bound by the requirements of 29 Del.C. Section 6962.

“Estimated Contract Value” means a dollar amount specified by the bidding agency that corresponds to the expected value of work associated with a classification or trade. Estimated contract value shall be equal to the base bid where alternates are specified.

“Maximum Contract Dollar Value” means the upper limit of anticipated contract value for a specific classification for which a prequalified contractor or subcontractor may submit a bid. Maximum contract dollar value shall be based on information provided by the applicant subject to the regulations contained herein.

“Multiplier” means a number expressed as a percentage (e.g. 120%) that will be applied to the dollar value of projects submitted as evidence of expertise and experience to calculate a “maximum contract dollar value.”

“Prequalified” means the standing achieved by a contractor or subcontractor after completing the prequalification process to the satisfaction of the Department pursuant to 29 Del.C. Section 6962(c).

“Prequalification” means the process by which a contractor or subcontractor becomes prequalified to bid on large public works contracts that require prequalified bidders pursuant to 29 Del.C. Section 6962(c).

“Project/classification combination” means work specific to one project and one classification or trade

associated with that project. An applicant shall provide information pertaining to a “project/classification combination” to document its experience and abilities to become prequalified for a specific classification.

“Secretary” means the Secretary of the Department of Administrative Services.

“Subcontractor” means an individual, firm, corporation, partnership or other entity that enters into one or more contracts with one or more contractors as defined in Section 2.9 herein.

## 3.0 Assigning Classifications for Which Applications for Prequalification Shall be Accepted

3.1 The Department shall publish annually, on March 1 of each year, classifications for which contractors and subcontractors may seek annual prequalification. The classifications specified by the Department shall include but shall not be limited to trade categories associated with prior or anticipated large public works contracts executed by state agencies and school districts. The Department may publish an amended list of classifications, as required, at any time during the year in accordance with the requirements of sections 3.3 and 4.9 herein.

3.2 Classifications for which the Department accepts applications for contractor and subcontractor prequalification shall be clearly stated in the forms and procedures associated with the prequalification process. Each listed classification may include additional, specific instructions such as, but not limited to, the basis on which to value work associated with completed projects submitted as part of the prequalification application process.

3.3 From time to time, the Department may add to or subtract from the list of prequalification categories specified in the forms and procedures that are used by contractors and subcontractors to apply for prequalification. Classifications may be removed from the published prequalification list at the discretion of the Department, based on changes in construction practices and as a result of periodic reviews of trade categories for which contracting agencies specify prequalification pursuant to 29 Del.C. Section 6962. Notice of the Department’s intent to delete such classifications shall be sent to those contractors and subcontractors that are prequalified under proposed classification(s) to be deleted. Notice shall be sent to the affected contractors and subcontractors with a request for comment on the proposed deletions at least 60 days prior to the proposed date of deletion. The Department shall consider all such comments and may not delete classifications unless such deletions are in the best interest of the state. Classifications may be added to the published prequalification list based on requests from contracting agencies, from contractors and subcontractors and from periodic evaluations of changes and developments in the construction industry. The Department shall decide whether or not to add a classification(s) within 60 days from

the date of a request to expand the list of published prequalification classifications. The Department's decision shall be based on changes and developments in the construction industry, the nature and scope of pending or anticipated large public works contracts that may require prequalification and the identification of classifications that may result in the enhanced quality of large public works contracts. The list of prequalification classifications shall be maintained on the World-Wide Web, the address of which shall be published in all bid documents and applications for prequalification.

3.4 The Department shall not be required to accept applications for annual prequalification for classifications not listed in the forms and procedures provided to applicants, but may do so if such acceptance is in the best interest of the State of Delaware.

#### 4.0 Assigning Classification(s) to Contractors and Subcontractors

4.1 Classifications for which contractors and subcontractors may submit applications for prequalification shall be clearly stated in the forms and procedures associated with the prequalification process. Each stated classification shall be accompanied by a brief description of the work, services, labor, material, supplies or equipment generally associated with that classification and may be accompanied by specific instructions pursuant to Section 3.3 herein.

4.2 Each contractor or subcontractor that submits an application for prequalification shall indicate on the application the classification or classifications for which the contractor or subcontractor wishes to be prequalified.

4.3 For each classification for which an applicant wishes to be prequalified, the applicant shall use a form provided by the Department to provide documentation that the contractor or subcontractor has the experience and expertise to perform the work or provide the services, labor, material, supplies or equipment generally associated with that classification.

4.4 The documentation provided by the applicant shall include a description of one or more projects that include the scope of work, services, labor, materials, supplies and equipment provided by the contractor or subcontractor in its involvement with the project. The documentation shall include the project name, location, duration, completion date, owner name and address and the name and address of the project architect and/or engineer.

4.5 The contractual dollar value of work associated with each project submitted as documentation for each classification shall conform to Sections 5.5 and 6.6 herein.

4.6 The Department shall use the information and documentation provided by the applicant to determine if the contractor or subcontractor should be prequalified in the selected classification or classifications. If the information and documentation provided by the applicant is, at the sole

discretion of the Department, unclear, ambiguous, vague or does not provide a sufficient basis on which to prequalify the applicant, as a courtesy, the Department shall contact the applicant once via certified mail, the project owner, architect, engineer or other knowledgeable individuals in an attempt to ascertain whether or not the applicant has the experience and expertise to be prequalified in the selected classification or classifications. However, it is the applicant's responsibility, not the Department's, to ensure that the information on the application meets the requirements of these regulations.

4.7 The Department shall make every reasonable attempt to ascertain if the applicant has the experience and expertise to be prequalified in the classification or classifications indicated on the application form. Based on construction industry practices and norms, if the information and documentation provided by the applicant, or information obtained by the Department pursuant to Section 4.6 herein, confirms that the applicant possesses the experience and expertise to perform or provide the work, services, labor, materials, supplies and equipment associated with the classification or classifications indicated on the application form, the contractor or subcontractor shall be prequalified pursuant to 29 Del.C. Section 6962(c) and shall be so informed either within 10 working days of the receipt of the application or not less than 14 calendar days prior to the closing date of a bid for a specific project. If the information and documentation does not support the applicant's request to be prequalified in one or more of the indicated classifications pursuant to 29 Del.C. Section 6962(c)(6) and Section(c)(9), the application shall be rejected and prequalification shall be denied. The applicant shall be so informed within 10 working days of the receipt of the application or within 14 calendar days prior to the closing date of a bid for a specific project.

4.8 The Department shall not be required to complete the prequalification process and to notify the applicant not less than 14 calendar days prior to the closing date of a bid for a specific project unless the prequalification application is received by the Department at least 28 days prior to the closing date of the bid.

4.9 At the sole discretion of the Department, if the information and documentation provided by the applicant, or information obtained by the Department, confirms that the applicant possesses the experience and expertise to perform or provide the work, services, labor, materials, supplies and equipment associated with a classification or classifications not indicated by the contractor or subcontractor on the application form, the Department may recommend that the applicant be prequalified in one or more appropriate classifications not indicated by the contractor or subcontractor. If the Department recommends the prequalification of an applicant in a classification or classifications other than the classification or classifications

indicated on the application form, the applicant shall, in writing, accept or reject prequalification in the recommended classification or classifications within 30 days of the Department's notice of such proposed additional classifications or before bidding on a project in said classification(s).

#### 5.0 Assigning Maximum Contract Dollar Value

5.1 Each applicant for prequalification shall provide the Department with documentation that demonstrates that the contractor or subcontractor has the experience and ability to provide the work, services, labor, materials, supplies and equipment associated with the classification(s) or trades for which the applicant seeks prequalification. The documentation shall include the contractual dollar value for each classification or trade for which the applicant seeks prequalification for each prior project submitted as part of the prequalification application process. If the applicant seeks prequalification for multiple classifications or trades, the applicant shall submit a separate contractual dollar value for each classification. The dollar value of each project/classification combination shall be submitted to the Department by providing a copy of an executed contract or subcontract and all change orders that increase or decrease the value of the submitted contract or subcontract, or a schedule of values, or a certified letter from an owner verifying a contract dollar value and the classification to which it applies, or another form of documentation specified by the Secretary pursuant to Section 9.0 herein.

5.2 For each classification or trade for which a contractor or subcontractor becomes prequalified, the Department shall assign the maximum contract dollar value for which the contractor or subcontractor may submit a bid. The maximum dollar value shall be based on the dollar value of projects that the contractor or subcontractor submits as documentation of prior experience pursuant to 29 Del.C. Section 6962(c)(3).

5.3 The Department shall request that an applicant for prequalification submit at least two projects completed within the previous 60 months for each classification for which the applicant seeks prequalification as documentation of prior experience pursuant to 29 Del.C. Section 6962(c)(3). If an applicant submits one project as documentation of prior experience for each classification for which the applicant seeks prequalification, such project shall have been completed within the previous 60 months, and if prequalified, the maximum dollar assigned to a contractor or subcontractor for bid submittal shall be subject to a lower limit pursuant to Sections 5.4 and 5.7 herein.

5.4 The maximum contract dollar value for bid submittal that the Department shall assign to a prequalified contractor or subcontractor (for each classification for which the contractor or subcontractor is prequalified) shall be no less than 120% of the higher dollar value of the two projects

that the contractor or subcontractor submits as documentation of prior experience pursuant to 29 Del.C. Section 6962(c)(3). If an applicant submits one project as documentation of prior experience, the maximum dollar value for which bids may be submitted shall be no less than 110% of the dollar value of the project submitted as part of the prequalification application. The percentage cited in this section shall be known as the "multiplier."

5.5 A contractor or subcontractor that is prequalified for more than one classification shall be assigned a separate, maximum contract dollar value for each classification. A contractor or subcontractor that is prequalified in more than one classification shall also be assigned a combined, maximum contract dollar value. The combined, maximum contract dollar value shall apply to contracts for which the prequalified contractor or subcontractor submits a bid that involves the provision work, services, labor, materials, supplies and equipment associated with more than one prequalified classification. The combined, maximum contract value assigned by the Department shall be derived from the total value of all work, services, labor, materials, supplies and equipment provided by the applicant in conjunction with prior projects that the applicant submits as documentation of the experience and ability to complete projects of a specific dollar value. The documentation shall consist of a copy of an executed contract or subcontract and all change orders that increase or decrease the value of the submitted contract or subcontract, or a schedule of values, or a certified letter from an owner verifying the total contract dollar value of all work, services, labor, materials, supplies and equipment associated with a specific project or projects, or another form of documentation specified by the Secretary pursuant to Section 9.0 herein. An applicant may cite a single project as documentation of its experience and abilities associated with a specific classification or classifications as well as its experience and abilities to complete a project of a specific dollar value that involves the provision of work, services, labor, materials, supplies and equipment in many trades or classifications. An applicant may also submit one or more projects that demonstrates its experience and abilities associated with a specific classification or classifications and one or more other, unrelated projects that demonstrates its experience and abilities to complete a project of a specific dollar value that involve the provision of work, services, labor, materials, supplies and equipment in many trades or classifications.

5.6 The assignment of a maximum, combined dollar value by the Department shall not increase or decrease the maximum dollar value assigned to the contractor or subcontractor for each classification in which the contractor or subcontractor is prequalified.

5.7 The maximum, combined contract dollar value shall be calculated in the same way the Department calculates and assigns the maximum contract dollar value for

a specific classification. Sections 5.1, 5.2, 5.3 and 5.4 herein shall also apply to the calculation of maximum, combined contract dollar value. However, the calculation of maximum, combined contract dollar value shall be based on the total value of all work, services, labor, materials, supplies and equipment provided by the applicant in conjunction with the project or projects cited as documentation of experience and ability to complete projects that involve many trades or classifications.

5.8 On a case-by-case basis, the Department may, at its discretion, evaluate an applicant's submission of project documentation that deviates from the requirements established in Section 5.4 herein. Based on the nature and substance of the documentation submitted by an applicant, the Department may reject the documentation and deny prequalification, or may accept the documentation and use the information pertaining to the contractual dollar value of prior projects/classification combinations to evaluate the application. Regardless of whether an alternate form of project documentation is accepted for evaluation by the Department, the applicant must provide separate contractual dollar values for each classification for which the applicant seeks prequalification, or the documentation shall not be accepted by the Department.

5.9 On a periodic basis, the Secretary shall establish the criteria by which the Department sets the maximum contract dollar value for each classification for which a contractor or subcontractor may apply for prequalification. On a periodic basis, the Secretary shall also establish the criteria by which the Department sets the combined, maximum contract value. The Department shall send notice of any change in criteria established pursuant to this Section to all prequalified contractors and subcontractors within ten working days of the establishment of the criteria. The Secretary shall have the authority to make the effective date of any change in criteria retroactive up to 12 calendar months. If the Secretary establishes a retroactive effective date for criteria established pursuant to this Section, all maximum contract dollar values and all combined, maximum contract dollar values associated with valid applications for prequalification received on or after the effective date shall be recalculated according to the criteria established by the Secretary. The criteria for the maximum contract dollar value for each classification and the combined, maximum contract dollar value set by the Secretary shall include, but may not be limited to the following items and shall be subject to the minimum multipliers specified in Section 5.4 herein.

5.9.1 The number of projects that an applicant must cite as documentation that the contractor or subcontractor has the experience and expertise to perform or provide the work, services, labor, materials, supplies and equipment associated with a classification or classifications.

5.9.2 A multiplier pursuant to the minimum figures specified in Section 5.4 herein that shall be applied to

the contractual dollar value of the project/classification that the applicant provides as documentation of the experience and expertise to perform or provide the work, services, labor, materials, supplies and equipment associated with a specific classification or classifications. The Secretary may assign one multiplier to all classifications, or, if there is a sufficiently compelling business reason, such as an inordinate increase in the cost of specific goods, materials, labor, services or other related factors may assign a different multiplier to each classification.

5.9.3 The specific mathematical formula pursuant to Sections 5.4 and 5.7.2 herein that will be used by the Department to set the maximum dollar limit for each classification for which the contractor or subcontractor has applied for prequalification. The mathematical formula will be made available on the Division's web site or in writing, if so requested.

5.10 Pursuant to 29 Del.C Section 6962(c)(2), a contractor or subcontractor which holds a valid prequalification classification shall report any material changes which could adversely affect the prequalification to the Department in writing within 10 days of the material change. A contractor or subcontractor may also report to the Department in writing material changes that could positively affect the contractor's or subcontractor's prequalification status or the maximum dollar values assigned by the Department to each prequalified contractor's or subcontractor's classification(s). If a prequalified contractor or subcontractor provides information and documentation concerning the successful completion of a project that was not complete, and therefore not able to be considered by the Department at the time of the applicant's application for prequalification, the Department shall reevaluate the maximum contract dollar value assigned to the contractor or subcontractor. The evaluation of project/classification information and documentation submitted at any time by a prequalified contractor or subcontractor shall be subject to all Sections of these regulations as well as the requirements of 29 Del.C Section 6962(c).

5.11 Any change in prequalification status as a result of information and documentation submitted pursuant to Section 5.10 herein shall not change the expiration date of the contractor's or subcontractor's twelve-month prequalification term.

6.0 "Maximum Contract Dollar Value," "Combined, Maximum Contract Value" "Estimated Contract Value" in the Submission of Bids by Prequalified Contractors and Subcontractors:

6.1 Each contractor and subcontractor that has been prequalified by the Department shall be assigned a "maximum contract dollar value" for each classification in which it is prequalified pursuant to Sections 5.1 through 5.9.5 herein. The maximum contract value shall be used to



determine the contracts for which the prequalified contractor or subcontractor may submit a bid.

6.2 Pursuant to 29 **Del.C.** Section 6962(c), for each contract that a contracting agency requires prequalified contractors and subcontractors, the contracting agency shall specify the classification(s) for which prequalification shall be required. The contracting agency shall also specify the estimated contract value for each classification.

6.3 A prequalified contractor or subcontractor may submit a bid for a contract in the classification in which it is prequalified if the maximum contract dollar value assigned to the contractor or subcontractor by the Department is equal to or greater than the estimated contract value for the classification in which the contractor or subcontractor wishes to submit a bid.

6.4 If a prequalified contractor or subcontractor submits a bid pursuant to Sections 6.1, 6.2 and 6.3 herein, and if the bid is more than the prequalified contractor's or subcontractor's maximum contract dollar value, the contracting agency may accept the bid and award a contract pursuant to 29 **Del.C.** Section 6962. However, the contracting agency may elect to reject any bid received pursuant to 29 **Del.C.** Section 6923(n)(3).

6.5 If a prequalified contractor or subcontractor wishes to submit a bid for a contract for which the contracting agency requires prequalified bidders, but the contractor's or subcontractor's maximum contract dollar value is less than the estimated contract value for a specific classification, the prequalified contractor or subcontractor may still submit a bid. However, if the contractor or subcontractor submits a bid higher than the bidder's maximum contract dollar value for a specific classification, the contracting agency shall reject the bid.

6.6 If a prequalified contractor or subcontractor intends to submit a bid for one contract in two or more classifications, the requirements of Sections 6.1 through 6.5 herein shall apply to each individual classification. The following additional requirements shall also apply:

6.6.1 A prequalified contractor or subcontractor may submit a bid for a contract in two or more classifications in which it is prequalified if the combined, maximum contract dollar value assigned to the contractor or subcontractor by the Department is equal to or greater than the total estimated contract values for the classifications in which the contractor or subcontractor submits a bid.

6.6.2 If a prequalified contractor or subcontractor submits a bid pursuant to Section 6.6.1 herein, and if the combined bid is more than the prequalified contractor's or subcontractor's combined maximum contract dollar value, the contracting agency may accept the bid and award a contract pursuant to 29 **Del.C.** Section 6962. However, the contracting agency may elect to reject any bid received pursuant to 29 **Del.C.** Section 6923(n)(3).

6.6.3 If a prequalified contractor or

subcontractor intends to submit a bid for a contract for which the contracting agency requires prequalified bidders, but the contractor's or subcontractor's combined maximum contract dollar value is less than the combined estimated contract value for the specific classifications for which the contractor or subcontractor intends to bid, the prequalified contractor or subcontractor may still submit a bid. However, if the contractor or subcontractor submits a bid higher than the bidder's combined, maximum contract dollar value for the specific classifications bid, the contracting agency shall reject all or part of the bid. The contracting agency may accept bids for individual classifications pursuant to Section 6.5 herein as long as the combined value of the bids accepted by the contracting agency do not exceed the prequalified contractor's or subcontractor's combined, maximum contract dollar value.

7.0 Contractors that accept bids from subcontractors shall follow the requirements of Subsections 6.1 through 6.6.3 herein for state projects that require the prequalification of subcontractors pursuant to 29 **Del.C.** Section 6962(c).

8.0 Pursuant to 29 **Del.C.** Section 6962(c)(8) the Department shall maintain a registry of all contractors and subcontractors prequalified to bid on large public works contracts. The registry shall include the classifications(s), maximum contract value and combined maximum contract value for each prequalified contractor and subcontractor. The Department may post the registry on the World-Wide Web and advertise and distribute it through other means, as deemed necessary by the Department

9.0 From time to time, the Secretary may specify form of documentation that an applicant may submit to document its experience and ability to provide the work, services, labor, materials, supplies and equipment associated with the classification(s) or trades for which the applicant seeks prequalification. Notice of the Department's intent to change the form of documentation that an applicant may submit with its application shall be sent to all contractors and subcontractors listed in the Department's registry of then-current prequalified contractors and subcontractors with a request for comment on the proposed changes. The Department shall send requests for comment at least 60 days prior to the proposed date that the change of documentation becomes effective. The Department shall consider all such comments and may not change the form of documentation unless such change is in the best interest of the state.

## DIVISION OF PROFESSIONAL REGULATION

### BOARD OF ELECTRICAL EXAMINERS

24 DE Admin Code 1400

Statutory Authority: 24 Delaware Code,  
Sections 1406(a)(1) (24 **Del.C.** §§1406(a)(1))

The Delaware Board of Electrical Examiners in accordance with 24 **Del.C.** §1406(a)(1) has proposed changes to its rules and regulations. The rules make it clear that experience may be supported by a tax form W-2 only when an affidavit by the supervisor or employer is not available. In addition, the changes give inspection agencies the responsibility for confirming that a person requesting an inspection is licensed under the chapter or otherwise permitted to perform the work to be inspected. The Division of Professional Regulation will provide current lists of licensees quarterly to the agencies to facilitate confirming the status of a licensee. The rules also provide that an inspection agency shall notify the Board of any violation, and the Division of Professional Regulation will send the notice of violation to the other inspection agencies and any local building inspector having jurisdiction over the structure.

A public hearing will be held at 9:00 a.m. on April 2, 2003 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

### Proposed Rules and Regulations

#### 1.0 License required.

1.1 No person shall perform electrical services or represent themselves as qualified to perform electrical services without first having been duly licensed unless specifically excepted by statute. 24 **Del.C.** §§1407, 1419.

1.2 To perform electrical services or electrical work means to plan, estimate, layout, perform, or supervise the installation, erection, or repair of any electrical conductor, molding, duct, raceway, conduit, machinery, apparatus, device, or fixture for the purpose of lighting, heating, or power in or on any structure or for elevators, swimming pools, hot tubs, electric signs, air conditioning, heating, refrigeration, oil burners, and overhead and underground

primary distribution systems.

1.3 A license is not required for servicing equipment in the fields of heating, air conditioning, refrigeration or appliances.

#### 2.0 Applications.

2.1 Applications may be obtained in person during regular business hours or by mail from the Division of Professional Regulation, Cannon Building, Ste. 203, 861 Silver Lake Boulevard, Dover, DE 19904-2467. Applications must be made in the name of the individual, not a company. The Board shall approve the application form to insure that it contains all of the information necessary to satisfy the statutory requirements for licensure.

2.2 Applications which are incomplete shall be retained for one year to allow an applicant the opportunity to supplement the application. After one year, incomplete applications are destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.

2.3 Applications approved for testing will be valid for two years. If the test isn't taken, the application is destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.

#### 3.0 Qualifications.

3.1 Persons demonstrating the education and experience qualifications set forth in 24 **Del. C.** §1408 may be licensed as a master electrician, limited electrician, master electrician special, or limited electrician special.

3.2 An applicant shall submit proof of qualifications verified by his or her affidavit on a form approved by the Board. Proof of experience requires ~~either~~ an employer's affidavit describing the nature of the experience. If an applicant cannot obtain the required affidavit from the supervising licensed electrician, tax W-2 forms showing full-time employment may be substituted at the discretion of the Board. ~~or a tax form w-2.~~ The required experience and training must be completed prior to taking the licensure test.

3.3 Applicants relying on military training and experience shall submit official documentation from the supervising officials showing type and approximate hours of work experience. Other official military documentation that reliably verifies military training and experience may be accepted when supervisory officials are not available or cannot be located.

3.4 The requirement of two years of technical training under 24 **Del.C.** §1408 (a)(1)(c) can be met by successful completion of two years of technical training related to electrical technology in a vocational/technical high school or by completion of 48 credit hours in technical training related to electrical technology at an accredited post-secondary school.

3.5 The experience necessary under 24 **Del.C.** §1408 to qualify for a particular license must relate to the activity

authorized by such a license as defined in 24 Del.C. §1402(10) - (13).

**See 4 DE Reg. 1788 (5/1/01)**

#### **4.0 Examinations.**

4.1 As a condition of licensure, applicants shall obtain a grade of 75% on the Division-approved test. Only the National Electrical Code Book can be used during the test as a reference. Applicants should submit a completed application with all necessary credentials for Board approval at least 45 days before the test is given. As long as the credentials have been approved, a license may issue from the Division of Professional Regulation upon proof of obtaining a passing score on the test, proof of insurance, and payment of the fee as provided herein. A member of the State Board of Electrical Examiners may attend the examination. All scores will be presented to the Board at the first meeting after the examination results are available. The roster of persons qualified for licensure will appear in the minutes.

4.2 Applicants who fail two consecutive times with a grade of less than 50% each time must wait one year before retesting.

**See 4 DE Reg. 1788 (5/1/01)**

#### **5.0 Fees.**

5.1 Fee information can be obtained from the Division of Professional Regulation, Cannon Building Ste. 203, 861 Silver Lake Boulevard, Dover, DE 19904 -2467.

#### **6.0 License and Insurance.**

6.1 The license will be issued by the Division of Professional Regulation to a qualified applicant upon receipt of the required fee and proof of insurance.

6.2 Each licensee shall maintain general liability insurance of at least \$300,000.00. Proof of said insurance shall be submitted at the time of license issuance and each renewal.

6.3 The insurance requirement is satisfied for a licensee who is performing work as an employee as long as the employer is insured for the risk on the work performed as required under these regulations. A licensee who also works independently from his or her employer must maintain separate insurance for that risk as provided under these regulations.

**See 4 DE Reg. 1788 (5/1/01)**

#### **7.0 Expiration and Renewal.**

7.1 Beginning in 2002, all licenses expire June 30 and biennially every two years thereafter.

7.2 As a condition of renewal, each applicant must show proof of continuing education as required in the Rules and Regulations. Extra continuing education hours do not carry over to the next licensing period. Renewal applications

will be audited by the Board for compliance with the continuing education requirements.

7.3 A license is expired when a licensee has failed to either complete the requirements for renewal or obtain permission for inactive status. A licensee may activate an expired license within one year of the date the renewal application was due by meeting all requirements and paying an additional fee set by the Division of Professional Regulation.

7.4 A licensee with a valid license may request in writing to be placed on inactive status. An inactive status can be effective for up to two years and renewed biennially by application to the Division upon proof of 10 hours of continuing education. Said license may be reactivated by the Board upon written request, proof of insurance, and payment of a prorated fee to be computed by the Division of Professional Regulation.

7.5 A licensee is not authorized to work as a licensed electrician in this State during the period of inactive status.

7.6 An individual whose license has expired for more than one year must reapply as a new applicant. Any prior training and experience satisfies the requirements under 24 Del.C. §1408(a). However, the applicant must take the examination required by §1408(5) again and achieve a passing score.

**See 4 DE Reg. 1788 (5/1/01)**

#### **8.0 Continuing Education**

8.1 Continuing education (CE) is required of all licensees and proof shall be submitted to the Board by April 30 of any year after 2000 in which a license is to be renewed. For example, if a license must be renewed June 30, 2001, the proof of completion of CE is due on April 30, 2001. A licensee who has submitted CE hours that are not allowed will be notified so that he or she may obtain replacement CE before the June 30 expiration of the license.

8.2 Courses must be approved by the Board in order to qualify as CE. Licensees may contact the Administrative Assistant of the Board at the Division of Professional Regulation to determine whether particular courses have been approved.

8.2.1 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to providing electrical services.

8.2.2 Sponsors or licensees can obtain Board approval of courses at any time by completing a form approved by the Board and including a course outline with the number of classroom hours and name of the instructor.

8.2.3 Sponsors or licensees seeking pre-approval should submit the request as provided in 8.1.2 at least 60 days before the CE course is being offered.

8.2.4 Approval of CE automatically expires on September 1, 2002 and every three years thereafter on each September 1. A sponsor or licensee must reapply for

approval as provided in 8.2.1.

8.3 Licensees shall complete 10 hours of approved CE during each renewal period with the following exceptions - a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 5 CE hours at the first renewal. Beginning with the licensee's second renewal, 5 of the 10 CE hours required for renewal must be related to the National Electrical Code.

8.4 The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation of hardship.

8.5 A log of CE on a form approved by the Board shall be maintained and submitted. Documentation of the CE should not be routinely sent with the log but must be retained during the licensure period to be submitted if the renewal application is selected for CE audit. Random audits will be performed by the Board to ensure compliance with the CE requirements. Licensees selected for the random audit shall submit attendance verification.

**See 4 DE Reg. 1788 (5/1/01)**

## **9.0 Loss of license holder**

9.1 A procedure permitting temporary practice after loss of a licensee to avoid business interruption is provided in 24 Del.C. §1418 and is necessary only where there is no currently employed licensee to assume the duties of the former license holder.

9.2 The notification must include documentation of the business relationship with the former license holder.

## **10.0 Exceptions.**

10.1 No license is required for performing electrical work by the following persons or entities:

10.1.1 persons working under the supervision of a Delaware licensed master or limited electrician;

10.1.2 persons under the supervision of a licensed electrician who is the owner or full-time employee of a company performing electrical work;

10.1.3 a professional engineer in a manufacturing or industrial plant having six years experience in electrical planning and design who is registered with the Board as the person responsible for the plant repairs, maintenance, and electrical additions;

10.1.4 the Department of Transportation, or a contractor, for work performed by or under the supervision of the Department for the installation, erection, construction, reconstruction and/or maintenance of drawbridges and traffic control devices

10.1.5 persons working beyond the main breaker or fuse of 200 amps or less in a structure used exclusively for agriculture;

10.1.6 persons performing the work of any light

or power company, electric or steam railway company, telegraph or telephone company when the work is part of the plant or service used in rendering authorized service to the public such as power delivery by an electric company. This exception ends at the point of service, termination box, or demarcation point;

10.1.7 a homeowner who has obtained a homeowners permit provided by law.

## **11.0 Reciprocity**

11.1 An applicant for licensure by reciprocity shall complete an application approved by the Board and cause a certificate of good standing to be sent to the Board from the licensing agencies of all jurisdictions where the applicant is or has been licensed. Upon request an applicant for licensure under this provision must submit to the Board a copy of reciprocal state's current licensure requirements.

11.2 If the reciprocal state's requirements are not substantially similar to those of this State, as determined by the Board, the applicant shall submit proof of practice for at least five years after licensure. Proof of practice can be by an employer's affidavit, tax form w-2, or tax Schedule C. requires an employer's affidavit describing the nature of the applicant's experience. If an applicant cannot obtain an affidavit from the employer, tax W-2 forms showing full-time employment may be substituted at the discretion of the Board. A self-employed applicant may submit tax form Schedule C as proof of practice.

## **12.0 Required Inspection.**

12.1 Every licensee shall file for an inspection by a licensed inspection agency no later than five working days after the commencement of electrical work. The inspection agency shall complete the inspections no later than five working days after the application has been received.

12.2 Any professional engineer excepted from licensure shall at least annually file with the Board a certificate of inspection by a licensed inspection agency and a letter stating that all repairs, maintenance, and additions to a manufacturing or industrial plant meet the Standards of the National Electrical Code. The annual inspection should include a representative sampling of the work performed by the authority of the responsible professional engineer.

12.3 Any person performing electrical work on agricultural structures excepted from licensure shall nevertheless obtain a certificate of inspection from a licensed inspection agency for new installations.

12.4 Any person authorized to perform work by a homeowner's permit shall obtain a final inspection by a licensed inspection agency.

## **13.0 Organization of the Board**

13.1 Election of Officers

Annually during the July meeting, the Board shall

elect officers to serve for a one year term from September 1-August 31.

### 13.2 Duties of the Officers

13.2.1 President - The president shall preside at all meetings, designate subordinates when provided by law, sign correspondence on behalf of the Board, and perform other functions inherent in the position. In conducting meetings or hearings, the President may limit or exclude evidence as provided under the Administrative Procedures Act unless overruled by a majority of the Board.

13.2.2 Vice President - The Vice President assumes the duties and powers of the President when the President is unavailable.

13.2.3 Secretary - The Secretary assumes the duties and powers of the President when neither the President nor the Vice President is available.

13.2.4 Complaint officer - The complaint officer shall be a member who works with the investigator of the Division of Professional Regulation when complaints are investigated pursuant to 29 **Del.C.** §8807. The complaint officer shall report to the Board when complaints are closed and recuse himself or herself from participating in disciplinary hearings involving matters that have been reviewed in his or her capacity as complaint officer.

13.2.5 Education officer - The education officer may review courses submitted for continuing education approval and makes recommendations to the Board.

### 13.3 Meeting Minutes

The minutes of each meeting are taken by the Administrative Assistant from the Division of Professional Regulation and approved by the Board.

**See 4 DE Reg. 1788 (5/1/01)**

## 14.0 Homeowners Permits

14.1 The Division of Professional Regulation is authorized to issue homeowners permits pursuant to an application process approved by the Board. Generally homeowners permits are not required for replacement in kind but are required for new construction, renovation, and any work that requires a building permit.

14.2 A homeowner shall not be permitted to install his or her own internal wiring, electrical work or equipment associated with a hot tub or a swimming pool.

**See 4 DE Reg. 1788 (5/1/01)**

## 15.0 Inspection agencies

15.1 Inspection agencies shall be licensed in accord with the provisions of 24 **Del.C.** §1421 in order to operate in Delaware. An application on a form approved by the Board must be filed at the Division of Professional Regulation. Licenses must be renewed annually on June 30 by completing the renewal form and paying the fee determined by the Division.

15.2 No inspection agency will be approved until it produces proof of general liability insurance in the amount of at least \$1,000,000.00 and errors and omissions insurance in the amount of at least \$1,000,000.00.

15.3 Inspection agencies must submit, to the Division of Professional Regulation, the names of its employees who are inspectors and proof of compliance with the statutory requirements for inspectors. Inspectors must have seven years of experience in residential, commercial, or industrial wiring. Proof of experience shall be submitted by affidavit of the named employer, a tax form w-2, or tax Schedule C. The experience requirement for an inspector employed by an approved inspection agency on July 20, 1999 is satisfied with seven years of inspection experience. Each inspector shall also submit a passing score for the Electrical one and two family dwelling and the Electrical General examinations within 18 months of employment and the Electrical Plan Review examination within 24 months of employment. For inspectors employed by the inspection agency on July 20, 1999, the time for taking said examinations shall run from the date these regulations become effective and not the date first employed.

**See 4 DE Reg. 1788 (5/1/01)**

15.4 An employee of an inspection agency shall confirm that the person who has filed for an inspection is a licensee under this chapter, a homeowner having a permit, or a person who has performed work allowed under an exception to licensure. The Division of Professional Regulation will provide quarterly lists of licensees to each inspection agency licensed in this State.

15.5 If a violation found in an inspection is not corrected within 15 days as provided in 24 **Del.C.** §1421(g), the inspection agency shall notify the Board in writing and include a copy of the notice of violation. The Division of Professional Regulation will send, on behalf of the Board, the notice of violation to the other inspection agencies and to any local building inspector having jurisdiction over the structure.

## 16.0 Voluntary treatment option for chemically dependent or impaired professionals.

A voluntary treatment option is available for chemically dependent or impaired professionals as provided in 29 **Del.C.** §8807 (n) who are reported to the Board or Division using the following procedures:

16.1 If the report is received by the president of the Board, that president 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 president of the Board, or that president's designate or designates.

16.2 The president of the Board or that president's designate or designates shall, within seven (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.

16.3 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 thirty (30) days following notification to the professional by the participating Board president or that president's designate(s).

16.4 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 president or that president's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the 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 president of the Board or that president'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 President of the Board.

16.5 Failure to cooperate fully with the Board president or that president'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 Board president or that president's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in 29 **Del.C.** §8807(h).

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

16.6.1 Entry of the regulated professional into a treatment program approved by the 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 professionals progress.

16.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the president of the Board or to that president'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 president of the Board or that president'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.

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

16.6.4 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 paragraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the 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.

16.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the Board's president, 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.

16.7 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.

16.8 The Board's president, 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.

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

16.10 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 Board shall be notified and cause to be activated an

immediate investigation and disciplinary proceedings as appropriate.

16.11 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 non-disciplinary matter.

16.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected.

---

**DIVISION OF PROFESSIONAL REGULATION  
COUNCIL ON REAL ESTATE APPRAISERS**

24 DE Admin Code 2930

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

The Delaware Council on Real Estate Appraisers has proposed to revise provisions of its rules and regulations. The proposal puts licensed trainees on the biennial renewal cycle and specifies the continuing education requirements. All licensees and certificate holders who have been licensed more than 12 months must submit evidence of continuing education for renewal. The requirement for the 7 hr. USPAP course will be implemented as required by the Appraisal Subcommittee.

A public hearing will be held on April 15, 2003 at 10:00 in Conference Room A on the second floor of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904 where members of the public can offer comments. Anyone wishing to receive a copy of the Proposed rules and regulations may obtain a copy from Dana Spruill, Administrative Specialist, Division of Professional Regulation, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Individuals may submit written comments at the above address. The final date for receipt of written comments will be at the public hearing.

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

**1.0 Application for Appraiser License or Certificate**

**1.1 Application**

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

certification.

**1.2 Filing and Fees**

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

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

1.2.2.1 Initial application and licensure for appraiser trainee license

1.2.2.2 Initial application and licensure for licensed real property appraiser license

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

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

1.2.2.5 Renewal fee

1.2.2.6 Duplicate license and certificate fee

1.2.2.7 Roster fee

1.2.2.8 Federal Appraiser Registry fee

1.2.2.9 Letter of Good Standing

1.2.2.10 Copies of the Uniform Standards of Professional Appraisal Practice

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

**See 4 DE Reg. 1504 (3/1/01)**

**2.0 Appraiser Licensure and Certification**

**2.1 Qualifications for Appraiser Licensure and Certification**

2.1.1 Applicants for certification as a state certified general or residential real property appraiser shall satisfy the qualification requirements stated in 24 Del.C. §2936, which adopts by reference "Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, and any subsequent amendments thereto or any regulations promulgated thereunder" and "qualification criteria established by the Appraiser Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto." A summary of the criteria set by the Appraiser Qualification Board (AQB) is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from the AQB whose address and website are provided on the Supplement.

2.1.2 Applicants for licensure as a State licensed real property appraiser shall satisfy the qualification criteria established by the Appraisal Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto. A summary of the criteria set by the Appraiser



Qualification Board (AQB) is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from the AQB whose address and website are provided on the Supplement.

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

## 2.2 License and Certificate Renewal

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

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

## 2.3 Continuing Education

2.3.1 As a prerequisite to renewal, all licensees and certificate holders are required to present evidence of continuing education satisfactory to the Council according to the following schedule:

2.3.1.1 no continuing education is required for fewer than 12 months of licensure required;

2.3.1.2 fourteen (14) hours of continuing education are required after at least 12 months but fewer than 24 months of licensure; and

2.3.1.3 twenty-eight (28) hours of continuing education are required after 24 months of licensure.

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

2.3.2 As a prerequisite to renewal of all licensees and certificate holders a license, certificate and trainee license, a seminar dealing with updating of Uniform Standards of Professional Appraisal Practice (USPAP) or a seminar dealing with USPAP shall be required in each license period. A minimum of four (4) hours will be

required. The seminars must be approved by the Council. **This provision will be superseded by the 7-hour National USPAP Update Course which will be required for any renewal after October 31, 2003.**

2.3.3 Programs must be structured to maintain or increase an appraiser's skill, knowledge, and competency in real estate appraising. The following topics are appropriate but not exclusive:

2.3.3.1 Influences on real estate value

2.3.3.2 Legal consideration of appraisal

2.3.3.3 Types of value

2.3.3.4 Real estate markets and analysis

2.3.3.5 Valuation process

2.3.3.6 Property description

2.3.3.7 Highest and best use

2.3.3.8 Appraisal math & statistics

2.3.3.9 Sales comparison approach

2.3.3.10 Site value

2.3.3.11 Cost approach

2.3.3.12 Income approach

2.3.3.12.1 Estimation of income and expenses

2.3.3.12.2 Operating statement ratios

2.3.3.12.3 Direct capitalization

2.3.3.12.4 Cash flow estimates

2.3.3.12.5 Measures of cash flow

2.3.3.12.6 Discounted cash flow

analysis

2.3.3.12.7 Gross rent multiplier

analysis

2.3.3.13 Valuation of partial interests

2.3.3.14 Appraisal standards and ethics

2.3.3.15 Narrative report writing

2.3.3.16 Appraisal Statistical concepts

2.3.3.17 Ad valorem taxation

2.3.3.18 Arbitration

2.3.3.19 Business courses related to real

estate appraisal

2.3.3.20 Development cost estimating

2.3.3.21 Ethics and standards of

professional practice

2.3.3.22 Land use planning, zoning and

taxation

2.3.3.23 Management, leasing, brokerage,

timesharing

2.3.3.24 Property development

2.3.3.25 Real estate appraisal (valuations/

evaluations)

2.3.3.26 Real estate financing and

investment

2.3.3.27 Real estate law

2.3.3.28 Real estate litigation

2.3.3.29 Real estate appraisal related

computer applications



2.3.3.30 Real estate securities and syndication

2.3.3.31 Real property exchange

2.3.4 Continuing education credit, up to 14 hours per licensure cycle, may also be granted for participation, other than as a student, in:

2.3.4.1 Teaching, including preparation time up to the number of hours spent teaching, for example, a 3 hour class can be submitted for 6 hours if the preparation time was at least 3 hours.

2.3.4.2 Program development

2.3.4.3 Authorship of textbooks

2.3.5 Field trips, excluding travel time, that relate to real estate appraisal may qualify.

2.3.6 A creditable hour is defined as fifty minutes out of each sixty minute segment. The educational offering must be at least two hours.

2.3.7 Distance learning courses may be approved by Council for content as long as the provider fulfils one of the following requirements:

2.3.7.1 The course is presented in an instructional setting with a person qualified to answer questions, provide information, and monitor attendance; or

2.3.7.2 The course is offered by an accredited college or university that offers distance learning in other disciplines or by an institution approved by the American Council on Education's program on Non-collegiate Sponsored Instruction. The student must successfully complete a written examination. If the examination is not required for accreditation, the student must complete the course mechanisms that demonstrate mastery and fluency; or

2.3.7.3 The course has been certified for delivery and design by the International Distance Educations Certification Center (IDEC).

2.3.8 Educational offerings that have documented approval by the AQB or another state are automatically approved when they are submitted to the Council with a certificate of attendance. In cases where the educational offering has not been approved by the AQB or another state, either the provider or the appraiser must apply to the Council for approval using a form approved by the Council. Applicants seeking pre-approval must submit all required documentation 60 days before the scheduled offering.

2.4 Duplicate License or Certificate Fee

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

change must accompany a request for a change of name.

2.5 Federal Appraiser Registry

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

**See 4 DE Reg. 1504 (3/1/01)**

### **3.0 Examination**

3.1 Examination

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

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

3.1.3 The passing scores on the examinations shall be the scores recommended as passing by Assessment Systems, Inc., the successor agency or company then contracted by the Division of Professional Regulation for administering the examination as endorsed by the Council on Real Estate Appraisers.

**See 4 DE Reg. 1504 (3/1/01)**

### **4.0 General Appraisal Practice**

4.1 Administrative Responsibilities

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

appraiser. Approved abbreviations are as follows:

DE Cert. Gen. followed by the certification number,

DE Cert. Res. followed by the certification number,

DE Lic. Appr. followed by the license number,

DE Appr. Trainee followed by the license number.

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

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

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

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

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

4.1.7 Each written appraisal report prepared by or under the direction of a State licensed or State certified real property appraiser shall bear the signature of the State licensed or State certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the appropriate title such as "State licensed appraiser trainee" (as co-signer only), "State licensed real property appraiser," "State certified residential real property appraiser," or the designation "State certified general real property appraiser," or the approved abbreviations as specified in Rule 4.1.1. Said certified or licensed appraiser shall be fully responsible for the content of the report prepared under his or her direction. Where

applicable, each appraisal report shall also indicate whether or not the State licensed or State certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

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

4.2 Responsibilities of Supervisors of State Licensed Trainees

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

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

4.2.2.1 Provides direct supervision of the state licensed appraiser trainee as defined in the Uniform Standards of Professional Appraisal Practice (USPSP); "Direct Supervision" means to:

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

4.2.2.1.2 personally review each appraisal report prepared by the trainee;

4.2.2.1.3 accept full responsibility for the report;

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

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

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

4.2.2.3 Complies with all provisions of 4.1.7 regarding appraisal reports;

4.2.2.4 Reviews and approves an trainee's experience log maintained pursuant to 4.3.2.2. The supervisor shall make available to the trainee a copy of any appraisal report that the trainee signed that is requested for review by the Council;

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

4.2.2.6 Signs an affidavit affirming that he/she

is a State licensed or certified Real Property Appraiser and that he/she shall comply with all rules and policies regarding supervisory appraisers; and

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

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

4.3 Responsibilities of State Licensed Appraiser Trainees:

4.3.1 All appraiser trainees must be licensed as required under 24 **Del.C.** Ch. 29.

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

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

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

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

Assisted by:

\_\_\_\_\_, Trainee

Name: \_\_\_\_\_

License Number: \_\_\_\_\_

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

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

**See 4 DE Reg. 1504 (3/1/01)**

## **5.0 Temporary Practice & Reciprocity**

### **5.1 Temporary Practice**

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

### **5.2 Reciprocity**

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

## **6.0 Guidelines for Qualifying Mass Appraisal Experience**

### **6.1 Qualifying Mass Appraisal Experience**

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

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

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

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

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

6.1.4 Mass appraisals shall be performed in

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

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

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

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

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

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

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

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

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

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

## 6.2 Mass Appraisal Experience Log

6.2.1 Applicants seeking mass appraisal experience credit must complete the Mass Appraisal Experience Log on a form approved by the Council.

**See 4 DE Reg. 1504 (3/1/01)**

## 7.0 Standards of Appraisal Practice

### 7.1 Appraisal Standards

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

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

## 8.0 Complaints and Hearing Procedures

### 8.1 Complaints

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

## 8.2 Hearing Procedures

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

**See 4 DE Reg. 1504 (3/1/01)**

## 9.0 Public Disclosure

### 9.1 Public Notice

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

### 9.2 Meeting Minutes

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

9.2.1 Said minutes shall include a record of those present.

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

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

### 9.3 Council Records

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

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

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

**See 4 DE Reg. 1504 (3/1/01)**

## 10.0 Change and Modification to Rules and Regulations

10.1 The Council may, change or modify these Rules and Regulations as provided in 29 Del.C. §§10111-10119.

**See 4 DE Reg. 1504 (3/1/01)**

## 11.0 Severability

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

**See 4 DE Reg. 1504 (3/1/01)**

## 12.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

12.1 If the report is received by the chairperson of the regulatory Council, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Council, or that chairperson's designate or designates.

12.2 The chairperson of the regulatory Council or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

12.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Council chairperson or that chairperson's designate(s).

12.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating 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 Council or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Council.

12.5 Failure to cooperate fully with the participating Council chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Council chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

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

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

12.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Council or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Council or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

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

12.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Council, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Council in addition to the administrative costs associated with the Voluntary Treatment Option.

12.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Council's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

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

12.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public

records open to public inspection. However, the participating Council may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

12.8 The participating Council's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

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

12.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Council shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

12.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

12.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Council's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

**See 4 DE Reg. 1504 (3/1/01)**

---

## **DEPARTMENT OF AGRICULTURE**

### **HARNESS RACING COMMISSION**

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

**PLEASE TAKE NOTICE**, that pursuant to 3 Del. C. § 10005 and 29 Del. C. § 10115, the Department proposes to amend Rule 7.3.9 and Rule 7.6.6.3. The Commission will accept written comments from March 1, 2003 through April 28, 2003. The Commission will hold a public hearing on the proposed rule amendment on April 29, 2003 at 10:00 a.m. at Harrington Raceway, Harrington, DE. Written comments should be submitted to John Wayne, Administrator of Racing, Delaware Harness Racing Commission, 2320 S.

DuPont Highway, Dover, DE 19901.

The Commission proposes to amend the Rules as follows: 1) amend Rule 7.6.6.3 to delete the phrase "after the recall point is passed"; and 2) amend Rule 7.3.9 to provide a more detailed procedure for the cancellation of races due to weather conditions.

Michael F. McTaggart, Deputy Attorney General

## **7.0 Rules of the Race**

### **7.1 Declarations and Drawing**

#### **7.1.1 Declarations**

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

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

7.1.1.1.2 All other meetings, 10:00 a.m.

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

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

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

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

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

#### **7.1.2 Drawing**

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

7.1.2.2 Subject to Commission approval, at non-extended meetings in the event of the absence or

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

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

7.1.2.3 In races of a duration of more than one dash or heat at pari-mutuel meetings, the judges may draw post positions from the stand for succeeding dashes or heats.

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

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

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

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

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

7.1.2.9 In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier, except as provided for in handicap claiming races. Whenever a horse is drawn from any tier, horses on the outside move in

to fill up the vacancy. When there is only one trailer, it may start from any position in the second tier. When there is more than one trailer, they must start from inside any horse with a higher post position.

#### 7.1.3 Qualifying Races

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

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

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

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

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

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

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

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

7.1.3.3.6 If a horse takes a win race record in either a qualifying race or a matinee race, such record must be prefaced with the letter "Q" wherever it appears, except in a case where, immediately prior to or following the race, the horse taking the record has been

submitted to an approved urine, saliva or blood test. It will be the responsibility of the Presiding Judge to report the test on the Judges' Sheet.

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

7.1.3.5 In their discretion the judges may require a horse to qualify for any reason; provided, however, that a horse making a break in each of two consecutive races may not be required to qualify if the breaks were solely equipment breaks and/or were caused solely by interference and/or track conditions.

7.1.3.6 A horse must qualify if:

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

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

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

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

#### 7.1.4 Coupled Entries

When the starters in a race include two or more horses owned by the same person, or trained in the same stable or by the same management, they shall be coupled as an "entry", and a wager on one horse in the entry shall be a wager on all horses in the "entry"; provided, however, that when a trainer enters two or more horses in a stake, early closing, futurity, free-for-all or other special event under bona fide separate ownership, such horses may, at the request of the association, made through the State Steward, and with the approval of the Commission, be permitted to race as separate entries. If the race is split in two or more divisions, horses in an "entry" shall be seeded in separate divisions insofar as possible, but the divisions in which they compete and their post positions shall be drawn by lots. The above provisions shall also apply to elimination heats. The person making the declaration of a horse that qualifies as a coupled entry with another horse entered in the same event shall be responsible to designate the word "entry" on the declaration blank. The Presiding Judge shall be responsible for coupling horses. In addition to the foregoing, horses separately owned or trained may be coupled as an entry



where it is necessary to do so to protect the public interest for the purpose of pari-mutuel wagering only; provided, however, that where this is done entries may not be rejected.

#### 7.1.5 Also Eligibles

Not more than two horses may be drawn as also eligibles for a race and their positions shall be drawn along with the starters in the race. In the event one or more horses are excused by the judges, the also eligible horse or horses shall race and take the post position drawn by the horse that it replaces, except in handicap races. In handicap races the also eligible horses shall take the place of the horse that it replaces in the event that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap. No horse may be added to a race as an also eligible unless the horse was drawn as such at the time declarations closed. No horse may be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list cannot be drawn except by permission of the judges, but the owner or trainer of such a horse shall be notified that the horse is to race and it shall be posted at the racing secretary's office. All horses on the also eligible list and not moved in to race by Scratch Time on the day of the race shall be released.

#### 7.1.6 Preference Dates

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

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

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

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

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

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

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

given an opportunity to compete at these meetings.

### 7.2 Timing and Records

#### 7.2.1 Timing

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

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

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

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

#### 7.2.2 Records

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

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

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

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

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

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

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

### 7.3 Postponement and Cancellation

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

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

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

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

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

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

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

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

7.3.9 If the track conditions are questionable for the warming up or racing of horses, the ~~State Steward and Presiding Judges shall convene~~ call a meeting consisting of a committee including himself/herself, an Agent of the track

~~with the representative of the drivers and trainers and a Representative of the Horsemen management. The Agent of the track will notify the Track Superintendent to attempt to correct any problem with the racing surface as soon as possible. Once the Track Superintendent has addressed the problem, The Horsemen's Representative will physically review the areas in question. If all are in agreement that the problem has been corrected, racing will proceed. If the Representative of the Horsemen is not satisfied, the Track Superintendent will be given a final opportunity to rectify the problem.~~

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

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

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

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

### 7.4 Horses Permitted to Race

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

7.4.1.1 the eligibility fee, which shall become due and payable when a horse makes its first start in any type of race in a calendar year, has been paid to the United States

Trotting Association, or a current eligibility certificate has been granted for the horse by the United States Trotting Association or by the Canadian Trotting Association.

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

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

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

7.4.1.5 for added money events, the horse has qualified at an extended meeting in accordance with the rules prior to the time of closing of declarations.

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

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

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

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

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

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

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

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

7.4.3 If the ownership of a horse changes, such horse may start under the new ownership not more than one time without reasonable evidence being given to the judges

that the registration certificate has been forwarded to the United States Trotting Association.

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

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

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

#### 7.5 Equipment

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

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

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

#### 7.6 Racing Rules

##### 7.6.1 Under Supervision of Starter

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

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

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

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

##### 7.6.2 Pre-Race Accidents

When, before a race starts:

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

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

7.6.2.3 If a horse is scratched in error and

cannot be added back into the pari-mutuel system, the horse may race for purse only. The judges shall ensure that the race announcer informs the public that the horse will be racing without pari-mutuel wagering.

### 7.6.3 Fair Start

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

### 7.6.4 Starter's Duties

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

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

7.6.4.3 The starter may assist in placing the horses when requested by the judges to do so.

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

### 7.6.5 Starting

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

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

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

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

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

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

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

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

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

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

### 7.6.6 Recall Rules

7.6.6.1 In case of a recall, a light plainly visible to the drivers shall be flashed and a recall sounded, but the starting gate shall proceed out of the path of the horses. In the case of a recall, whenever possible, the starter shall leave the wings of the gate extended and gradually slow

the speed of the gate to assist in stopping the field of horses. In an emergency, however, the starter shall use his/her discretion to close the wings of the gate.

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

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

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

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

7.6.6.5.1 A horse scores ahead of the gate;

7.6.6.5.2 There is interference;

7.6.6.6.3 A horse has broken equipment;

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

7.6.6.6.5 A mechanical failure of the starting gate.

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

7.6.6.7.1 Delaying the start;

7.6.6.7.2 Failure to obey the starter's instructions;

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

7.6.6.7.4 Coming to the starting gate out of position;

7.6.6.7.5 Crossing over before reaching the starting point;

7.6.6.7.6 Interference with another driver during the start; or

7.6.6.7.7 Failure to come up into position.

### 7.6.7 Starting Gate

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

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

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

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

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

participants and the safety of the patrons.

#### 7.6.8 Two-Tiered Races

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

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

7.6.8.3 When there is only one trailer, it may start from any position in the second tier. When there is more than one trailer, they must start from inside any horse with a higher post position.

#### 7.6.9 Starting Without a Gate

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

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

#### 7.6.10 Horse Deemed a Starter

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

#### 7.6.11 Unmanageable/Bad Acting Horses

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

7.6.11.2 The starter may place a bad acting horse on the outside at his/her discretion. Such action may

be taken only where there is time for the starter to notify the judges who will in turn notify the public prior to any pari-mutuel wagering on the race. If pari-mutuel wagering has already begun on the race, the horse must be scratched as stipulated in subdivision 1 above.

#### 7.6.12 Post Positions, Heat Racing

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

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

#### 7.6.13 Conduct of the Race

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

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

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

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

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

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

7.6.13.1.6 Carry another horse out.

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

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

7.6.13.1.9 Strike or hook wheels with another sulky.

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

7.6.13.1.11 Drive in a careless or reckless manner.

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

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

7.6.13.1.14 Kicking a horse.

7.6.13.2 A complaint by a driver of any foul, violation of the rules or other misconduct during a race shall be made immediately after the race to which it relates, unless

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

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

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

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

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

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

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

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

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

findings to the judges.

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

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

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

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

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

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

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

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

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

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

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

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

7.6.13.20.3 Failure to lose ground while on a break.

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

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

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

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

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

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

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

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

#### 7.6.14 Harness Race Track Without a Hubrail

7.6.14.1 If at a racetrack which does not have a continuous solid inside hub rail, a horse or part of the horse's sulky leaves the course by running over or going inside the pylons or other demarcation which constitutes the inside limits of the course, the offending horse may be placed one or more positions where, in the opinion of the judges, the action gave the horse an unfair advantage over other horses in the race, or the action helped the horse improve its position in the race. Drivers may be fined or suspended for

permitting a horse's sulky to run over or go inside the pylons or other demarcation which constitutes the inside limits of the course. In addition, when an act of interference causes a horse or part of the horse's sulky to cross the inside limits of the course, and the horse is placed by the judges, the offending horse shall be placed behind the horse with which it interfered.

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

#### 7.6.15 Extended Homestretch

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

7.6.15.2 In the event the home stretch is expanded pursuant to 7.6.15.1 above, the following shall apply:

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

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

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

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

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

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

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

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

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

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

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

## DEPARTMENT OF AGRICULTURE

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))

### Standardbred Breeder's Fund Regulations

The Department proposes these amendments to the Standardbred Breeder's Fund Regulations pursuant to 29 Del. C. § 4815 (b) (3) b.2.D and 29 Del. C. § 8103 (8). Its purpose in proposing these amendments is to comply with Delaware Harness Racing Commission Rules, to make the program language more specific under certain racing conditions, to promote fairness, and to allow the races to be contested within the normal racing card at Harrington Raceway and Dover Downs.

These proposed amendments to the regulations will be considered at a public hearing scheduled for Friday, March 7, 2003 at 1:00 P.M. at the Delaware Department of Agriculture Building in Conference Room 1. Copies of the proposed amendments may be obtained from Ms. Judy Davis-Wilson, Director, Delaware Standardbred Breeder's Fund by calling (302) 698-4610. Public comments may be submitted in writing to Ms. Davis-Wilson on or before March 7, 2003. Also, written submissions and/or oral comments are welcomed at the public hearing. The Delaware Department of Agriculture is located at 2320 South DuPont Highway, Dover, Delaware.

### Delaware Standardbred Breeders' Fund Program

#### 1.0 Introduction

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

- (1) Standardbred horses;
- (2) bred in a manner prescribed in Section 2.0 herein;
- (3) the product of a registered Delaware stallion;
- (4) who are registered and whose sire and mare are registered with the Delaware Harness Racing Commission (herein "the Commission") and the Administrator of the Breeder's Program (herein "the Administrator") as such; and,
- (5) listed in their registry books.

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

Association, the Administrator of the Breeder's Program, and the Delaware Harness Racing Commission.

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

- (1) Classes and divisions of races, eligibility of horses and owners therefor and purses and bonuses to be awarded;
- (2) Nominating, sustaining and entry fees on horses and races;
- (3) Such temporary programs including eligibility of horses, breeding, and other matters as may be necessary to make the Program operable as soon as possible;
- (4) Registration and certification of Delaware stallions, mares bred to such stallions and foals produced thereby; and,
- (5) Such other matters as the board determines to be necessary and appropriate for the proper administration and implementation of the Program.

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

1.4 Races for the Program shall be run at each licensed harness track in the State of Delaware. Said races and purses and awards awarded therefore shall be pursuant to the rules and regulations of the Board of the Delaware Standardbred Breeder's Program hereunder, and the Delaware Harness Racing Commission.

1.5 The Board of the Delaware Standardbred Breeder's Program can amend these regulations through a vote of 2/3 majority of the entire board. Changes to the rules of eligibility for the Delaware Standardbred Breeder's Program will be effective at the beginning of the next breeding season and the corresponding racing season.

#### 2.0 Definitions.

The following words and terms, when used in this part



for the purposes of the Delaware Standardbred Breeder's Fund Program, have the following meanings, unless the context clearly indicates otherwise:

**"Bred"** Bred shall refer to any form of insemination inside the State of Delaware by a Delaware sire, including insemination using semen transported within the State of Delaware, provided that such semen is not frozen or 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 herein. A foal conceived through embryo transplantation is not eligible for nomination to the Delaware Standardbred Breeder's Program under any circumstances.

**"Breeder"** A breeder is the owner of the dam at the time of breeding through foaling.

**"Breeding Season"** A breeding season runs from February 15th to ~~December 31st~~ August 1st of the calendar year.

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

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

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

**"Private Treaty"** No stallion participating in the Delaware Standardbred Breeder's Program may be offered

under private treaty. Each stallion registered in the Delaware Standardbred Breeder's Program must make public the maximum possible breeding fee."

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

### **3.0 Eligibility for Delaware-bred races.**

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

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

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

### **4.0 Eligibility of breeders for bonus payments.**

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

exceed \$70,000. In the event such payments would exceed these limits, owners eligible for bonus payments shall receive a prorated share of those monies allocated toward the payment of bonus payments.

#### **5.0 Eligibility of owners of Delaware sires for awards.**

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

#### **6.0 Records of registration.**

Foals and sires eligible for registration shall be registered on official registration forms approved by the Harness Racing Commission and maintained by the Administrator of the Breeder's Program. The registrar shall certify thereon the name and address of the owner, breeder, farm where mare was inseminated, farm on which this horse was foaled, owner of stallion at time the mare was inseminated, owner of the mare at the time of breeding, notice of semen transfer, stallion by which the mare was inseminated following the birth of the standardbred to be registered, breeder social security or tax identification number, United States Trotting Association registration number, name of foal, color and sex of foal, date of foaling, sire, dam, sire of the dam, signature of the owner, or breeder or authorized representative and the date of application. The registration record shall be maintained at the Administrator of the Breeder's Program and be open to public inspection during normal business days and hours at the State Department of Agriculture. Immediately upon completion and filing of the form, the Administrator of the Breeder's Program shall cause a correct copy of it to be filed with the offices of the State Department of Agriculture.

#### **7.0 Appeals.**

A person having an interest in a matter concerning the registration of a horse in the Breeder's Program shall have the right to file objections or exceptions to a registration and to the facts set forth therein within 30 days of the filing of the copy of the registration with the Administrator and the Delaware Harness Racing Commission. The objections or exceptions shall be filed in writing with the Administrator of the Breeder's Program and a duplicate delivered to the Harness Racing Commission within the 30-day time period. An interested party aggrieved of an action taken by the Administrator may appeal to the Commission in the manner prescribed for appeals. The Commission shall hear and determine an appeal de novo. In the absence of objections or

exceptions timely made, a registration shall be deemed final and binding and an official record of the Commission at the expiration of the 30th day of the delivery to the Commission. The Commission shall thereafter have the right on its own motion to correct an error or inaccuracy that it may find within the records.

#### **8.0 Records of expenses.**

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

#### **9.0 Purses and Bonus Awards**

9. A purse or bonus awarded under this section shall be in accordance with the standards for purses at each racing meet as approved by order of the Commission. The racing association shall maintain a separate ledger of such purses and bonuses and shall transmit a certified copy of allowances, bonus payments, and purses made no later than the 10th day of each month of the meet to the Commission. After the Commission has reviewed and approved them, it shall reimburse the racing association for the advances made which the Commission finds proper.

9.2 Administrator of the Breeder's Program shall compile awards earned by breeders and owners of Delaware sires and maintain a separate ledger of them. A certified report of awards earned shall be forwarded to the Commission on a monthly basis during the racing season. The list of awards will be forwarded to Administrator of the Breeder's Program who shall ensure payment to the awardees, subject to approval by the Commission.

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

9.4 The Board will have the right to review and approve fees and charges imposed by the Administrator of the Breeder's Program. The charge or fee may not be

imposed without prior approval by the Board.

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

#### **10.0 Responsibilities-Owners or lessees of standardbred stallions and mares**

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

10.2 An owner or lessee of a stallion eligible for the Delaware Standardbred Breeders' Fund Program shall designate a resident of Delaware as the authorized agent who shall be responsible for the registrations and records of the farm; and complying with the requirements of the Delaware Standardbred Breeders' Fund Program. The "Authorized Agent" form shall be filed with the stallion registration.

10.3 In order for foals of 100% wholly owned mares at the time of breeding through foaling by a Delaware resident to be eligible for races under the Program for race years 2002 and 2003, said mares shall be registered with the Administrator and Commission by August 15, 2000 for the breeding seasons of 1999 and 2000.

No fee shall be charged for registering said mare.

#### **11.0 Sire Registration Fees**

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

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

11.3 Registration fees for the Delaware Standardbred Breeder's Program are non-refundable.

11.4 Sire registration fee for a stallion shall be \$500.00. Sire registration for those sires standing in the State of Delaware and registering for breeding seasons prior to 2001 in accordance with these regulations shall be charged a single fee of \$250.00.

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

11.6 The annual stallion registration fee may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Delaware Standardbred Breeder's Program. An owner of a standardbred stallion registered with the Administrator and Commission shall submit by December 1st of each year the stallion registration fee, or January 1st with the supplemental fee provided in section 10 above and a report for each stallion that states each mare bred by said stallion during the preceding twelve (12) months. For breeding seasons prior to breeding season 2001, an owner of a standardbred stallion registered with the Administrator and Commission shall submit by March 1, 2000 the stallion registration fee of \$250 and any other documentation required by the Administrator and Commission to verify where the stallion stood during the period for which the stallion or its progeny seek to register.

#### **12.0 Sire Renewal Fees**

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

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

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

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

### 13.0 Penalties and Suspension from the Program

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

- (a) Suspend or deny the registration of the stallion; and
- (b) Schedule a hearing within thirty days of the denial or suspension.

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

- (a) Suspend the registration; or
- (b) Rescind its suspension of the registration; or
- (c) Deny or revoke the registration; or
- (d) 1. Deny or revoke the registration; and
- 2. Bar from further registration, horses owned

by the person who executed the application containing false or misleading information.

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

- (a) Suspend or deny the registration of the stallion; and
- (b) Summon the person who executed the application, and any person who has knowledge relating to the application, to appear before the Administrator at a hearing;

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

- (a) Rescind its suspension or denial of the registration; or
  - (b) Suspend, deny, or revoke the registration; or
  - (c) 1. Deny or revoke the registration; and
  - 2. Bar from further registration, horses owned
- by the person who executed the application containing false or misleading information.

If a person summoned by the Administrator of the Breeder's Program fails to respond to the summons

within ten working days, the Administrator of the Breeder's Program:

- (a) Shall suspend or deny the registration of the stallion;
- (b) Notify the person in writing of the action taken by the Commission; and
- (c) May:
  1. Deny or revoke the registration; and
  2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

### 13.2 Appeals

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

### 14.0 Races

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

14.2 ~~In the case of dead heats, points for the two positions shall be divided equally among those horses finishing in a dead heat. For example, if two horses finish in a dead heat for second, those horses would divide 25 plus 12 points to receive 18.5 percent of the purse or 18.5 qualifying points each.~~ 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.

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

14.4 If circumstances prevent the racing of an event, and the race is not drawn, all stake payments shall be refunded to the purse account of the Delaware Standardbred Breeder's Fund Program.

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

1. Age;
2. Sex; and
3. Gait.

The minimum purses for elimination races for both pacers and trotters shall be \$5,000. The minimum

purses for finals shall be \$30,000. The Board of the Delaware Standardbred Breeder's Program, pursuant to a recommendation from the Administrator of the Program, may agree to increase purses should funds and other conditions permit.

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

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

~~Horses that meet the qualifying standards for a preliminary leg at each racetrack are qualified for all subsequent legs and the final at that racetrack. For all eliminations and finals, all horses must have their nose on the gate.~~

14.6 The Administrator of the Delaware Standardbred Breeder's Fund Program shall be responsible for races conducted under the Delaware Standardbred Breeder's Fund Program and shall ensure that:

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

(b) entry for races run under the Delaware Standardbred Breeder's Fund Program is required to be received by the Racing Office ~~by noon three days in advance of the scheduled race date in a box designated for this purpose.~~ at the date and time specified on the track condition sheet.

(c) The Eligibility and class of all horses running in races is carefully screened.

(d) The Administrator, or his/her designee, is present for the judges' draw for all races conducted under the Delaware Standardbred Breeder's Fund Program

### **15.0 Nominations and Sustaining Payments.**

15.1 Nomination and sustaining payments shall be made to the Delaware Standardbred Breeder's Fund in U.S. funds.

15.2 A fee payment required by this section shall be postmarked no later than the due date that is specified for the fee by this section.

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

- (a) Forty (40) dollars each; and
- (b) Due by ~~August 15~~ May 15th of the yearling year.

15.4 A nomination shall be accompanied by a photocopy of the United States Trotting Association registration certificate. Supplemental fees of \$25 shall be assessed if the USTA registration certificate does not accompany the nomination. No nomination shall be accepted where a USTA registration certificate is not

obtained and submitted within 60 days of nomination to the Delaware Standardbred Breeder's Program.

15.5 If the August 15 deadline to nominate a yearling is missed, a late supplemental payment of \$350 shall be required. The late supplemental payment shall be accepted if a) it is received by April 1 of the two (2) year old year; and b) the two (2) year old March 15th payment has been made.

15.7 Sustaining payments shall be as follows:

(a) **TWO (2) YEAR OLD PAYMENTS**

March 15th \$100

May 15th \$200

Declaration Fee (for each track) \$500

March 15th payment must be made to ensure eligibility as a three (3) year old.

(c) **THREE (3) YEAR OLD PAYMENTS**

March 15, \$300

Declaration Fee (for each track) \$500

### **16.0 Investment Plan and Use of Fees**

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

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

16.3 For race year 2003 and each race year thereafter, one million dollars (\$1,000,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") and any interest earned on that money in the preceding twelve (12) months shall be deposited in a separate purse account for purses and bonus for that race year. Beginning January 1, 2003 and for each race year thereafter, one million dollars (\$1,000,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the

Program") shall be deposited in the endowment account.

16.4 Any monies from the purse account for the Delaware Standardbred Breeder's Fund Program at the end of the race year shall revert to the endowment account of the Delaware Standardbred Breeder's Fund Program.

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

## DEPARTMENT OF EDUCATION

### 830 Students with HIV Infection

The Secretary of Education seeks to repeal the regulation 830 Students with HIV Infection because 1.0 and 2.0 of the regulation are covered in existing state and federal law and 3.0 and 4.0 are technical assistance statements. The rights of students with HIV infection are covered by existing state and federal law.

#### ~~830 Students with HIV Infection~~

~~1.0 A student enrolled or entering a Delaware public school/program, or in an adult or apprenticeship program, with HIV infection shall be permitted to attend school unless the student, in the opinion of his/her physician, is at risk from communicable diseases (e.g., measles, chicken pox) present in the school or has other medically related problems.~~

~~2.0 A student entitled to a free public education pursuant to 14 Del.C. Ch. 2 and Ch. 31, with HIV infection who is removed for reasons stated in 1.0, shall be provided with an appropriate alternative education according to already established procedures.~~

~~3.0 Dissemination of the knowledge that a student has HIV infection is subject to State and Federal privacy laws and regulations.~~

~~4.0 Routine and standard procedures, etc. universal precautions, for handling all body fluids shall be utilized in every school and program.~~

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

### 877 Smoking

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

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

The Secretary of Education seeks to amend regulation 877 Smoking by changing the name of the regulation to Tobacco Policy and adding additional Sections that reflect 16 Del.C. Chapter 29 The Clean Indoor Air Act and guidelines recommended by the Center for Disease Control. The amended regulation expands the scope of the ban on the use and distribution of tobacco products.

#### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the use and distribution of tobacco products not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the use and distribution of tobacco products not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the use and distribution of tobacco products and helps to ensure that the health and safety of students is protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation helps to ensure that the legal rights of students concerning tobacco use and distribution are protected.

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

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

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

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

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

### **877 Smoking**

~~1.0 Each school district in Delaware shall have a policy which, at a minimum, prohibits smoking and the use, dispensing or selling of tobacco products such as snuff and chewing tobacco by students in kindergarten through grade 12 during school hours in school buildings, on school grounds, or on school buses.~~

### **877 Tobacco Policy**

1.0 In order to improve the health of students and school personnel, each school district and charter school in Delaware shall have a policy which at a minimum:

1.1 Prohibits the use of or distribution of tobacco products in school buildings, on school grounds, in school-leased or owned vehicles, and at all school affiliated functions.

1.2 Includes procedures for communicating the policy to students, school staff, parents/guardians/Caregivers, families, visitors and the community at large.

1.3 Makes provisions for or refers individuals to voluntary cessation education and support programs that address the physical and social issues associated with nicotine addiction.

2.0 The tobacco policy shall apply to:

2.1 Any building, property or vehicle leased, owned or operated by a school district, charter school or assigned contractor.

2.1.1 School bus operators under contract shall be considered staff for the purpose of this policy.

2.2 Any private building or other property including automobiles or other vehicles used for school activities when students and staff are present.

2.3 Any non-educational groups utilizing school buildings or other educational assets.

2.4 Any individual or a volunteer who supervises students off school grounds.

3.0 No school or school district property may be used for the advertising of any tobacco product.

### **PROFESSIONAL STANDARDS BOARD**

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

### **Educational Impact Analysis Pursuant To 14 Del. C. Section 122 (D)**

### **Amendment 301 General Regulations For Certification Of Professional Public School Personnel**

#### **A. Type Of Regulatory Action Requested**

Amendment to Existing Regulation

#### **B. Synopsis Of Subject Matter Of Regulation**

The Professional Standards Board in cooperation and collaboration with the Department of Education seems the approval of the State Board of Education to amend 301 General Regulations for Certification of Professional Public School Personnel by deleting it in its entirety and replacing it with regulations 1505 Professional Growth Programs, 1510 Initial License, 1513 Denial of License, 1514 Revocation of License, 1515 Emergency Certificate, 1516 Standard Certificate, 1519 Alternative Routes to Certification, and 1520 Substitute Teacher. Regulations 1511 Issuance and Renewal of Continuing License and 1584 Permits also contain matters that were addressed in regulation 301, thereby rendering those sections of regulation 301 redundant. It is necessary to amend this regulation in order to comply with changes in statute regarding the licensure and certification of educators. The regulation has been reconstituted as separate regulations which address the matters previously regulated in 3-1, but which comply with recent changes in statute. The reconstituted regulations, listed below, have also been renumbered to reflect their movement to the Professional Standards Board section of the Department regulations.

1505 Professional Growth Programs

1510 Initial License

1513 Denial of License

1514 Revocation of License

1515 Emergency Certificate

1516 Standard Certificate

1519 Alternate Routes to Certification

1520 Substitute Teacher

The existing 301 General Regulations for Certification of Professional Public School Personnel are affected by the amended regulations in the ways indicated in the column on the right, below:

**Table 1:**

1.0 Definitions	Incorporated in reconstituted regulations
2.0 Current Licenses, Certificates	1511 Issuance and Renewal of Continuing and Permits License, 1584 Permits
2.7.2 Substitute Teacher	1520 Substitute Teacher
3.0 Testing Requirements	1510 Initial License
4.0 Application for Initial License	1510 Initial License
4.7 Denial of License	1513 Denial of License
5.0 Renewal of Licenses	1511 Issuance and Renewal of Continuing License
6.0 Licensure Agreements/Reciprocity	1510 Initial License, 1511 Issuance and Renewal of Continuing License
7.0 Revocation of Licenses/Certification	1514 Revocation of License
8.0 Denial of Licenses/Certifications	1513 Denial of License
9.0 Professional Growth Programs	1505 Professional Growth Programs
10.0 Certification/National Board of Professional Teaching Standards	stricken by change in statute
11.0 Alternative Routes to Certification Program for Secondary Teachers	1519 Alternative Routes to Certification

### C. Impact Criteria

1. Will the amended help improve student achievement as measured against state achievement standards? The amended and new regulations address student achievement by establishing standards for initial licensure of teachers and for the issuance and renewal of continuing licenses to ensure that highly-qualified teachers teach Delaware students, and engage in appropriate professional development to ensure that they maintain current skills and knowledge.

2. Will the amended help ensure that all students receive an equitable education? The amended and new regulations helps to ensure that all teachers hired to teach

students meet high standards for initial licensure and continuing licensure.

3. Will the amended help to ensure that all students' health and safety are adequately protected? The new regulation addresses educator licensure. Regulations concerning denial and revocation of licenses help to ensure students' health and safety by providing vehicles to deny or revoke licenses of individuals whose behavior poses a danger to students' health and safety.

4. Will the amended help to ensure that all students' legal rights are respected? The new regulations address educator licensure issuance, renewal denial, and revocation, not students' legal rights.

5. Will the amended regulations 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 amended 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 and cooperation with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulations? *14 Del. C.* requires that we promulgate these regulations.

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

### **~~301 General Regulations for Certification of Professional Public School Personnel~~**

#### 1.0 Definitions of terms



**Credential Evaluation for Licensure through Transcript Analysis:** A process through which persons who have not graduated from a state approved teacher education program in a specific field may obtain a Standard license in Delaware. Official college/university transcripts shall be submitted to the Department of Education where they are audited for compliance with licensure requirements for the specific field.

**Evaluation/Prescription Letter:** A letter issued by Department of Education after the evaluation of an individual's college transcripts and other official documents. This letter lists any deficiencies that need to be met related to specific requirements for licensure in Delaware, as stated in this Manual. The letter may include deficiencies, such as coursework, test scores, experience verification and/or may state other specifics which need to be met for Standard licensure.

**Initial Standard Certificate:** A license that was issued in Delaware from 1982 through 1991. Issuance of this license indicates the individual met all requirements current during that time period for a specific area of licensure. In addition, the qualifying scores for the Pre-Professional Skills Tests were met before the Initial Standard Certificate was issued. This license had a validity period of five years, after which the license was converted to a Standard license, upon documentation of appropriate employment or coursework. (See Refresher Coursework and Recency Requirement) Expired Initial Standard licenses may be renewed as Standard licenses in the same content area provided refresher requirements are met.

**Internship:** One year of supervised, full time, successful experience in a setting appropriate to the area of licensure. An Internship may be sponsored by a college or university in conjunction with a particular set of program requirements; or it may be sponsored locally through employment by a district and in conjunction with the Department of Education.

**Interstate Certification Agreement (ICA):** A formal contract signed by individual member states of NASDTEC, in pairs, specifying the parameters of reciprocity. The Interstate Agreement is a binding, legal agreement/contract between two states. The states agree to accept teachers from programs approved under NASDTEC Standards as well as fully licensed, experienced personnel. The NASDTEC organization facilitates the signing of the agreement through an arm called the Interstate Contract Association. Reciprocity established in this manner operates under specific conditions that are clearly defined by the Interstate Agreement.

**Licensure Via Approved Program:** A process for acquiring a teaching license in Delaware and other NASDTEC states that requires graduating from a state approved teacher education program and meeting specific testing requirements set by the Delaware State

Board of Education. Individuals who receive a Standard license in Delaware based on an approved program are eligible for reciprocity with other states. Each state has its own individual set of testing requirements which the candidate must meet.

**Limited Standard License:** A license that is issued to an individual who is employed in a Delaware public school setting, but does not meet all of the requirements for Standard licensure in the area(s) of employment. It may be issued for a period of between one and six years. No salary reduction is required. This license is non-renewable.

**NASDTEC:** National Association of State Directors of Teacher Education and Certification, a national organization of State Department certification personnel and Standards Boards members who have the responsibility for state certification and program approval. This organization has developed and adopted a set of Standards which is used by each member state, in as much as possible. These Standards form the basis for the Reciprocity Agreement.

**NCATE:** National Council for the Accreditation of Teacher Education: One of two national accrediting bodies approved by the United States Department of Education. NCATE accreditation is voluntary in Delaware. Colleges/Universities apply to NCATE seeking to have both the education unit of the college/university and specific education programs given national recognition. Each program must still be approved by that state's Department of Education in order to have students graduating from such programs receive licensure in that state.

**Occupational/Vocational Testing:** The testing in the vocational field is a performance test in a particular trade given under strict guidelines. The National Occupational and Career Testing Institute (NOCTI) is the only vocational test available that allows an individual to demonstrate skill competency in a trade such as welding or plumbing. The NOCTI organization designs the competency tests and trains staff at institutional settings to administer the NOCTI examinations under specific standardized conditions. As the NTE is used to validate certain aspects of teaching, the NOCTI is used to validate certain skills in vocational trade areas.

**Partial Assignment:** A teaching assignment that is for no more than two periods per day for a one-year period only. The individual who is given a partial assignment shall have previously taken at least fifteen semester hours of coursework in the content area of the partial assignment. The intent of the partial assignment is to meet specific emergency needs a district might encounter on a short term basis, for example, an enrollment bulge. If the district's situation warrants that the teacher remain in this assignment after the initial one year period, the teacher will be granted a Limited Standard license, allowing three additional years to meet all of the requirements for Standard licensure.

**Permits:** Permits are given for specific positions within

the local school districts that do not require a Bachelor's degree, the PRAXIS I tests or a Standard license. Permits are currently given to aides of all types and substitute teachers.

**Processing Fee:** A non-refundable, one-time fee that shall accompany all applications for initial Delaware certification for each evaluation requested.

**Professional and Occupational Licenses:** Certain non-educational fields require State of Delaware licenses to practice. These fields include Electricians, Plumbers, Cosmetologists, etc. as well as Nurses, Speech Pathologists, Physicians and others. If an individual works in a school setting and a State license is required for practice in Delaware, it is also required for the education position and for the licensure/certification of that individual. For example, all School Nurses must meet specific coursework and degree requirements for their educational position. In addition, they are required to maintain their State of Delaware license and continue its renewal according to Nursing Board requirements for continuing education.

**Professional Status Certificate:** A certificate that is issued after an individual has met all requirements for Standard licensure in a specific area and has been employed in a Delaware public school in that same area for three consecutive years. It is issued for a five-year period. The renewal of this certificate is a function of continued employment in a public school for three years out of each five-year renewal period.

**Provisional License:** A substandard license that required a 10% reduction in salary. It has not been issued since 7/1/91 and is no longer a valid Delaware license.

**Recency Requirement:** A requirement for either 6 semester hours of appropriate coursework or appropriate full time employment within the five year period immediately preceding application or evaluation for licensure. Recency requirements are as indicated: (1) the applicant's Bachelor's degree shall be conferred within the most recent five-year period; or (2) the applicant shall have completed appropriate college-level coursework within the most recent five-year period; or (3) the applicant shall have been employed in a full time position, in the area of licensure request, for three years during the most recent five year period.

**Reciprocity:** A process whereby an individual with a license or certificate issued by one state can receive an equivalent license in another state without meeting additional coursework requirements. Other non-academic requirements such as professional work experience or testing may still be required for the license. The process operates under a very specific set of previously agreed upon rules between the two states.

**Refresher Coursework:** Six semester hours of college-level coursework, taken either at the Bachelor's or Master's level from a regionally accredited institution, is required to meet the Recency Requirement for licensure. Coursework shall include one professional education

elective and one elective in the specific content area of licensure. This coursework is required only if the applicant is unable to meet Delaware's Recency Requirement.

**Revocation of License/Certificate/Permit:** Revocation is the process of rescinding a Delaware license/certificate/permit for reasons of immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty. Revocation may be considered at the request of a local school district or initiated by the Secretary of Education.

**Specialized Assignment License:** An assignment that is deemed necessary by a local public school district but for which no specific requirements for licensure exist is termed a Specialized Assignment. The license is issued on the basis of a job description for the position. A Standard License will be issued to an employed individual who meets all the qualifications of the job description, including passing PRAXIS I scores. A Limited Standard license will be issued if any requirements or qualifications are not met and can be attained. A Temporary License shall be issued when the person hired does not meet the job description for the position. Any certificate issued for a Specialized Assignment is valid only for the specific position for which it was issued. The certificate is not valid for use in another position, another district, or another state.

**Standard License:** A license issued when an individual has met all requirements for a specific area of licensure, including the testing requirement. It is issued for an indefinite period of time except within the Delaware public school setting, where it is current for a five year period. This license can only be renewed when the individual is currently working in a public school setting or other setting for which it is required by the State of Delaware, such as the correctional system.

**Temporary License:** A one-year non-renewable license issued to a district employee who meets neither the Standard nor Limited Standard requirements for a specific Delaware license and who is hired after August 15th of that school year. A 10% salary reduction is required. This license is a one year, non-renewable license and can be issued only one time to the same individual in the same area of licensure. Unless the individual holds a Standard license in another area, they are not eligible for a salary increment.

## 2.0 Current Licenses, Certificates and Permits

**2.1 Professional Status Certificate:** The Professional Status certificate shall be issued to personnel employed in areas which require at least a baccalaureate degree for full certification, as well as to individuals who hold Standard Trade and Industry licenses. Thus, this license will be available to superintendents, assistant superintendents, directors, administrative assistants, supervisors, principals, assistant principals, teachers, librarians, guidance counselors, school nurses and other personnel who must have a minimum of a bachelor's degree for full certification.

2.1.1 This license shall be issued to persons who meet the requirements for a Standard license and who have been employed by a Delaware public school system for three (3) consecutive years of the previous five (5) years in the type of position for which the certificate is appropriate. The certificate shall be issued for a period of five (5) fiscal years.

2.2 Standard License: The Standard License shall be issued to personnel employed in areas which require at least a baccalaureate degree for full certification, as well as to individuals who meet all requirements for Trade and Industry licenses. Thus, this license will be available to superintendents, assistant superintendents, directors, administrative assistants, supervisors, principals, assistant principals, teachers, librarians, guidance counselors, school nurses and other personnel who must have a minimum of a bachelor's degree for full certification.

2.2.1 The Standard license shall be issued upon completion of all requirements in a single area of licensure, along with successful completion of the State of Delaware's requirement for testing 3.0, for a period of five (5) years.

2.2.2 The Standard license shall be issued to the following categories of employees which do not require a baccalaureate degree for full licensure, and/or which do not require successful completion of the State of Delaware's testing requirements (3.3): Manager of School Food Service Programs, Transportation Manager, Administrative Support Personnel, formerly Educational Secretaries. The issuance of this license shall not affect either the salary paid or the negotiating rights of individuals as currently specified in the Del. C.

2.2.3 The Standard license shall be issued to an employee of a Delaware public school district who has been employed in a Specialized Assignment, for which no specific requirements are defined, and who possesses the competencies and skills required for the special assignment (example: museum curator, laboratory technician, coordinator, etc.). The employee's credentials, including evidence of the skills and competencies stated in the job description and posting, will be collected by the employing district and sent to the State Certification Office along with a copy of the job description and the qualifications posted for the position. A determination regarding licensure will be made by the State Office of Certification. The state testing requirement for teacher licensure shall be met for this position.

2.2.3.1 A Standard Endorsement requires a Standard license as well as specific requirements defined under the individual licensure requirements.

2.3 Limited Standard License-Non-Renewable (Substandard): The Limited Standard license may be issued for a period of one (1) to six (6) years depending on circumstances defined below. The Limited Standard license carries no salary penalty and is non-renewable. This license shall not be issued at the request of an individual. It is issued

to employees of a public school district or other state agency requiring certified educational personnel, upon the request of the personnel designee of the organization, if the employee has not fully satisfied the requirements for a Standard license and one or more of the following conditions shall apply:

2.3.1 Limited Standard-Test (LS-T) Issued for a period not to exceed two (2) fiscal years to persons who have not, as yet, satisfied the State Board of Education testing requirement.

2.3.1.1 The local school district superintendent shall request that this license be issued to a new employee who has not been previously employed in a Delaware public school district, and who has not shown evidence of satisfactory performance on the PRAXIS I/PPST. The effective date for this non-renewable license shall be July 1 of the year in which the employment began and the expiration date shall be June 30 of the next, consecutive fiscal year.

2.3.2 Limited Standard Coursework (LS-C) Issued for a period of up to three (3) fiscal years to a public school employee who is lacking no more than twelve (12) graduate or undergraduate college level semester hours and who has successfully met all testing requirements. A Limited Standard Coursework license may be issued to:

2.3.2.1 An employee who meets all course requirements for a Standard license, but who has been out of college five (5) years or more. Six (6) semester hours of college level coursework will be required to be taken during the life of the Limited Standard license, or prior to the issuance of the Standard license (see 5.7), or

2.3.2.2 An employee who holds an expired Initial Standard, Standard or Professional Status license/certificate, but who has not taught on that license for at least three (3) years during the most recent five-year period (see 5.7). Six (6) semester hours of college level coursework will be required of such an applicant for renewal of the Standard license or an employee who meets the requirements for the Limited Standard;

2.3.2.3 An employee who is reassigned to continue for more than one (1) year in a partial assignment (see 2.6). At that point, the employee shall have three (3) years to complete all the specific requirements for licensure in the area of the partial assignment, regardless of the number of credits needed. Said employee shall hold a current, valid, Standard license in another, similar related content area

2.3.3 Limited Standard-Vocational (LS-V) May be issued for a period of up to six (6) years for employees who need more than sixty (60) semester hours of college level course work and who are required to satisfy the state's testing requirement within that six (6) year period.

2.3.4 Limited Standard-Shortage/Critical Need (LS-S) May be issued for up to three (3) years in areas of shortage designated annually by the State Department of

Education. Requirements are established in accordance with areas of need by the State Office of Certification, as approved by the Secretary and the State Board of Education. In this instance, the license may be issued to an employee who has at least a Bachelor's degree with a major in the subject area identified as being an area of critical shortage.

2.3.5 Limited Standard – Internship (LS-I) May be issued for a period of one (1) year for employees who meet all requirements for a Standard license other than student teaching or an internship requirement; and/or who have been accepted to participate in an approved Internship program; and/ or are teaching through a special program. A Limited Standard Internship license may be issued to an employee who is:

2.3.5.1 An exchange teacher from a foreign country or a teacher in an exchange program between states or schools or institutions of higher education and/or state education agencies within the United States or

2.3.5.2 A teacher from a foreign country who holds a valid certificate/license from that country and a degree equivalent to a Bachelor's degree as defined in the United States; or

2.3.5.3 A person employed by a Delaware public school district who will have the first year of employment used in lieu of student teaching or who is in the process of serving one year of supervised experience in order to meet an experience requirement stated for a specific license. Either case requires the prior approval of the State Office of Certification (see 4.5).

2.3.6 A teacher holding a Standard or Professional Status Certificate in either Elementary (grades 1-8) or Middle Level (grades 5-8) who is assigned to teach grade 7 and/or 8 math and/or science, regardless of the number of credits needed for full certification. During the term of the Limited Standard Certificate, the teacher shall complete the requirements for the Standard Certificate in the area(s) of the assignment. This regulation will be effective for three years from 7/1/98 through 6/30/2000.

2.4 Temporary License – Non-Renewable: Issued at the request of a local district superintendent under emergency conditions to a person who is unable to meet the licensure requirements at the Standard or Limited Standard level. This license classification carries a reduction in salary and shall not be requested prior to August 15 of any year. The Temporary license is a one-year, non-renewable license. Salary for an employee issued a Temporary license in an academic area shall be 10% less than the salary for an employee issued a Standard license with the same experience and salary level. Salary for a Temporary licensed person in an area of Trade & Industry shall be reduced by \$400.00 from that of the Standard licensed person having the same experience and salary level. A Temporary license may be issued to an employee who meets one of the three situations listed below:

#### 2.4.1 Academic (10% salary reduction)

2.4.1.1 A Non-degree employee for a regular teaching position who is currently engaged in pursuing a Bachelor's degree and who has completed all professional education requirements including student teaching, but who lacks no more than six (6) semester hours of credits for completion of the Bachelor's degree requirements or;

2.4.1.2 A non-degree employee for a regular teaching position who has completed no less than two (2) years of college training and who has no less than three (3) years of successful teaching experience; or-

2.4.1.3 An employee who is a graduate of a non-accredited college. No higher level license may be issued until the degree is validated (see 4.6.3).

2.4.2 A person whose credentials for any assignment do not meet Limited Standard licensure requirements. The 10% salary reduction will or will not be in effect as indicated below:

2.4.2.1 If the assignment in the area of Temporary licensure is a full daily schedule, then a 10% salary reduction is required.

2.4.2.2 If the assignment in the area of Temporary licensure is one-half or more of the full daily schedule, then a 10% salary reduction is required.

2.4.2.3 If the assignment in the area of Temporary licensure is less than half of the full daily schedule, and the individual has a Standard license in the primary area of assignment, then no reduction in salary is required

2.4.3 Trade and Industry (\$400.00 salary reduction): A non-degree employee for a Trade and Industry teaching position who has less than six (6) years of work experience or two (2) years beyond the learning period in the trade or industrial occupation to be taught.

#### 2.4.4 Special Situations

2.4.4.1 May be issued to any employed person who fails to meet the requirements for renewal of a Professional Status certificate, a Standard license, or the requirements specified under the Limited Standard license, provided the local district superintendent or designee chooses to make a written request for the Temporary license. Salary reduction will be based on whether the employee holds an Academic or Trade and Industry position; or

2.4.4.2 at the written request of the local district superintendent or designee to an employee who fails to meet the coursework requirements specified for a Standard or Limited Standard license within the period specified by that license. Such request shall not be made when an employee fails to meet the testing requirement within the time specified by the Limited Standard Test; or

2.4.4.3 to an individual at the specific written request of the employing local district superintendent to the Secretary of Education of the Department of Education, upon providing appropriate documentation as specified in

**3.5.1.2.1 and 3.5.1.2.2.****2.5 Failure to Meet Requirements**

2.5.1 An employee who accepts employment in a public school district and is licensed below the level of a Standard license (Limited Standard or Temporary), by accepting the position agrees that any deficiencies will be completed within the specified period of that license. Such licenses are non-renewable. Consequently, if the specific requirements stated for Standard licensure are not met when the license expires, the individual is without licensure in Delaware and may be terminated by the local school district (see 2.4).

**2.6 Teaching Assignment Out of Licensed Area**

2.6.1 When a written request is received from the local Superintendent prior to reassignment, a partial teaching assignment of no more than two (2) classes or class periods may be authorized for one (1) school year, if the person assigned the partial meets the following requirements:

2.6.1.1 Holds a current, valid Delaware Standard teaching license in a field other than that in which the partial assignment is to be made; and has at least fifteen (15) semester hours in the content area of the partial assignment.

2.6.2 If it is necessary to continue the partial assignment past the initial year, regardless of the coursework deficiency, the individual shall be placed on a Limited Standard license in that area. During the three (3) year period of the Limited Standard, all requirements for the Standard license shall be met.

2.7 Permits: Permits are issued for specific positions within the local school districts that do not require either a Bachelor's degree or the Test approved for licensure by the Delaware State Board of Education. Individuals who hold permits are not considered "certified professional employees of the public school system" as that phrase is used in 19 Delaware Code, Chapter 1301.

2.7.1 Aide: A permit shall be required for all persons employed either full time or part time as school or classroom aides with local, state, federal or other funds.

2.7.2 Substitute Teacher (Delaware Code, Title 14, §1230):

2.7.2.1 Class A: May be issued to an applicant who holds, or is eligible to hold a valid Standard Delaware teacher's license or such a certificate/license that has expired. The PPST is not required to hold this classification.

2.7.2.2 Class B: May be issued to an applicant with or without a bachelor's degree who meets at least the requirements for a Temporary license (see 2.0).

2.7.2.3 Class C: May be issued to an applicant who is not eligible for either Class A or Class B Permit, but who is recommended to the Secretary of Education by the superintendent of a Delaware public school

district.

2.7.2.4 Class D: May be issued to an applicant who is eligible for or holds a Class A, B, or C permit, but who prefers on a given date to perform substitute teaching assignments as a volunteer worker, or at a wage rate to be determined by the Board of Education of the employing school district.

**2.8 Provisions for Exceptions and Changes**

2.8.1 An exception to the existing licensure/certification regulations may be made by the Secretary of Education at the request of the local chief school officer; or in the case of an exception for the chief school officer, by the president of the local board.

2.8.2 An annual report stating the number and type of exception requests, as well as the disposition of each exception, shall be sent to the State Board of Education at the end of each fiscal year beginning with Fiscal Year 1997.

2.8.3 In the event of the consolidation of school districts where reassignment of a certified personnel is necessary, the following rules shall apply:

2.8.3.1 Personnel shall be considered certified for the position to which assigned and a certificate issued.

2.8.3.2 Such certificate or certificates shall be valid in the consolidated district for the duration of the reassignment or subsequent assignments resulting from consolidation.

**2.9 Effect of Changes in Rules and Regulations Adopted 7/1/93**

2.9.1 State of Delaware Approved Programs: An individual attending a college/university in the State of Delaware and currently enrolled in a program approved by the State of Delaware prior to July 1993 shall not be affected by any of the changes adopted July 1, 1993, as specified in the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations of the same provided that he/she received the "Institutional Recommendation" of the college/university.

2.9.2 Evaluation for Licensure via Transcript Analysis: Individuals who have received a credential evaluation by transcript analysis that has resulted in evaluation/prescription letter(s) in their credential file at the Department of Education will have a period of time to complete the requirements stated in those respective letters, according to the following schedule:

2.9.2.1 All evaluation/prescription letters based on certification regulations adopted prior to the 1974 regulations shall become invalid on June 30, 1993. These individuals shall be required to meet the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations of the same as adopted for certification effective July 1, 1993.

2.9.2.2 All evaluation/prescription letters dated June 30, 1990 through June 30, 1993 shall become

invalid on June 30, 1996. Effective July 1, 1996 these individuals shall be required to meet the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations of the same as adopted for licensure effective July 1, 1993.

2.9.3 Individuals Employed and Certified on Substandard Certificates: An employee who has been issued a Delaware substandard certificate (Limited Standard, Provisional, Temporary) prior to July 1, 1993, shall continue on that certificate until the requirements specified are met or the certificate expires or the employee no longer occupies the position for which the certificate was issued. In that latter two cases, the employee shall be required to meet the July 1, 1993 regulations, if reassigned or re-employed at some later date, for a position requiring that same licensure.

### 3.0 Testing Requirements

3.1 Any applicant seeking initial licensure in Delaware shall provide the state Office of Certification with official test scores for one or more of the following tests of essential skills in Reading, Writing and Mathematics: The Pre-Professional Skills Tests (PPST) and/or The PRAXIS I Paper and Pencil Tests; and/or The PRAXIS I Computer Based Tests.

#### 3.2 Test Scores. (Revised May 1994)

3.2.1 The following minimum passing scores are required in the areas of Reading, Writing and Mathematics for each of the Tests of essential skills.

3.2.1.1 Pre-professional Skills Test Taken between 7/1/83 and 10/22/93 Reading - 175, Mathematics - 175, Writing - 172 and/or

3.2.1.2 PRAXIS I - Paper and Pencil Tests (Passed 7/94) (Tests taken on 10/23/93 and thereafter): Reading - 175, Mathematics - 174, Writing 173 and/or

3.2.1.3 PRAXIS I - Computer Based Tests (Passed 7/94) (Tests taken on 10/23/93 and thereafter): Reading - 322, Mathematics - 319, Writing 319

3.3 Testing Exemptions include individuals holding Delaware certificates issued prior to July 1, 1983 or having a completed file on record with the Office of Certification as of July 1, 1983 which resulted in an evaluation letter for a certificate/license that is currently in effect, are not required to take the PPST/ PRAXIS I. The exemption based on an evaluation letter prior to July 1, 1983 shall expire on 6/30/94, since letters of that date will become invalid after 6/30/94 (see 2.6.2).

3.3.1 In addition, the following licenses and/or permits do not require the PPST/PRAXIS I:

- Manager of School Food Service Program
- Supervisor of School Food Service Program
- Transportation Manager
- Supervisor of School Bus Transportation
- Administrative Support (formerly Secretarial Personnel)
- Interpreter Tutor for Hearing Impaired

Permit Substitute Teacher

Permit - Aides

3.4 Acceptable alternatives to the PRAXIS I test scores include:

3.4.1 Scores from the California Test of Basic Skills (CTBS) shall be in lieu of PPST/PRAXIS I scores under the following conditions:

3.4.1.1 The scores were required to receive a certificate/license in another state and the test was taken as a condition of meeting certification/licensure requirements in that state; and

3.4.1.2 The scores total 123, with at least 37 in each category; and.

3.4.1.3 Effective 7/1/96, the following test scores can be used to exempt an applicant for initial Delaware licensure from the corresponding portion of the PPST/ PRAXIS I: Effective 7/1/97 - SAT Tests taken after 4/1/95 and presented for exemption must meet the score indicated due to a re-centering of the SAT.

3.4.1.4 Alternate Test And Score Praxis I Exemption

GRE Verbal 490 PRAXIS I Reading

SAT Verbal 480 PRAXIS I Reading

\*SAT Verbal 560 PRAXIS I Reading (After 4/1/95)

GRE Quantitative 540 PRAXIS I Mathematics

SAT Mathematics 520 PRAXIS I Mathematics Mathematics

\*SAT Mathematics 540 PRAXIS I Mathematics (After 4/1/95)

NTE Core Battery:

Communications Skills 670 PRAXIS I Writing

### 3.5 Testing Timeline

3.5.1 Individuals may be hired in a Delaware public school district prior to having taken or passed the PPST/PRAXIS I. The employee has the period of time, from the date of hire to the end of the next, consecutive fiscal year to present passing PPST/PRAXIS I scores to the employing school district and the State Office of Certification, should employment remain continuous.

3.5.1.1 Any Standard Aptitude Test (SAT) scores and/or Graduate Records Exam (GRE) scores and/or NTE Communication Skills scores intended to be used as an exemption for the PPST/PRAXIS I, shall be submitted within the same timeline and scores should pre-date the employment date.

3.5.1.2 Once this period has expired, the individual will be without any valid Delaware license and employment may not be continued unless one of the following conditions is met:

3.5.1.2.1 Official documentation is provided to the Department of Education, Office of Certification, showing successful completion of all parts of the PPST/PRAXIS I OR

3.5.1.2.2 Based on documented

effectiveness, the superintendent of a public school district may submit a written request to the Secretary of Education to grant a third/fourth year for an individual to successfully complete all parts of the PPST/PRAXIS I tests. The request shall include:

3.5.1.2.2.1 A letter from the individual's immediate supervisor attesting to the employee's effectiveness in the position; and copies of the employee's evaluations (Delaware Performance Appraisal System — 3 Formative and 1 Summative) from the current schoolyear, which demonstrate effective performance.

3.5.1.2.3 If the extension is granted, the individual shall:

3.5.1.2.3.1 Be placed on a one-year Temporary License at a ten (10) percent reduction in state salary; and

3.5.1.2.3.2 By October 31 complete training in all parts of the PPST/PRAXIS I for which qualifying scores have not been attained, by using the Learning Plus computer tutorial package or other available training programs.

3.5.1.2.3.3 By December 31 take the PPST/PRAXIS I at least once; and twice during the third/fourth year of employment.

3.5.1.2.3.4 By January 31 the district shall verify the above to the Department of Education.

3.5.1.3 In the event that employment is terminated from a Delaware public school district prior to passing the PPST/PRAXIS I and prior to the end of the next consecutive fiscal year, an individual may be re-hired and be granted the amount of time remaining on the original license, to meet the testing requirement. The total time the employee shall be employed, without demonstrating passing PPST/PRAXIS I scores, shall not exceed the amount of time from original date of hire to the end of the next, consecutive fiscal year, whether the employment remains continuous or not.

3.5.1.4 When employment is not involved, there is no time restriction for meeting the testing requirement; however, the test shall be taken prior to submitting an application for certification and the testing requirements may change.

3.5.2 PPST/PRAXIS I scores need not be passing to initiate the application process. Official scores that are passing shall be received prior to the issuance of any Standard license requiring the test (see 3.3 and 3.3.1).

3.5.3 There is no limit on the number of times an individual may take the PPST/PRAXIS I. Once passed, a section need not be taken again.

3.5.3.1 Passing scores in each area (Reading, Writing, Mathematics) may be attained in any testing format.

3.5.4 Presentation of Test Scores to the State Certification Office.

3.5.4.1 Test scores shall be official and

Official scores are generally computer coded to the Department of Education at the test site, and are sent directly from Educational Testing Service to the Office of Certification.

3.5.4.2 Unopened, unaltered envelopes containing PPST/PRAXIS I scores that were sent to the individual may be accepted as official. The State Office of Certification, shall determine whether the scores are acceptable as presented.

3.5.4.3 If an individual cannot provide official scores as described above, the applicant may have an official set of scores sent to the State Office of Certification, directly, by contacting the Educational Testing Service. After five years, test scores are considered invalid by ETS and re-testing is required as a means of providing official scores.

3.5.4.4 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Delaware Office of Certification. This method shall be used only when those avenues described in 3.5.4.1, 3.5.4.2, and 3.5.4.3 have been exhausted.

3.5.4.5 Acceptable means for providing Scholastic Aptitude Tests (SAT) and Graduate Record Exam (GRE) scores are:

3.5.4.5.1 Have scores sent directly from the Education Testing Service to the State Office of Certification.

3.5.4.5.2 Have an official college transcript forwarded directly to the State Office of Certification, if a particular institution lists SAT and/or GRE scores on its transcript.

3.5.4.5.3 Have high school transcript signed and sealed by the registrar and sent directly to the State Office of Certification, for SAT verification.

3.6 It shall be the responsibility of the individual employee/applicant to bear any/all costs related to testing/re-testing, and the presentation of official scores to the State Office of Certification.

3.7 Department of Education Employees: All employees of the Department of Education hired after 7/94 shall pass PRAXIS I or provide equivalent scores from other acceptable assessments. These scores shall be presented to the State Office of Certification as official scores (see 3.5.4).

3.8 Certification Testing Data from Delaware Institutions of Higher Education with State Approved Teacher Education Programs.

3.8.1 The State Office of Certification shall receive the same certification testing information, data or reports that are provided to each institution of higher education having a State of Delaware approved program in education.

3.8.2 The request for such information shall be

made directly to the Educational Testing Service or other testing vendor by the State Office of Certification only. Data or reports related to alternative test scores, SAT, GRE, and NET Core Battery, which can be used in Delaware for an exemption from specific portions of the PRAXIS I tests, shall also be provided upon request.

#### 4.0 Application for Initial License

4.1 An applicant for initial licensure shall file an application with the State Office of Certification. The application shall be supported by official transcripts and other documentation that may be necessary to perform the credential evaluation. It shall be the responsibility of the applicant to provide the necessary documentation in an appropriate official form. Any and all costs related to providing appropriate documentation shall be the responsibility of the applicant.

#### 4.2 Credentials for Application

4.2.1 All documentation to support an application request for licensure shall be official. Transcripts shall be signed and sealed by the college/university registrar. If presented in a sealed, unaltered envelope to the Office of Certification, transcripts stamped with "Issued to the Student" are considered official. The Office of Certification shall determine, solely, whether a transcript or other document is official.

4.2.2 All other documentation shall be originals, unless otherwise specified in the Application Packet.

4.2.3 Test scores shall be received directly from the Educational Testing Service; or be otherwise official (see 3.5.4).

4.2.4 Credentials required for application, if employed or non-employed, are the same, they shall include:

4.2.4.1 Application for Certification Form.

4.2.4.2 Official transcripts of all institutions listed on Application for Certification Form at the time of application for initial licensure.

4.2.4.3 Institutional Recommendation/Verification of Approved Program.

4.2.4.4 Official PPST/PRAXIS I scores. If not employed in a public school district at the time of initial application, official PPST/PRAXIS I scores are required to apply for an initial evaluation for licensure. Individuals who are employed in the Delaware public school system have a period of time to submit passing scores (see 3.5).

4.2.4.5 Non-resident processing fee (non-refundable), if applicable.

4.2.4.6 Experience verification, when applicable.

4.2.4.7 Copy of out-of-state certificates/licenses.

4.3 Receipt of Credentials for Persons Employed in the Delaware Public School System.

4.3.1 All credentials for licensure other than

PPST/PRAXIS I scores (where applicable) should be received in the State Office of Certification, prior to employment. If this is not possible, then the credentials shall be received no later than two (2) months from the date of employment. Under these circumstances, it is the responsibility of the district, before employment, to determine that the person is eligible to be certified for the position.

4.3.2 If a complete credential file has not been received by the State Office of Certification, within two (2) months of the employment date, the applicant shall be paid at the rate of a substitute teacher until required documentation for licensure has been received. Under extenuating circumstances, the district may make a written request for a waiver.

4.3.3 Upon receipt of the appropriate credentials and evaluation for license, the individual's salary level, based on verified degree, experience, military service, and type of license shall be determined, and shall be made retroactive to the date of employment.

#### 4.4 Recency of Coursework

4.4.1 If an applicant's Bachelor's degree has not been conferred within the most recent five-year period; or if the applicant has not completed appropriate college-level coursework within the most recent five-year period from the date of evaluation for licensure or 3 years of full-time experience in the area of the license during the last 5 years, then six (6) semester hours of refresher coursework may be necessary, even if all other requirements are satisfied (see 5.7). Refresher coursework shall be taken in a regionally accredited college or university. All courses shall meet the approval of the Office of Certification. Inservice coursework is not appropriate to meet the recency requirement.

#### 4.5 Student Teaching

4.5.1 Successful student teaching at the appropriate level under the supervision of an accredited teacher preparation institution shall be required for all standard licenses, with the exception of the process described below:

4.5.1.1 In lieu of student teaching, one (1) year of full-time, successful elementary, secondary school, or appropriate college/university sponsored internship training in Delaware, under supervision, and given prior approval by the State Office of Certification may be substituted. This regulation shall not be used until the individual has met all other requirements, leaving student teaching as the sole remaining requirement to be met for Standard licensure.

4.5.1.2 In lieu of student teaching, the six (6) semester hour student teaching requirement shall be met via a year of experience, as approved by the State Office of Certification, and six (6) additional elective semester hours in professional education in the area of licensure or any area designated by the employing school district and approved by



the State Office of Certification:

4.5.1.2.1 The State Office of Certification must give prior approval to this year of experience. The one (1) year of experience shall be served at the same level or in the same content area as required for that license (K-4, elementary 1-8, secondary 7-12, Special Education, Math, English, etc.). Experience served before approval is obtained from the State Office of Certification is not appropriate to meet this requirement.

4.5.1.2.2 Private school experience in lieu of student teaching shall be served in a regionally accredited/regularly organized private school. An appropriate evaluation system, that is equivalent to the Delaware Performance Appraisal System, shall be in force in order for the private setting to qualify as an approved site. A private school is not required to participate in this process. It is voluntary and is a service to the applicant for Delaware licensure. Private school experience served before approval is obtained from the State Office of Certification is not appropriate to meet this requirement.

4.5.1.2.3 An applicant who did not attain an undergraduate index sufficient for eligibility for student teaching at the appropriate level; or an applicant who, for some other reason, was denied permission by the college to engage in this experience; may not be certified to teach in Delaware until the restriction is removed by the college. This individual shall meet the Specific Requirements for the area of licensure sought, since the approved program recommendation is not available.

#### 4.6 Other Considerations for Initial Licensure

##### 4.6.1 Foreign Credentials

4.6.1.1 Applicants with study outside the United States who are not employed in the Delaware public school system should submit academic credentials either in the original or in legible certified reproductions. An analysis of the degree equivalency is required. The State Office of Certification has no staff trained in foreign credential analysis. For this reason, the individual shall submit credentials to an approved consulting firm specializing in foreign credential analysis/translation. An official translation/evaluation accompanying the original shall be required. The translation/evaluation will assist the Office of Certification in determining the applicant's licensure status. Semester hour equivalents and verification of certification/licensure as a teacher in the foreign country may also be necessary to complete the evaluation for licensure in Delaware. A list of appropriate foreign credential consultants is available from the State Office of Certification. Since this service is not provided by the Department of Education, the cost is the full responsibility of the applicant.

4.6.1.1.1 In making application for licensure, the individual with foreign credentials shall follow the standard procedure for all applicants; however, it is more

efficient to submit transcripts for foreign credential analysis first. Any teaching experience claimed must be properly verified. If an applicant with foreign credentials is unable to provide all the required information, a license to teach in Delaware cannot be issued (see 2.0); and

4.6.1.1.2 Applicants who are part of a foreign exchange program should refer to 2.3.5.

##### 4.6.2 Professions and Occupations License

4.6.2.1 In areas of licensure where a State of Delaware professional licensure or registration is required by law, the applicant must present a current, valid license or registration upon application for a teaching license. The State license or registration shall be renewed as required by law. For initial licensure, a copy of a current, valid State of Delaware license shall be submitted with all requests for renewal of a Delaware license that requires the license.

4.6.2.1.1 At any time an individual allows the required license to lapse or become invalid for any reason, the Delaware teaching license which requires such professional licensure shall become invalid as well.

4.6.3 All graduate and undergraduate degrees and coursework accepted for licensure must be earned from a college or institution approved by the appropriate regional or national accrediting agency; however, applicants from non-accredited colleges may validate the Bachelor's degree by the completion of six (6) graduate level credits from an accredited institution or through the National Teacher Examinations (NTE) (see 4.6.5.1).

4.6.4 Correspondence coursework or courses delivered by video tape shall have a regionally accredited institution as the grantor of credit in order to meet requirements for licensure, and shall be presented to the Office of Certification on an official transcript from said regionally accredited institution. Six (6) semester hours of coursework is the maximum amount of credit allowable via correspondence (see 4.6.6).

##### 4.6.5 Proficiency Examinations

4.6.5.1 A satisfactory score (fiftieth percentile or better) on the National Teacher Examinations (NTE)/PRAXIS II Content Tests may be used:

4.6.5.1.1 to validate work from non-accredited colleges (see 4.6.3 and 4.6.4);

4.6.5.1.2 to complete requirements for the major teaching field if the applicant holds a Bachelor's degree but lacks six (6) semester hours or less for full licensure and has at least one (1) year of successful teaching experience in the area required for the license;

4.6.5.1.3 as a substitute for coursework for an additional teaching field. This applies to a person who is fully certified and who has satisfactory experience in his/her major teaching field of at least three (3) years on the Standard license (documentation of both experience and level of performance required), and who wishes to qualify for another teaching field;

4.6.5.1.4 by an applicant who needs only refresher credits as required under Recency Requirement (see 5.7);

4.6.5.1.5 to complete requirements for foreign language in the areas of French, German and Spanish or any other specific content areas for which the National Teacher Exam (NTE/PRAXIS II) has been developed and for which the State of Delaware offers licensure;

4.6.5.1.6 to validate proficiency as a native speaker; or proficiency of a language gained through cross-cultural experiences such as living abroad.

4.6.5.2 Occupational—Vocational—Testing (NOCTI)

4.6.5.2.1 This test may be taken to complete requirements in the occupational vocational education area of Trade and Industry, with approval of the State Department of Education and they determine the appropriate cut scores of the NOCTI competency examinations for each trade area.

4.6.5.2.1.1 The appropriate NOCTI can be used for nine (9) semester hours of credit in the vocational elective area of the Specific Requirements of the Trade and Industry license and nine (9) semester hours toward a salary increment.

4.6.5.2.1.2 The NOCTI can be used as part of an undergraduate bachelor's degree program in vocational education. The degree-granting college/university will determine the credit value of the exam in light of the completion on the Bachelor's degree.

4.6.5.2.1.3 The NOCTI cannot be used for both 4.6.3.2.1.1 and 4.6.3.2.1.2 above.

4.6.6 Correspondence Coursework

4.6.6.1 Not more than six (6) semester hours of required courses for licensure in any single area may be secured by correspondence work. This correspondence work shall be successfully completed through an accredited college or in a school listed by a recommended accrediting agency such as the National Home Study Council.

4.6.6.1.1 Any courses presented in a video or distance learning format shall be considered as a correspondence course, as long as attendance on campus in a formal classroom setting is not required. Consequently, video courses and distance learning shall be taken through a regionally accredited college and a maximum of six (6) semester hours are allowable.

4.6.7 Fees Required

4.6.7.1 A \$10.00 non-resident initial processing fee will be charged for each original evaluation for licensure at the time of initial application. A resident of Delaware is an applicant who has been a resident of Delaware for at least one (1) year. Checks are to be made payable to the Delaware Department of Education, shall accompany each Application for Certificate, and are not refundable. Applications submitted without this fee shall be

returned unprocessed.

4.6.7.2 A \$5.00 fee will be charged for each duplicate certificate/license. Checks are to be made payable to the Department of Education. Cash or postage stamps are not acceptable.

4.6.8 The effective date of each license shall be the actual date of issuance or employment, whichever is earlier; or the first of the month following the completion of the semester in which coursework requirements were completed or the date of completion of testing requirements when no other requirements were needed. The expiration date shall be the end of the fiscal year, as appropriate for the license being issued.

4.6.9 An applicant for initial licensure who meets all minimum requirements may, in some cases, be issued the appropriate license for only one (1) year when offered employment in a Delaware public school district. The license may be continued/extended for its full term after one (1) year of successful, full-time teaching experience in a public school setting and upon the recommendation of the local district superintendent.

4.7 Denial of License

4.7.1 A license may be denied to an applicant for initial licensure for the following reasons: lack of good moral character, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

4.7.2 Notwithstanding any other provisions stated herein, no license shall be issued to an applicant for initial licensure, for licensure through reciprocity, or for renewal of licensure, if:

4.7.2.1 There is legal evidence that the applicant is not of good moral character; or

4.7.2.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

5.0 Renewal of Licenses

5.1 The Professional Status certificate is valid for five (5) fiscal years and shall be renewed upon expiration provided the employee shall have been employed, full-time, for at least three (3) school years during the aforesaid five-year term, in the type of position for which the certificate was issued.

5.1.1 In the event that the Professional Status certificate expires and the holder has not been employed full-time, for three (3) of the most recent five-year period, in the type of position for which the Professional Status certificate was issued, the employee shall be required to take refresher coursework as required in 5.7. Credits earned during the period when the certificate was valid may be applied, if appropriate, toward meeting the refresher requirements as long as the coursework is not older than five (5) years. Upon completion of the refresher coursework, a

regular Standard license will be issued/renewed.

5.1.2 The holder of an expired Professional Status certificate, who does not meet either the three-year employment requirement for renewal or the refresher requirements to qualify for a regular Standard license or renewal of such, may qualify for a Limited Standard license in the same area, if such certification is requested by a local district superintendent as a condition of employment or continued employment.

5.2 Standard license: The Standard license shall be renewed upon expiration, provided the employee shall have been employed in a Delaware public school district or other state agency requiring certified educational personnel, for at least three (3) school years during the most recent five-year period. Said employment shall have been in the type of position for which the license was issued and for which it is valid.

5.2.1 The Standard license shall be renewed only when the employment is not for three (3) consecutive years, thus rendering the employee ineligible for a Professional Status certificate. If employment in the appropriate position is for three (3) consecutive years, the individual shall be issued the Professional Status certificate and the Standard license in that area shall not be renewed.

5.2.2 Standard licenses are typically not renewed for individuals employed outside the Delaware public school system and appropriate agencies that require certified educational personnel. The Standard license shall not be renewed for individuals employed within the Delaware public school system, unless it is required in the area to which the employee is currently assigned. Regular Standard licenses that are not renewed are valid indefinitely. Renewal of these licenses shall be made only when an assignment/reassignment within the public school system requires the employee to hold that specific license.

5.2.3 In the event of a reassignment to an area in which the Standard license has expired, and when the holder of that expired license has not been employed for three (3) of the most recent five-year period in a position for which it was issued, the holder shall be required to take the refresher coursework described in 5.7. Six (6) semester hour credits from regionally accredited colleges/universities earned during the period when the license was valid but expired may be applied, if appropriate, toward meeting the refresher requirement.

5.2.4 The regular Standard license may be renewed for personnel who previously held a Professional Status certificate, and who do not meet the three-year, full-time employment renewal requirement but who have completed the required refresher coursework. The Standard license shall be renewed at the time the Professional Status certificate expires, provided the holder is employed by a Delaware public school district or state agency requiring certified educational personnel, in a position requiring that

license.

5.2.5 The holder of an expired license who meets neither the service requirements nor the refresher requirements for renewal, may qualify for a Limited Standard license, if employed by a Delaware public school district or state agency requiring certified educational personnel, provided such license is requested by a local district superintendent or appropriate personnel officer.

5.3 The Initial Standard certificate was valid for a period of five (5) years between October 1, 1982 and June 30, 1991 and is not renewable. The holder of an Initial Standard certificate who has been employed, full-time, by a Delaware public school district or state agency requiring certified educational personnel for at least three (3) years of the aforesaid five-year term, and in the type of position for which the certificate was issued, shall be eligible for a regular Standard certificate upon expiration of the Initial Standard certificate. The Initial Standard certificate has not been issued since July 1, 1991. Since that time, the regular Standard certificate replaced the Initial Standard certificate as the initial certificate in Delaware. In the situation described above, the Standard certificate would be issued for the next consecutive five-year period.

5.3.1 After three (3) consecutive years of service in the type of position for which the Initial Standard certificate was issued, the holder of the Initial Standard is eligible for a Professional Status certificate in the same area. If employed in a Delaware public school district or an agency that requires certified educational personnel, a regular Standard certificate will not also be issued at that time. It may be issued later, as appropriate.

5.3.2 The holder of an expired Initial Standard certificate who has not completed, within the most recent five-year period, three (3) years of employment in the type of position for which the certificate was issued, may be issued a regular Standard license upon completion of six (6) semester hours of approved refresher work, independent of employment. A written request must be submitted if the individual is outside the Delaware public school system.

5.3.3 The holder of an expired Initial Standard certificate may be issued a Limited Standard license at the request of a local district superintendent/state agency, provided he/she is employed in a Delaware public school district or state agency requiring certified educational personnel, and in the event they meet neither the experience or the refresher requirements.

5.4 A Limited Standard license is issued for up to three (3) years at the request of a local district superintendent, and is not renewable (see 2.3).

5.5 A Temporary license is valid for one (1) year and is not renewable. If an applicant for licensure who was employed on the basis of a Temporary license later qualifies for a regular Standard then the appropriate license may be issued.

5.6 Individuals who are not employed in a Delaware Public School District or other State Agency Requiring Certified Educational Personnel.

5.6.1A Professional Status certificate, issued to an individual while employed in a Delaware public school district, shall not be renewed. It is considered to be a valid Delaware license for an indefinite period of time.

5.6.1.1 Upon returning to employment within the Delaware public school system, the Standard license that was initially issued/used during the previous employment, shall be renewed when either 5.6.1.1.1 or 5.6.1.1.2 below can be met:

5.6.1.1.1 verification of the completion of the appropriate refresher coursework as specified in 5.7.

5.6.1.1.2 provision of appropriate documentation of three (3) years full-time experience within the most recent five-year period, teaching in the same area as the Professional Status certificate.

5.6.1.2 Upon employment in a Delaware public school district, a Limited Standard license may be issued for a period of up to three (3) years at the request of a local district superintendent/designee while the refresher coursework requirement is being met.

5.6.2 The Standard license, although valid for an indefinite period of time, is typically not renewed for a five-year period until the individual holder is employed in a Delaware public school district or other state agency which employs certified educational personnel. At the time of employment within the public school system, and upon presentation of verification of appropriate refresher coursework (see 5.7):

5.6.2.1 If an individual with a valid regular Standard license that is more than five (5) years past its latest issuance date, seeks employment, he/she will be eligible for renewal with documentation of appropriate refresher coursework or experience. If coursework has not been taken, the regular Standard license cannot be renewed until such time as the refresher is taken. However, this individual shall be eligible at the request of the local district superintendent, to be issued a three-year Limited Standard license while the appropriate refresher coursework is completed.

## 5.7 Recency Requirement

5.7.1 Upon initial application for licensure, or when an additional area(s) of licensure is/are requested, or upon license renewal, at least six (6) semester hours of the coursework shall have been taken within the most recent five-year period. The recency requirement may be satisfied through appropriately documented employment in the area of license request, for three (3) years out of the most recent five-year period. Should neither of these criteria be met, six (6) semester hours of refresher coursework as specified below, shall be required prior to Standard licensure or renewal of license.

5.7.2 Refresher coursework for licensure shall be

taken in a regionally accredited college or university. Said refresher may be either graduate or undergraduate level coursework, as was appropriate to meet the original requirements for licensure in that particular area. In-service coursework is not appropriate. A total of six (6) semester hours of refresher coursework is required for license renewal or to update any degree or coursework that is more than five (5) years old (see 4.4).

5.7.2.1 If required, the refresher coursework shall be related to the specific area of licensure requested, with three (3) semester hours to be taken in the subject/content area of the license and three (3) additional semester hours to be taken in professional education directly related to the certified area. Refresher coursework shall meet the approval of the State Office of Certification. Refresher coursework shall be required for:

5.7.2.1.1 Renewing (upon employment in or assignment to a position) any valid, expired, renewable certificate/license where the individual has not been employed in an assigned position requiring that license for three (3) of the most recent five-year period;

5.7.2.1.2 Updating the recency of any degree or coursework that is older than five (5) years as it applies to the use of such coursework or the completion of a degree used to obtain initial licensure for a new area;

5.7.2.1.3 Updating the recency of any degree or coursework that is older than five (5) years as it applies toward meeting the requirements for any additional area(s) of licensure, after initial licensure.

## 6.0 Licensure Agreements/Reciprocity

6.1 Individuals graduating from Teacher education programs that are approved and accredited by the National Council for Accreditation of Teacher Education (NCATE) or the National Association of State Directors of Teacher Education and Certification (NASDTEC) Certification Reciprocity System or The Interstate Certification Project (ICP) and have full recommendation from their degree granting institution shall be accepted for full licensure in Delaware upon passing the reading, mathematics and writing parts of the Pre-Professional Skills Tests (PPST/PRAXIS I).

### 6.2 Interstate Certification Project (ICP)

6.2.1 Classroom Teacher: An applicant with a bachelor's degree granted after January 1, 1964 in teacher education whose program is on the list of approved programs for the ICP will be automatically certified to teach in Delaware in his/her major area if he/she is fully recommended for teaching by the degree-granting institution.

6.2.1.1 An applicant with a bachelor's degree who holds a valid initial regular certificate/license from one of the states in the ICP and who has at least 27 months of successful teaching experience within the immediate past seven (7) years with at least eighteen (18) months of that

teaching under the license now offered, is eligible for a Delaware license in the same area. (A copy of the certificate/license and verification of experience is required.)

6.2.2 All other licensed education personnel (except Superintendents and Assistant Superintendents):

6.2.2.1 An applicant from one of the states in the ICP who holds a valid initial regular certificate/license from the state and who has a minimum of 27 months of successful performance of professional school services under the certificate/license is eligible for a Delaware license in the same area if he/she has attained the same degree level of education required by Delaware. A copy of the certificate/license and verification of experience is required.

6.2.3 Licensed Educational Personnel from Other States (except local District Superintendent)

6.2.3.1 An applicant with a bachelor's degree who is fully licensed/certified in another state and who has a minimum of three (3) years of satisfactory experience within the immediate past five (5) years in the specific teaching area covered by that certificate/license, will be licensed in that area if he/she meets the total number of credits required by Delaware in professional education and the specific field, but not necessarily the specific courses required in Delaware if he/she has attained the same degree level of education required by Delaware.

## 7.0 Revocation of Licenses/Certification

7.1 Any license other than that of Professional Status may be revoked by the Secretary of Education for the reasons of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials.

### 7.2 Revocation Requested by a School District

7.2.1 When any certified person is dismissed for immorality, the board making such a determination pursuant to 14 Del. C. shall, upon final decision, give written notice to the Secretary of Education of its desire to request the revocation of that individual's license(s).

7.2.2 When any certified person is dismissed for misconduct in office, incompetence, disloyalty, or willful and persistent insubordination, the board making such a determination pursuant to 14 Del. C. may, upon final decision, give written notice to the Secretary of Education of its desire to request the revocation of that individual's license(s).

7.2.3 The certified copy of the decision of the board shall be substantial evidence for the Secretary of Education to revoke the license(s) without a hearing. The district shall forward its record with regard to the dismissal and any hearing thereon.

7.2.4 The notice of the revocation(s) by the Secretary of Education shall be sent to the person by certified mail and shall give notice that it may be appealed to the Delaware State Board of Education within thirty (30)

days.

### 7.3 Revocation or Denial by the Secretary of Education

7.3.1 In a case where the Secretary of Education has good reason to believe that a certified person not employed by a public school district has been convicted of a crime which is evidence of immorality, the Secretary of Education may initiate proceedings to revoke the person's license(s).

7.3.2 Any revocation by the Secretary of Education, or any denial of licensure or denial of renewal of license shall be subject to the following:

7.3.2.1 The Secretary of Education shall ensure that there has been a fair investigation of the facts, that there is substantial evidence for the basis of the decision, and that the person is given notice of the decision and the reasons.

7.3.2.2 The notice of the decision shall be sent to the person by certified mail, and the person shall have thirty (30) days, from receipt, to request an informal hearing before the State.

7.3.2.3 If such a hearing is requested, the Secretary of Education shall give the person twenty (20) days prior notice of the date, time and place of the informal hearing. The notice shall inform the person of the right to present his position and to be represented by counsel.

7.3.2.4 The Secretary of Education shall render a decision in writing, setting out the reasons within twenty (20) days. The decision shall be sent to the person by certified mail, and shall give notice that it may be appealed to the State Board of Education within thirty (30) days of receipt.

7.3.3 All appeals to the State Board of Education regarding revocation or denial of licensure are pursuant to 29 Del. C., Chapter 101.

## 8.0 Denial of Licenses/Certificates

8.1 A license may be denied to an applicant for initial licensure for the following reasons: Lack of Good Moral Character, Misconduct in Office, Incompetence, Willful Neglect of Duty, Disloyalty or Falsification of Credentials.

8.2 Notwithstanding any other provisions stated herein, no license shall be issued to an applicant for initial licensure, for licensure through reciprocity, or for renewal of licensure, if:

8.2.1 There is legal evidence that the applicant is not of good moral character; or

8.2.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

## 9.0 Professional Growth Programs

### 9.1 Definitions of Terms

9.1.1 Graduate Level Course: Any course to be used herein which is offered at a regionally accredited college or university that is considered graduate level at that institution.

9.1.2 Undergraduate Course: Any course to be used herein which is offered by a regionally accredited college or university which carried college credit for an Associate or Bachelor's degree.

9.1.3 In-service Credits: Any project course offered by a local Delaware school district or other agency that has the approval of the Delaware State Department of Education; or any course offered by the Delaware State Department of Education. (To be used in a Professional Growth Program, completion of these courses must have the prior approval of the local employing school district superintendent.)

9.1.4 Individual Professional Growth Credits: Individual activities, i.e. projects, travel, and work experience, which contribute to the professional growth of the school employee in his/her assignment. Individual Professional Growth credits must have the prior approval of the Delaware State Department of Education and the local employing school district superintendent. A written evaluation report by the individual earning the credit shall be required at the conclusion of the activity.

9.1.4.1 A minimum of one (1) and a maximum of three (3) in-service credits will be allowed for each activity, for a maximum of nine (9) Individual Professional Growth credits.

9.1.5 Credit Calculation: All credits must be expressed in terms of semester hours. College or university credits expressed in quarter hours and approved CEUs will be converted to semester hours by multiplying the number of quarter hours by two-thirds. In the case in-service credits, fifteen (15) clock hours of class time is considered the equivalent of one (1) credit. Credits earned for Professional Growth activities will be calculated in the same manner as in-service credits.

## 9.2 Acceptable Grades

9.2.1 All grades for college-level credit submitted for a Professional Growth Program must be a grade that earns a "C" or better from the granting institution. In the case of credits earned on a pass-fail basis, a grade of pass is acceptable.

## 9.3 Acceptable Credits

9.3.1 Credits for the Professional Growth Programs (B+15, B+30, M+15, M+30, M+45) shall be earned after the Bachelor's degree has been conferred. They may be graduate, undergraduate, or in-service. CEUs from regionally accredited colleges can also be used (1 CEU = 10 clock hours = 2/3 semester hour)

9.3.2 Up to nine (9) Individual Professional Growth credits may be counted from the B+15 through the M+45.

9.3.3 Undergraduate and graduate credits must be earned at regionally accredited institutions of higher learning. Any credits not counted toward a graduate degree shall be counted in the B+15, B+30, M+15, M+30, M+45 programs.

9.3.4 Undergraduate, in-service, and Individual

Professional Growth credits shall have the prior approval of the employing local district superintendent/designee before submission to the State Office of Certification. These credits shall be relevant and usable to the applying employee.

9.3.5 For Trade and Industry teachers, a Bachelor's degree equivalent shall be two years of college and six years of work experience, 14 Del. C., § 1301.

9.4 Salary Increment: An applicant shall hold a Delaware Standard or Limited Standard license before a Professional Growth Program salary increment can be approved.

9.5 Admittance to Graduate School: Applicants for a Professional Growth Program need not be admitted to a graduate school in order to have graduate level courses accepted for these programs.

## 9.6 Acceptable Professional Degrees

9.6.1 Professional degrees earned in areas other than professional education will not be accepted for the Professional Growth Program unless the degree is directly related to an area of specialty in which the individual is employed.

9.6.2 To be counted for the Professional Growth Program, a degree for any individual involved in instruction, curriculum, or the supervision of instruction must be a degree in professional education.

9.6.3 Individual courses in any area may be considered for acceptance in the Professional Growth Program upon receipt of a written rationale from the applicant with an endorsement by his/her local employing school district superintendent.

9.7 Usable Credits: All credits and programs to be accepted for the Professional Growth Program/state supported salary increments shall be relevant and usable to the professional school employee and may be approved or disapproved by the local employing school district superintendent.

9.8 Excess Graduate Level Credits: Graduate level credits earned after a Bachelor's degree or before earning a Master's degree may be used in the B+15 and the B+30 Professional Growth Programs so long as the same credit is used only one time. Credits earned in excess of those required for the Master's degree by the granting institution can be used in a M+15, M+30 and M+45 Professional Growth Program.

## 9.9 Effective Date of Salary Adjustment

9.9.1 The salary adjustment shall be made after the evaluation and approval of the candidate's application by the State Office of Certification. The adjustment will be authorized to be made retroactive to the first of the month following the date certified by transcript, official grade slip, or approved in-service slip, as to when the program or credit was completed.

9.9.2 Retroactive salary adjustment may be by a single payment or by payments divided equally among all

the pay periods remaining in a current fiscal year as may be determined by the district or state fiscal officers.

9.10 Appeals Committee: A committee shall be called to review and make recommendations regarding an appeal that may result as these rules are administered. The committee shall include the following: One (1) representative from the professional organization which represents the applicant; One (1) staff member from the Department of Education; and one (1) representative from the Chief School Officers organization.

#### 9.11 Application Procedures

9.11.1 The applicant shall secure the proper form from the local school district office, complete the form, and to return it to his/her school district office for transmittal to the State Office of Certification.

9.11.2 The applicant shall arrange for the appropriate authority or institution to provide verification, if needed, regarding graduate level of courses or any other information that might be needed to support his/her application for the Professional Growth Program.

9.11.3 Application for evaluation shall not be submitted prior to the completion of the Professional Growth Program.

9.11.4 A salary increment for the current fiscal year (July 1 - June 30) based upon approval of the application must be received in the State Office of Certification by June 1. This cut-off date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment. Applications received after this date will be approved effective the first day in the new fiscal year. No salary credit shall be retroactive into a prior fiscal year.

#### 10.0 Certification/National Board of Professional Teaching Standards

10.1 To be eligible to apply for national board certification (and, therefore, for the award) an individual shall:

10.1.1 Hold a baccalaureate degree from a regionally-accredited institution of higher education.

10.1.2 Verify the completion of at least three years of successful, full-time experience teaching in one or more elementary, middle-level, and/or secondary schools. Substitute teaching does not count for this experience.

10.1.3 Be currently employed in a Delaware public school.

#### 10.2 Application Procedures

10.2.1 By a date prescribed each year, teachers interested in applying for national certification shall request, complete, and return an Award Application to the State Office of Certification. If more than fifteen (15) applications are received in any given year, a total of fifteen applicants to receive the awards will be chosen by lottery.

10.2.2 The applicant shall complete the forms and return them to the State Office of Certification by the annual

deadline for processing and submission to the National Board. The application for national board certification shall be completed in full and returned before the individual can obtain the award specified in this policy.

10.2.3 The application for national board certification and the \$500.00 initial application fee shall be sent from the State Office of Certification directly to the National Board for Professional Teaching Standards.

10.2.4 As bills are sent to the teacher by the NBPTS for additional application fees and related costs up to a total of \$2,000.00, the teacher will forward the bills to the Office of Professional Standards and Certification for payment to the National Board.

10.2.5 A teacher may receive an award only one time for working toward national certification in a particular field/level.

10.2.6 Should a teacher/applicant be involved in another national board certification program like the Princeton Project, which also pays part of the fees for the national certification, this program will pay the other part of the fees and related costs up to the total of \$2,000.00 for all support.

10.2.7 The Documents that shall be submitted to complete the application and reporting process include the Award Application and the NBPTS Application.

10.3 Salary Adjustment: School district personnel offices shall verify for the State Office of Certification completion of national board certification by any teacher paid under 14 Del.C. §1305.

#### 11.0 Alternative Routes To Certification Program For Secondary Teachers

11.1 Eligibility for Participation in Program is defined in 14 Del.C. §1260.

11.2 Candidates employed for secondary teaching positions who do not meet the certification requirements for a limited standard or standard Delaware certificate and who do not meet the criteria will be issued a one-year temporary certificate and will be required to meet the Delaware certification requirements for the area in which they are teaching.

11.3 School districts or charter schools employing a secondary-level candidate for the alternative routes program must meet the criteria set forth in 14 Del.C. §1260.

11.4 The Alternative Routes to Certification Program shall be offered in three interrelated but distinct components — a summer institute of intensive study, a practicum experience the first year of teaching, and seminars in teaching during and immediately following the first year of teaching.

11.4.1 A summer institute of approximately 120 instructional (clock) hours completed by the candidate prior to the beginning of his/her teaching assignment. This includes an orientation to the policies, organization and

curriculum of the employing school district or Charter School, instructional strategies and classroom management and adolescent development.

~~11.4.1.1 Candidates employed too late to participate in the summer institute will complete the practicum experience and seminars on teaching during the first school year and will participate in the summer institute following their first year of teaching.~~

~~11.4.2A one year, full-time practicum experience which includes a period of intensive on-the-job mentoring and supervision beginning the first day in which the candidate assumes full responsibility for a classroom and continuing for a period of thirty (30) weeks.~~

~~11.4.3 Seminars on Teaching that provide alternative routes to certification teachers with approximately 120 instructional (clock) hours during the first year of their teaching assignment and during a one week intensive seminar the following summer.~~

~~11.4.4 Mentoring Support: Mentoring support shall be carried out in accordance with Section 1261 (b) (2) (3) of 14 Del. C.~~

~~11.4.5 Evaluation/Supervision: Evaluation/supervision shall be conducted as per Section 1261 (b) (2) (3) of 14 Del. C.~~

~~11.5 Program Evaluation: Those responsible for alternative routes to certification programs approved by the State Office of Certification shall develop a program evaluation process. The focus of the program evaluation must be to demonstrate the degree to which teachers who complete the program are effective in the classroom.~~

### **1505 Professional Growth Programs (Effective through 6/30/03 only)**

1.0 Content: This regulation shall apply to professional growth programs for educators, pursuant to 14 **Del. C.** § 1305.

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.

**"Graduate level course"** means any course to be used herein which is offered at a regionally accredited college or university that is considered graduate level at that institution.

**"Individual professional growth credits"** means individual activities (i.e., projects, travel, and work experience) which contribute to the professional growth of the school employee in his/her assignment.

**"In-service credit"** means credit offered by school districts, charter schools, Delaware educationally related organizations, the Department, or individual professional

growth programs and approved by the state in-service committee.

3.0 Three (3) in-service credits will be allowed for each activity, for a maximum of nine (9) individual professional growth credits. Individual professional growth credits must have the prior approval of the Department and the local employing school district superintendent or charter school principal. A written evaluation report by the individual earning the credit shall be required at the conclusion of the activity.

3.1 Credit Calculation: All credits must be expressed in terms of semester hours. College or university credits expressed in quarter hours and approved CEUs will be converted to semester hours by multiplying the number of quarter hours by two-thirds. In the case in-service credits, fifteen (15) clock hours of class time is considered the equivalent of one (1) credit. Credits earned for professional growth activities will be calculated in the same manner as in-service credits.

#### 3.2 Acceptable Grades

3.2.1 All grades for college-level credit submitted for a professional growth program must be a grade that earns a "C" or better from the granting institution. In the case of credits earned on a pass-fail basis, a grade of pass is acceptable.

#### 3.3 Acceptable Credits

3.3.1 Credits for the professional growth programs (B+15, B+30, M+15, M+30, M+45) shall be earned after the Bachelor's degree has been conferred. They may be graduate, undergraduate, or in-service. CEUs from regionally accredited colleges can also be used (1 CEU = 10 clock hours = 2/3 semester hour)

3.3.2 Up to nine (9) individual professional growth credits may be counted from the B+15 through the M+45.

3.3.3 Undergraduate and graduate credits must be earned at regionally accredited institutions of higher learning. Any credits not counted toward a graduate degree shall be counted in the B+15, B+30, M+15, M+30, M+45 programs.

3.3.4 Undergraduate, in-service, and individual professional growth credits shall have the prior approval of the employing local district superintendent/designee before submission to the State Office of Certification. These credits shall be relevant and usable to the applying employee.

3.3.5 For Trade and Industry teachers, a Bachelor's degree equivalent shall be two years of college and six years of work experience (14 **Del. C.**, § 1301).

3.4 Salary Increment: An applicant shall hold a Delaware Standard or Limited Standard license before a Professional Growth Program salary increment can be approved.

3.5 Admittance to Graduate School: Applicants for a



professional growth program need not be admitted to a graduate school in order to have graduate level courses accepted for these programs.

### 3.6 Acceptable Professional Degrees

3.6.1 Professional degrees earned in areas other than professional education will not be accepted for the professional growth program unless the degree is directly related to an area of specialty in which the individual is employed.

3.6.2 To be counted for the professional growth program, a degree for any individual involved in instruction, curriculum, or the supervision of instruction must be a degree in professional education.

3.6.3 Individual courses in any area may be considered for acceptance in the professional growth program upon receipt of a written rationale from the applicant with an endorsement by his/her local employing school district superintendent.

3.7 Usable Credits: All credits and programs to be accepted for the professional growth program/state supported salary increments shall be relevant and usable to the professional school employee and may be approved or disapproved by the local employing school district superintendent.

3.8 Excess Graduate Level Credits: Graduate level credits earned after a Bachelor's degree or before earning a Master's degree may be used in the B+15 and the B+30 professional growth programs so long as the same credit is used only one time. Credits earned in excess of those required for the Master's degree by the granting institution can be used in a M+15, M+30 and M+45 professional growth program.

### 3.9 Effective Date of Salary Adjustment

3.9.1 The salary adjustment shall be made after the evaluation and approval of the candidate's application by the Office of Professional Accountability. The adjustment will be authorized to be made retroactive to the first of the month following the date certified by transcript, official grade slip, or approved in-service slip, as to when the program or credit was completed.

3.9.2 Retroactive salary adjustment may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or state fiscal officers.

3.10 Appeals Committee: A committee shall be called to review and make recommendations regarding an appeal that may result as these rules are administered. The committee shall include the following: One (1) representative from the professional organization which represents the applicant, One (1) staff member from the Department; and one (1) representative from the Chief School Officers organization.

### 3.11 Application Procedures

3.11.1 The applicant shall secure the proper form

from the local school district office, complete the form, and to return it to his/her school district office for transmittal to the Office of Professional Accountability.

3.11.2 The applicant shall arrange for the appropriate authority or institution to provide verification, if needed, regarding graduate level of courses or any other information that might be needed to support his/her application for the professional growth program.

3.11.3 Application for evaluation shall not be submitted prior to the completion of the professional growth program.

3.12 A salary increment for fiscal year 2004 (July 1 - June 30) based upon approval of the application must be received in the Office of Professional Accountability by June 1. This cut-off date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment. No salary credit shall be retroactive into a prior fiscal year.

## **1510 Issuance Of Initial License Issuance Of Initial License**

1.0 Content: This regulation shall apply to the issuance of an initial license for educators, pursuant to 14 Del. C. § 1210.

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

"Alternative Routes to Licensure and Certification" means programs approved by the Department of Education to certify or license candidates who hold bachelors degrees with a major in a particular content area, but who did not complete a nationally accredited educator preparation program.

"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 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 general knowledge" means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing.

"Exigent circumstances" means unanticipated circumstances or circumstances beyond the educator's control, including, but not limited to, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator's temporarily leaving active service.

“Induction” means a required set of activities, including mentoring and other professional development, in which a holder of an initial license must engage during the three-year term of the initial license.

“Jurisdiction” means a state, territory or country.

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

“Novice applicant” means an applicant who has not previously held an initial license in Delaware.

“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.

“Student teaching program” means a program accredited by the National Association of State Directors of Teacher Education and Certification or the National Council for the Accreditation of Teacher Education, which includes traditional student teaching programs, or such alternatives as seemed appropriate to the program, such as supervised internships or other field based experience recognized as a required component of the accredited educator preparation program.

3.0 In accordance with 14 **Del. C.** § 1210, the Department shall issue an initial license to a novice applicant who submits evidence of (1) receipt of a bachelors degree from a regionally accredited 4-year college or university; (2) completion of a student teaching program or enrollment in an Alternative Routes to Licensure and Certification program, and (3) a passing score on an examination of general knowledge, such as Praxis I, or such other alternative as may be established by the Standards Board, with the approval of the State Board. An initial license shall also be issued to an applicant currently licensed as an educator in another jurisdiction or to an applicant who previously held a valid Delaware standard or professional status certificate who has been out of the profession for more than three years. In addition to an initial license, applicants must also apply for a standard certificate in the particular area, subject, or category in which they wish to be employed, and must verify that they possess the prescribed knowledge, skill and/or education to practice in that area, subject, or category. (See 14 DE Admin. Code 1516).

3.1 An applicant for an initial license shall submit the approved application form, official transcripts, and official scores on an examination of general knowledge to the Department.

3.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an

unopened, unaltered envelope.

3.2 Examination of General Knowledge Requirements

3.2.1 An applicant seeking initial licensure in Delaware shall provide the Department with official test scores for one or more of the following tests of essential skills in reading, writing and mathematics: the PRAXIS I Tests or such alternatives as set forth in 3.2.4 below.

3.2.2 Scores of Examinations of General Knowledge.

3.2.2.1 The following minimum passing scores are required in the areas of reading, writing and mathematics for each of the examinations of essential skills.

3.2.2.1.1 Pre-professional Skills Test Taken between 7/1/83 and 10/22/93: reading - 175, mathematics - 175, writing - 172.

3.2.2.1.2 PRAXIS I - Paper and Pencil Tests (Tests taken on 10/23/93 and thereafter) and computerized pre-professional skills tests taken 1/1/02 and thereafter: reading - 175, mathematics - 174, writing - 173.

3.2.2.1.3 PRAXIS I - Computer Based Tests (Tests taken between 10/23/93 and 12/31/02): reading - 322, mathematics - 319, writing - 319.

3.2.3 Individuals holding Delaware certificates issued prior to July 1, 1983 are exempt from the testing requirements.

3.2.4 Acceptable alternatives to the PRAXIS I test scores include:

3.2.4.1 Scores from the California Test of Basic Skills (CTBS) shall be accepted in lieu of PPST/PRAXIS I scores if the test was taken as a condition of meeting certification or licensure requirements in that state and the scores total 123, with a minimum of at least 37 in each category.

3.2.4.2 Scholastic Aptitude Tests (SAT) taken after 4/1/95 and presented for exemption must meet the scores set forth below due to a re-centering of the SAT.

3.2.4.2.1 A minimum score of 520 on the SAT Mathematics taken prior to 4/1/95, and a minimum score of 540 on the SAT Mathematics test taken thereafter will be accepted as fulfillment of the Praxis I Mathematics requirement.

3.2.4.2.2 A minimum score of 480 on the SAT Verbal test taken prior to 4/1/95, and a minimum score of 560 on the SAT verbal test taken thereafter will be accepted as fulfillment of the Praxis I reading requirement.

3.2.4.3 Graduate Record Examination (GRE) scores presented for exemption must meet the scores set forth below.

3.2.4.3.1 A minimum score of 490 on the Graduate Record Examination (GRE) Verbal test will be accepted as fulfillment of the Praxis I reading requirement.

3.2.4.3.2 A minimum score of 540 on the Graduate Record Examination (GRE) Quantitative test will be accepted as fulfillment of the Praxis I mathematics

requirement.

3.2.4.4 National Teacher Examination (NTE) Core Battery Communications Skills with a minimum score of 670 will be accepted as fulfillment of the Praxis I writing requirement.

3.2.5 Any Scholastic Aptitude Test (SAT) scores, Graduate Records Exam (GRE) scores or NTE Communication Skills scores intended to be used as an exemption for the PPST/PRAXIS I, shall be submitted within the same timeline as that required for Praxis I and scores must pre-date the employment date.

3.2.6 Timeline for Examination of General Knowledge.

3.2.6.1 An applicant for an initial license must pass Praxis I or an approved alternative within three (3) months of the date of employment or by May 1 of the educator's first year of employment, whichever is later. An initial license issued without the passage of Praxis I shall be suspended on the last day of the school year during which the license was issued if proof of passage of Praxis I has not been provided. This suspension shall remain in effect until the license holder passes Praxis I or until the initial license expires, whichever first occurs.

3.2.6.2 An applicant in a vocational trade and industry area must pass Praxis I or an approved alternative within six (6) years of the date of employment or before the expiration of the initial license, whichever is later.

3.2.7 There is no limit on the number of times an individual may take the PPST/PRAXIS I. Once passed, a section need not be taken again.

3.2.7.1 Passing scores in each area (reading, writing, mathematics) may be attained in any testing format.

3.2.8 Submission of Scores of Examination of General Knowledge.

3.2.8.1 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the Department.

3.2.8.2 Unopened, unaltered envelopes containing PPST/PRAXIS I scores, or scores of acceptable alternatives, sent to the individual may be accepted as official. The Department shall determine whether the scores as presented are acceptable.

3.2.8.3 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Department. This method will be accepted only when official test scores from Educational Testing Service are not available.

4.0 An initial license is valid for three (3) years, unless revoked, and may not be renewed. Notwithstanding the foregoing, an initial license issued to an applicant in a vocational trade and industry area is valid for up to six (6) years to provide time for completion of specified college

level course work required for certification.

4.1 During the term of the initial license, license holders are required to participate in mentoring and other prescribed professional development activities offered by the Department and by the school district or charter school in which they are employed.

5.0 Applicants with foreign credentials.

5.1 Applicants graduating from foreign institutions shall provide an analysis of the degree equivalency, along with all other required application materials, which shall be reviewed by the Department.

6.0 The Department may extend an initial license for a period not to exceed one (1) year, exigent circumstances warranting the necessity of such extension.

7.0 An educator may take a leave of absence of up to three (3) years with no effect upon the validity or expiration of the initial license.

8.0 An applicant shall disclose his or her criminal conviction history upon application for an initial license. Failure to disclose a criminal conviction history is grounds for denial or revocation of an initial license as specified in 14 Del. C. § 1219.

9.0 This regulation shall apply to all requests for issuance of an initial license, except as specifically addressed herein.

9.1 Educators whose applications for certification in Delaware were received prior to May 15, 2003, and whose applications and credentials have been reviewed by the Department and resulted in the issuance of an evaluation or prescription letter shall be required to meet the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations as adopted for certification effective July 1, 1993.

9.2 Educators employed on a Limited Standard Certificate shall continue on that certificate until the requirements specified are met or the certificate expires, whichever comes first. In no case shall a Limited Standard Certificate be valid after July 1, 2006.

### **1513 Denial Of Licenses**

1.0 Content: This regulation shall apply to the denial of an initial license, continuing license and/or advanced license for educators, pursuant to 14 Del. C. § 1217.

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

“Advanced license” means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. §

1213 and § 1214.

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

**“Continuing license”** means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1211 and §1212.

**“Good moral character”** means conduct which is consistent with the rules and principles of morality expected of an educator.

**“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 or otherwise.

**“Initial license”** means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1210.

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

**“Standards Board”** means the Professional Standards Board established pursuant to 14 Del. C. § 1205.

**“State”** means the State of Delaware.

**“Unfit”** means lack of good moral character, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

3.0 Upon a finding that an applicant is unfit to be licensed in the State, the Department may refuse to issue an initial license, continuing license or an advanced license to an applicant who otherwise meets the requirements set forth in 14 DE Admin. Code 1510, 1511, and 1512.

3.1 The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days.

3.2 An applicant who is denied an initial, continuing, or advanced license may appeal the decision, and is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with the Standard Board’s Hearing Procedures and Rules.

4.0 Notwithstanding any other provisions stated herein or in 14 DE Admin. Code 1510, 1511, and 1512, no license shall be issued to an applicant for an initial, continuing or advanced license if:

4.1 There is legal evidence that the applicant is not of good moral character; or

4.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

## 1514 Revocation Of Licenses

1.0 Content: This regulation shall apply to the revocation of an initial license, continuing license and/or advanced license for educators, pursuant to 14 Del. C. § 1218.

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

**“Advanced license”** means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1213 and 1214.

**“Continuing license”** means a license issued as part of the three-tiered license system set forth in 14 Del. C. § 1211 and 1212.

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

**“Dismissal”** means (1) dismissal by a school board or board of directors where the license holder is employed by a public school district or a charter school for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty; or (2) the license holder’s voluntary resignation of employment in the face of disciplinary action for immorality; or (3) the license holder’s conviction of a crime which is evidence of immorality.

**“Educator”** means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers and administrators, and s otherwise defined by the Standards Board and the State Board pursuant to 14 Del. C., § 1203, but does not include substitute teachers.

**“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 or otherwise.

**“Initial license”** means a license issued as part of the three-tiered licensure system set forth in 14 Del. C. § 1210.

**“License holder”** or “licensee” means any individual who holds an initial license, continuing license and/or advanced license, and until a continuing license is issued, a limited standard, standard, or professional status certificate.

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

**“Standards Board”** means the Professional Standards Board established pursuant to 14 Del. C. § 1205.

**“State”** means the State of Delaware.

3.0 An initial, continuing or advanced license may be revoked upon the dismissal of the license holder for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty, and must be revoked upon a finding that the license holder made a materially false or misleading statement in his or her license application.

**3.1 Revocation Requested by a School District**

3.1.1 When any license holder is dismissed by a school board or board of directors for immorality, the board making such a determination pursuant to 14 Del. C. shall, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual's license.

3.1.2 When any license holder is dismissed by a school board or board of directors for misconduct in office, incompetence, willful neglect of duty or disloyalty, the board making such a determination pursuant to 14 Del. C. may, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual's license.

3.1.3 When a license holder employed by a school board or board of directors voluntarily resigns in the face of disciplinary action for immorality and an investigation has been initiated by the school board or board of directors, the board shall, upon accepting the resignation, give written notice to the Secretary.

3.1.4 Upon receipt of written notification from the school board or board of directors, the Secretary shall give written notice to the license holder of the intended revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

3.1.5 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license.

**3.2 Revocation by the Secretary of Education**

3.2.1 The Secretary may initiate proceedings to revoke a license holder's license when she/he has good reason to believe that any of the following circumstances exist:

3.2.1.1 The license holder has been convicted of a crime which is evidence of immorality;

3.2.1.2 The license holder who is not employed by a public school district or charter school has voluntarily resigned his/her employment in the face of an open investigation for immorality; or

3.2.1.3 The license holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty or falsification of credentials.

3.2.2 The Secretary shall give written notice to the license holder of the intended revocation and the reasons therefor. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

3.2.3 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license.

**4.0 Duty of license holder to report.**

4.1 Notwithstanding any other provisions stated herein, a license holder shall send written notification to the Secretary within thirty (30) days of the happening of any of the following events:

4.1.1 The license holder is dismissed by a school board or board of directors for immorality;

4.1.2 The license holder voluntarily resigns employment in the face of disciplinary action for immorality and/or an open investigation for immorality;

4.1.3 The license holder is convicted of a crime which is evidence of immorality; or

4.1.4 The license holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty, disloyalty or falsification of records.

4.2 The failure of the license holder to report any of the above events to the Secretary of Education shall be grounds for revoking a license.

**1515 Emergency Certificate**

1.0 Content: This regulation shall apply to the issuance of an emergency certificate, pursuant to 14 Del. C. § 1221.

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

"Certified" means holding a certificate in a specific content area at designated grade levels.

"Department" means the Delaware Department of Education.

"Emergency certificate" means a certificate issued to an educator who holds a valid Delaware initial, continuing, or advanced license, but lacks necessary skills and knowledge to meet certification requirements in a specific content area.

"Employing district" means a school district or charter school that proposes to employ an educator under an emergency certificate.

"Satisfactory evaluation" means an overall rating of "basic" or higher on an annual DPAS summative evaluation.

"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.

3.0 Upon request from the employing district, the Department may issue an emergency certificate, valid for up

to three years, to an educator who holds a valid Delaware initial, continuing, or advanced license, but who is not eligible for certification in the area of need. An emergency certificate may not be renewed.

3.1 In its request for the issuance of an emergency certificate, the employing district must:

3.1.1 Document its efforts to hire a certified educator by supplying the Department with copies of job postings, recruitment efforts, and advertisements.

3.1.2 provide evidence that the vacancy cannot be filled by a certified educator by reassigning an educator already in the district's employ.

3.1.3 Establish that the proposed recipient of an emergency certificate is competent by submitting evidence of the educator's license and other qualifications which the employing district applied in determining the proposed recipient's competence.

3.1.4 Set forth a written plan to support and assist the proposed recipient in achieving the skills and knowledge necessary to meet the applicable certification requirements.

3.2 Failure by the employing district to fulfill the conditions set forth in 3.1 above will result in denial of the emergency certificate.

4.0 At the end of each school year during which an emergency certificate is in effect, the employing district shall file a status report with the Department, which shall:

4.1 Establish that the recipient of the emergency certificate has demonstrated competence through receiving a satisfactory evaluation on the Delaware Performance Appraisal System.

4.2 Document the progress made by the recipient of the emergency certificate toward fulfilling the plan established by the employing district to meet the applicable certification requirements.

4.3 Failure by the employing district to fulfill the conditions set forth in 4.1 and 4.2 above will result in suspension of the emergency certificate.

5.0 Prior to the expiration of an emergency certificate, the recipient must meet the requirements for issuance of a standard certificate (See 14 DE Admin. Code 1516).

### **1516 Standard Certificate**

1.0 Content: This regulation shall apply to the issuance of a standard certificate, pursuant to 14 Del. C. § 1220.

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

"**Certified**" means holding a certificate in a specific

content area at designated grade levels.

"**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 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 an 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 standard certificate to an educator who holds a valid Delaware initial, continuing, or advanced license who has 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. Educators may hold certificates in more than one area.

3.1 An educator may document the acquisition of 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 achieving a passing score on an examination of content knowledge, such as Praxis II. This section is subject to the establishment of passing scores for Praxis II examinations by the Department, and their approval by the Professional Standards Board, with concurrence from the State Board of Education.

3.1.1 National Board for Professional Teaching Standards in the area, subject, or category in which the standard certificate is to be issued will be accepted in lieu of a passing score on Praxis II.

3.1.2 In areas, subjects or categories where an examination of content knowledge is neither available nor applicable, the applicant must meet the requirements set forth in the relevant Department regulation governing the issuance of a standard certificate in the area for which a standard certificate is sought.

4.0 An applicant for a standard certificate shall submit evidence of (1) receipt of a bachelors degree from a regionally accredited 4-year college or university; (2) official transcripts and, if applicable, official scores on the Praxis II examination or a notarized copy of the National Board for Professional Teaching Standards Certificate. 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.

4.1 If an applicant holds a valid initial, continuing, or advanced Delaware license 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.

5.0 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 May 15, 2003 shall be issued a Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate. The Department shall also recognize a limited standard certificate issued prior to May 15, 2003, provided that the educator successfully completes the requirements set forth in the limited standard certificate. Requirements must be completed by the expiration date of the limited standard certificate.

6.0 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 may be revoked in accordance with 14 DE Admin. Code 1514.

### **1519 Alternative Routes To Teacher Licensure And Certification Program**

1.0 Content: This regulation shall apply to the alternative routes to licensure and certification program, pursuant to 14 Del. C. §§ 1260 through 1264.

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., Chapter 12, and includes teachers 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.

**“Emergency certificate”** means a certificate issued to an educator who holds a valid Delaware initial, continuing, or advanced license, but lacks necessary skills and knowledge to meet certification requirements in a specific content area.

**“Examination of general knowledge”** means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing.

**“Initial license”** means the first license issued to an educator that allows an educator to work in a position requiring a license in a Delaware public school.

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

**“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.

**“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 Candidates seeking participation in the alternative routes for teacher licensure and certification program shall be issued an initial license and a standard or emergency certificate or certificates of no more than three years duration. Candidates must:

3.1 hold a bachelor’s degree from an accredited college or university in a major appropriate to the instructional field they desire to teach;

3.2 pass an examination of general knowledge, such as PRAXIS I, or provide an acceptable alternative to the PRAXIS I test scores, as set forth in DE. Admin. Code 1510.

3.3 obtain an acceptable health clearance and an acceptable criminal background check clearance

3.4 obtain and accept an offer of employment in a position that requires licensure and certification.

4.0 The Alternative Routes to Teacher Licensure and Certification Program shall consist of three interrelated but distinct components - a summer institute of intensive study, a practicum experience the first year of teaching, and seminars in teaching during and, immediately following, the first year of teaching.

4.1 A summer institute of approximately 120 instructional (clock) hours completed by the candidate prior to the beginning of his/her teaching assignment. This includes an orientation to the policies, organization and curriculum of the employing school district or charter school, instructional strategies and classroom management and adolescent development.

4.2 Candidates employed too late to participate in the summer institute will complete the practicum experience and

seminars on teaching during the first school year and will participate in the summer institute following their first year of teaching.

4.3 A one-year, full-time practicum experience which includes a period of intensive on-the-job mentoring and supervision beginning the first day in which the candidate assumes full responsibility for a classroom and continuing for a period of thirty (30) weeks.

4.4 Seminars on teaching that provide alternative routes to licensure and certification teachers with approximately 120 instructional (clock) hours during the first year of their teaching assignment and during a one week intensive seminar the following summer.

4.5 Mentoring Support: Mentoring support shall be carried out in accordance with Section 1261 (b) (2) and (3) of 14 Del. C.

4.6 Evaluation/Supervision: Evaluation/supervision shall be conducted as per Section 1261 (b) (2) (3) of 14 Del. C.

5.0 Program Evaluation: Those responsible for alternative routes to certification programs approved by the Standards Board and the State Board shall develop a program evaluation process. The focus of the program evaluation must be to demonstrate the degree to which teachers who complete the program are effective in the classroom.

6.0 The Secretary may implement other alternative routes to teacher licensure and certification programs, provided the programs meet the minimum criteria set forth in this regulation.

### **1520 Substitute Teacher**

1.0 Content: This regulation shall apply to the issuance of a license for substitute teachers, pursuant to 14 Del. C., § 1230.

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

“Educator” means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 Del. C., § 1203, but does not include substitutes.

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

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

“Substitute” means an individual who serves on a day-to-day or long-term basis in a class in the absence of the educator.

3.0 Substitute Teacher (14 Del. C., § 1230)

3.1 Classifications for substitute licenses.

3.1.1 Class A: A Class A license may be issued to an applicant who holds a valid Delaware teacher’s license or such a license that has expired. The applicant is not required to take refresher courses for issuance of a substitute’s license.

3.1.2 Class B: A Class B license may be issued to an applicant with or without a bachelor’s degree who meets at least the requirements for an emergency certificate as set forth in 14 Del. C., §§ 1313 and 1315.

3.1.3 Class C: A Class C license may be issued to an applicant who is not eligible for either Class A or Class B licensure but who is recommended to the Secretary by the chief school officer of a Delaware school district or charter school.

3.1.4 Class D: A Class D license may be issued to an applicant who is eligible for, or holds, a Class A, B, or C license, but who prefers on a given date to perform substitute teaching assignments as a volunteer worker, or at a wage rate to be determined by the Board of Education of the employing school district.

3.2 A school district or charter school may employ a retired teacher to be a substitute teacher within that district or charter school. Such employment shall not decrease nor increase, nor adversely affect, the retired person’s pension.

3.2.1 The retired teacher will be paid regular substitute teacher pay.

4.0 An applicant shall disclose his or her criminal conviction history upon application for a license as a substitute teacher. Failure to disclose a criminal conviction history is grounds for denial or revocation of a substitute teacher license as specified in 14 Del. Code, § 1219.

5.0 An applicant shall obtain an acceptable health clearance.

---

### **PROFESSIONAL STANDARDS BOARD**

#### **Educational Impact Analysis Pursuant To 14 Del. C. Section 122 (D)**

**302 Certification Administrative– Superintendent**

**304 Certification Administrative – Assistant**

**Superintendent for Curriculum**

**311 Certification Administrative – Elementary School**

**Principal or Assistant Principal**

**312 Certification Administrative – Secondary School**

**Principal or Assistant Principal**

**313 Certification Administrative – Principal of a School**

**for Children with Disabilities**

**1535 Certification Administrative – Administrative**



**Assistant****1536 Certification Administrative – Director****1538 Certification Administrative – Supervisor****A. Type Of Regulatory Action Requested**

Amendment to Existing Regulation

**B. Synopsis Of Subject Matter Of Regulation**

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to amend the following regulations:

302 Certification Administrative – Superintendent

304 Certification Administrative – Assistant Superintendent for Curriculum

311 Certification Administrative – Elementary School Principal or Assistant Principal

312 Certification Administrative – Secondary School Principal or Assistant Principal

313 Certification Administrative – Principal of a School for Children with Disabilities

1535 Certification Administrative – Administrative Assistant

1536 Certification Administrative – Director

1538 Certification Administrative – Supervisor

It is necessary to amend these regulations in order to comply with changes in statute regarding the licensure and certification of educators. Further, by amending these regulations, the number of regulations will be reduced from eight to three, thereby furthering the goal of reducing the number and complexity of regulations. These regulations were previously published in the October, 2002, Register of Regulations. Comments received during the public comment period of the previous publication of these regulations have been addressed. Principal of an adult education program has been removed. These regulations address only pK-12 schools and do not address adult education programs. Concerns about special qualifications for principals of schools for exceptional children have also been addressed.

Regulations 311 Certification Administrative – Elementary School Principal or Assistant Principal, 312 Certification Administrative – Secondary School Principal or Assistant Principal, and 313 Certification Administrative – Principal of a School for Children with Disabilities will be amended by deleting them in their entirety and replacing them with regulation 1530 Certification Administrative – School Principal. This amended regulation is aligned with the Delaware Administrator Standards and acknowledges the core of skills and knowledge required for school leaders. The amended regulation also reflects current research in school leadership and is consistent with leader training and preparation programs being delivered and/or developed in

the State of Delaware.

Regulations 1535 Certification Administrative – Administrative Assistant, 1536 Certification Administrative – Director, and 1538 Certification Administrative – Supervisor will be amended by deleting them in their entirety and replacing them with regulation 1531 Certification Administrative – School Leader I.. This amended regulation is aligned with the Delaware Administrator Standards and acknowledges the core of skills and knowledge required for school leaders. The amended regulation also reflects current research in school leadership and is consistent with leader training and preparation programs being delivered and/or developed in the State of Delaware. Further, the amended regulation acknowledges the expanded skill and knowledge required at a broader level than the school building level.

Regulations 302 Certification Administrative – Superintendent and 304 Certification Administrative – Assistant Superintendent for Curriculum will be amended by deleting them in their entirety and replacing them with regulation 1532 Certification Administrative – School Leader II. This amended regulation is aligned with the Delaware Administrator Standards and acknowledges the core of skills and knowledge required for school leaders. The amended regulation also reflects current research in school leadership and is consistent with leader training and preparation programs being delivered and/or developed in the State of Delaware. Further, the amended regulation acknowledges the expanded and deeper skill and knowledge required to exercise leadership as a chief school officer or assistant.

**C. Impact Criteria**

1. Will the amended regulations help improve student achievement as measured against state achievement standards? The amended regulations address student achievement by educational leaders support and lead Delaware educators and establish and sustain positive environments which encourage high student achievement.

2. Will the amended regulations help ensure that all students receive an equitable education? The amended and new regulations helps to ensure that all school administrators hired to lead buildings or districts meet high standards for certification.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected? The amended regulations address educator certification. Regulations concerning high standards and appropriate credentials and training for school leaders help to ensure that all students' health and safety are adequately protected.

4. Will the amended regulations help to ensure that all students' legal rights are respected? The amended regulations address school leader certification, not students' legal rights. Appropriate credentials and training for school

leaders will help to ensure that all students' legal rights are respected.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level. By reducing the number and complexity of the regulations, decision makers at the local board and school level will have greater authority and flexibility.

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

7. Will decision making authority and accountability for addressing the subjects to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subjects to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulations? *14 Del. C.* requires that we promulgate these regulations.

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

### ~~311 Certification Administrative Elementary School Principal Or Assistant Principal~~

Effective July 1, 1993

~~1.0 The following shall be required for the Standard License for the principal of a building containing any combination of grades K-8 designated as an elementary school, and is valid for a principal of a middle level school:~~

#### ~~1.1 Degree required~~

~~1.1.1 Master's degree from a regionally accredited college and,~~

#### ~~1.2 Experience~~

~~1.2.1A minimum of three years of successful, full-time classroom teaching experience at the elementary level or two years of elementary classroom teaching experience, as specified, and a one-year internship in Administration at the elementary level and,~~

#### ~~1.3 Specialized Professional Preparation~~

~~1.3.1 Master's degree from a regionally accredited college with an approved program in Elementary School Administration and,~~

~~1.3.2A minimum of three semester hours in each of the following areas:~~

##### ~~1.3.2.1 Child Development~~

~~1.3.2.2 Methods of Teaching Reading at the elementary level~~

~~1.3.2.3 Methods of Teaching Mathematics at the elementary level or,~~

~~1.3.3 Completion of any graduate program in Elementary School Administration and,~~

~~1.3.4A minimum of three semester hours in each of the following areas:~~

##### ~~1.3.4.1 Child Development~~

~~1.3.4.2 Methods of Teaching Reading at the elementary level~~

~~1.3.4.3 Methods of Teaching Mathematics at the elementary level or,~~

##### ~~1.3.5A Master's degree in any field and,~~

~~1.3.6A three semester hour graduate level course in each of the following areas:~~

##### ~~1.3.6.1 Elementary School Administration~~

##### ~~1.3.6.2 Supervision/Evaluation of Staff~~

##### ~~1.3.6.3 Curriculum Development~~

##### ~~1.3.6.4 School Business Management~~

##### ~~1.3.6.5 School Law/Legal Issues in Education~~

##### ~~1.3.6.6 Human Relations and~~

~~1.3.7A minimum of three semester hours in each of the following areas:~~

##### ~~1.3.7.1 Child Development~~

~~1.3.7.2 Methods of Teaching Reading at elementary level~~

~~1.3.7.3 Methods of Teaching Mathematics at elementary level~~

~~(The requirements specified in 1.3.1 and 1.3.2 and 1.3.3. may be met by previously taken undergraduate coursework or through undergraduate or graduate level coursework taken specifically to meet these requirements.)~~

~~2.0 The following shall be required for the Limited Standard License:~~

~~2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.~~

2.2 Master's degree from a regionally accredited college and;

2.3 Meets requirements listed in 1.2 and;

2.4 Within six semester hours of the coursework specified in 1.3.2 or 1.3.4 or 1.3.6 and 1.3.7.

3.0 Licenses that may be issues for this position include Standard and Limited Standard.

**~~312 Certification Administrative Secondary School Principal Or Assistant Principal~~**

Effective July 1, 1993

1.0 The following shall be required for the Standard License for the principal of a building containing grades 7-12 designated as a junior high school, high school, vocational high school or a senior high school. Valid for a principal of a middle level school.

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and;

1.2 Experience

1.2.1 Minimum of three years successful, full-time classroom teaching experience at the secondary level or two years of successful, full-time secondary classroom teaching experience and a one year internship in School Administration at the secondary level and;

1.3 Specialized Professional Preparation

1.3.1 Master's degree from an accredited college in an approved program for Secondary School Administration; and

1.3.2A minimum of three semester hours of Adolescent Development, if not taken at the undergraduate level or;

1.3.3 Completion of a graduate program in Secondary School Administration and;

1.3.4A minimum of three semester hours of Adolescent Development, if not taken at the undergraduate level or;

1.3.5A Master's degree in any field and;

1.3.6A three semester hour graduate level course in each of the following areas

1.3.6.1 Secondary School Administration

1.3.6.2 Supervision/Evaluation of Staff

1.3.6.3 Curriculum Development

1.3.6.4 School Business Management

1.3.6.5 School Law/Legal Issues in Education

1.3.6.6 Human Relations

1.3.6.7 Three semester hours Adolescent Development, taken at the graduate or undergraduate level.

2.0 The following shall be required for the Limited Standard License:

2.1 The Limited Standard License may be issued for a

period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License as in 1.0.

2.1.1 Master's degree from a regionally accredited college and;

2.1.2 Meets the requirements in 1.2 and;

2.1.3 Within six semester hours of the completion of the coursework in 1.3.6.

3.0 Licenses that may be issues for this position include Standard and Limited Standard.

**~~313 Certification Administrative Principal Of A School For Children With Disabilities~~**

Effective July 1, 1993

1.0 The following shall be required for the Standard License for a principal of a school for children with disabilities:

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and;

1.2 Experience

1.2.1 Three years of full-time, successful classroom experience as a teacher of children with disabilities, while holding a Standard License to teach children with disabilities. Standard certification is limited to these areas of special education: LD, SED, MD, VI, HI, PI, Autistic/ Severely Disabled and combinations thereof and;

1.3 Specialized Professional Preparation

1.3.1A Master's degree in any field from a regionally accredited college; and

1.3.2The individual shall meet the State of Delaware's requirement for Standard certification as an Elementary or Secondary School Principal; and

1.3.3The individual shall hold, or be eligible to hold a Standard License as a teacher of exceptional children LD, SED, MD, VI, HI, PI, Autistic or Severely Disabled and combinations thereof.

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Meets all requirements in 1.1, 1.2, 1.3.1 and;

2.1.2 Within six semester hours of meeting the requirement in 1.3.2.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

**Regulation 1530 Certification Administrative - School Principal/Assistant Principal**

1.0 This regulation shall apply to the issuance of a standard certificate for school principal and assistant principal, pursuant to 14 **Del. C.** § 1220.

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

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

"**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.

3.0 The following shall be required for the Standard Certificate for the principal or assistant principal 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 a regionally accredited college, or

3.1.2 A master's degree in education from a regionally accredited college and a current principal or assistant principal certificate from another state, or

3.1.3 A master's degree in any field from a regionally accredited college 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 standard 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: School Administration (at the level to be initially assigned), Supervision/ Evaluation of Staff, Curriculum Development, School Business Management, School Law/Legal Issues in Education, Human Relations, and 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 classroom teaching experience at the level to be initially

assigned as a school principal or assistant principal, except at the middle level, where the classroom teaching experience may be at any pK-12 level, or as a principal or assistant principal of a school for exceptional students, where the classroom teaching experience must have been with one or more of the categories of exceptional children served by the school.

**~~1535 Certification Administrative - Administrative Assistant~~**

~~Effective October 11, 2001~~

~~1.0 The f1535 (formerly 305) Certification Administrative - Administrative Assistant following shall be required for the Standard License~~

~~1.1 Degree required~~

~~1.1.1 Master's degree from a regionally accredited college and,~~

~~1.2 Experience~~

~~1.2.1 A minimum of three years of successful, full-time classroom teaching experience, or three years of administrative experience, and,~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 Specific training or satisfactory experience including an internship and/or fieldwork in the area in which employed.~~

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.~~

~~2.1.1 Master's degree from an accredited college and,~~

~~2.1.1.1 Meets the requirements of 1.2 and,~~

~~2.1.1.2 Within six semester hours of meeting the requirements as specified in 1.3.~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

~~See 5 DE Reg. 856 (10/1/01)~~

**~~1536 Certification Administrative - Director~~**

~~Effective October 11, 2001~~

~~1.0 The foll1536 (formerly 306) Certification Administrative - Director owing shall be required for the Standard License for persons employed to be responsible for the administration of specialized instructional areas.~~

~~1.1 Degree required~~

~~1.1.1 Master's degree plus thirty semester hours of graduate level coursework from a regionally accredited~~

college(s) and;

1.2 Experience

1.2.1A minimum of three years of successful, full-time classroom teaching experience or;

1.2.2A minimum of three years of successful, full-time administrative experience in the specific area to be directed, within a school system or;

1.3 Specialized Professional Preparation

1.3.1 Master's degree plus thirty semester hours of graduate level coursework from a regionally accredited college(s) with a major in Educational Supervision and Curriculum or Educational Administration or Educational Leadership, or Human Resource Management; and Twenty-one semester hours of graduate level coursework specific to the area to be directed or;

1.3.2 Master's degree in any field plus thirty semester hours of graduate level coursework from a regionally accredited college(s) to include the following graduate level coursework:

1.3.2.1A minimum of twenty-one semester hours of graduate level coursework specific to the area to be directed and;

1.3.2.2A minimum of twenty-one semester hours of graduate level coursework in the area of administration, to include at least one course in each of the following areas:

1.3.2.2.1 Curriculum Development and Instruction

1.3.2.2.2 Supervision/Evaluation of Staff

1.3.2.2.3 School Business Management

1.3.2.2.4 School Law/Legal Issues in

Education

1.3.2.2.5 Human Resource Management

1.3.2.2.6 Human Development (to include child/adolescent development)

1.3.2.2.7 Organizational Management

(NOTE: Any of the requirements listed in 1.3.1. or 1.3.2 may be met by coursework taken either within or in addition to the Master's degree plus thirty semester hours.)

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Master's degree plus thirty semester hours of graduate level coursework from a regionally accredited college; and

2.1.2 Meets all experience requirements in 1.2 and

2.1.3 Meets the Specialized Professional Preparation requirement in the specialized area 1.3.2.1 and is within six semester hours of meeting the administrative

coursework in 1.3.2.1.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

**See 5 DE Reg. 856 (10/1/01)**

~~1538 Certification Administrative Supervisor Effective October 11, 2001~~

1.0 The ~~fol~~1538 (formerly 308) Certification Administrative Supervisor ~~lowing~~ shall be required for the Standard License for persons employed to be responsible for the administration of specialized areas.

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and;

1.2 Experience

1.2.1A minimum of three years of successful, full-time classroom teaching experience in the instructional area to be supervised and;

1.3 Specialized Professional Preparation

1.3.1 Master's degree from a regionally accredited college with a major in Educational Supervision and Curriculum and;

1.3.2 Fifteen semester hours of graduate level coursework, specific to the area to be supervised or;

1.3.3A Master's degree in any field from a regionally accredited college with the following graduate level coursework included within, or in addition to, the degree:

1.3.3.1A minimum of fifteen semester hours of graduate level coursework in the area to be supervised and;

1.3.3.2A minimum of fifteen semester hours of graduate level coursework in administration to include one course in each of the following areas:

1.3.3.2.1 Curriculum Development

1.3.3.2.2 Supervision/Evaluation of Staff

1.3.3.2.3 Human Relations

1.3.3.2.4 School Law/Legal Issues

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.1.

2.1.1 Master's degree from a regionally accredited college; and

2.1.2 Meets all requirements in 1.2.

2.1.3 Within six semester hours of meeting the specific coursework requirements in 1.3.1 and 1.3.2, or within six semester hours of meeting the specific coursework requirements in 1.3.3.1 and 1.3.3.2.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

**See 5 DE Reg. 856 (10/1/01)**

### Regulation 1531 Certification Administrative - School Leader I

1.0 The following shall apply to the issuance of a standard certificate for directors, supervisors, administrative assistants, and managers in instructional areas, pursuant to 14 Del. C. § 1220.

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

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

**"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.

3.0 The following shall be required for the standard certificate for directors, supervisor, administrative assistants, and managers in instructional areas.

#### 3.1 Educational requirements

3.1.1 A master's degree in educational leadership from a regionally accredited college, or

3.1.2 A master's degree in education from a regionally accredited college and a current equivalent central office administrative certificate from another state, or

3.1.3 A master's degree in any field from a regionally accredited college 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: Curriculum Development, Supervision/

Evaluation of Staff, Human Relations, and School Law/Legal Issues and 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 classroom teaching experience at the pK-12 level. Teaching experience for directors, supervisors, administrative assistants and managers of programs for exceptional children must have been with exceptional children.

3.2.2 School districts or charter schools may require additional qualifications for specific positions.

### ~~302 Certification Administrative - Superintendent~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License for the Superintendent and the general Assistant Superintendent in all school districts:

#### 1.1 Degree required

1.1.1 Master's degree plus thirty graduate semester hours or a Doctor's degree from a regionally accredited college or university and;

#### 1.2 Experience

1.2.1 A minimum of three years of successful, full-time elementary or secondary experience, at the building level, as a teacher or administrator and;

#### 1.3 Specialized Professional Preparation

1.3.1 Graduate level coursework must include the following areas:

1.3.1.1 Personnel Administration

1.3.1.2 Supervision/Evaluation of Staff

1.3.1.3 Curriculum Development and

Instruction

1.3.1.4 School Business Management

1.3.1.5 School Law/Legal Issues in Education

1.3.1.6 Human Resource Management

1.3.1.7 Organizational Management

1.3.1.8 Child or Adolescent Development, if not taken at the undergraduate level.

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License as listed in 1.0.

2.1.1 Requirements listed in 1.1. and 1.2.

2.1.2 Within six semester hours as required in 1.3

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

**~~304 Certification Administrative Assistant  
Superintendent For Curriculum~~**

Effective July 1, 1993

~~1.0 The following shall be required for the Standard License for an individual who is employed to be in charge of the specialized areas of curriculum/program development within a public school district.~~

~~1.1 Degree required~~

~~1.1.1 Master's degree from a regionally accredited college plus 30 graduate semester hours and,~~

~~1.2 Experience~~

~~1.2.1A minimum of three years of successful, full-time elementary or secondary experience, at the building-level, as a teacher or administrator and,~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1A minimum of 18 semester hours of graduate level coursework in Curriculum to include: curriculum development, design, implementation and evaluation and,~~

~~1.3.2A minimum of 18 semester hours of graduate level coursework in the area of administration, to include one course in each of the following areas:~~

~~1.3.2.1 Supervision/Evaluation of Staff~~

~~1.3.2.2 School Business Management~~

~~1.3.2.3 School Law/Legal Issues in Education~~

~~1.3.2.4 Human Resource Management~~

~~1.3.2.5 Organizational Management~~

~~1.3.2.6 Personnel Administration~~

~~1.3.2.7 Child Development if not taken at undergraduate level~~  
~~1.2.1.8 Adolescent Development if not taken at undergraduate level.~~

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.~~

~~2.1.1 Meets requirements specified in 1.1 and 1.2 and,~~

~~2.1.2 Within nine semester hours of meeting the requirements in 1.3.1 and 1.3.2.~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

**Regulation 1532 Certification Administrative - School Leader II**

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

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

"Full-time classroom teaching experience" means experience as a teacher in any pK-12 area.

"Full-time school leadership" means full-time experience as a principal or assistant principal or as a district level administrator in an instructional leadership position, which includes, but is not limited to, curriculum coordinator, director or supervisor of instruction, director or supervisor of learning.

"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.

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 a regionally accredited college, 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.

3.1.2.1 Personnel Administration

3.1.2.2 Supervision/Evaluation of Staff

3.1.2.3 Curriculum Development and

Instruction

3.1.2.4 School Business Management

3.1.2.5 School Law/Legal Issues in Education

3.1.2.6 Human Resource Management

3.1.2.7 Organizational Management

3.1.2.8 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 experience consisting of classroom teaching, full-time school leadership, or a combination of the two, at the building or district level.

## PROFESSIONAL STANDARDS BOARD

### Educational Impact Analysis Pursuant To 14 Del. C. Section 122 (D)

**1502 Delaware Performance Appraisal System For  
Teachers**

**1503 Delaware Performance Appraisal System For  
Specialists**

**1504 Delaware Performance Appraisal System For  
Administrators**

#### A. Type Of Regulatory Action Requested

New Regulation

#### B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to adopt the following regulations:

1502 Delaware Performance Appraisal System for Teachers

1503 Delaware Performance Appraisal System for Specialists

1504 Delaware Performance Appraisal System for Administrators

It is necessary to adopt these regulations in order to comply with changes in statute regarding the evaluation of the performance of educators. The Delaware Performance Appraisal System (DPAS II) is a system for the evaluation of educators. The system which has been developed is research-based, and is aligned with the Delaware Professional Teaching Standards and the Delaware Administrator Standards (ISSLC Standards). The system serves the dual purposes of quality assurance and professional growth, and contains a component dedicated to student improvement. The Delaware Performance Appraisal System reinforces those aspects of the system which apply to all educators, while acknowledging the differences which exist among groups of educators. All regulations concern the evaluation of educators and are introduced together as the three regulations are complementary to one another and, together, establish a system for the evaluation of educators.

#### C. Impact Criteria

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

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

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

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

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

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

7. Will decision making authority and accountability for addressing the subjects to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subjects to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

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



9. Is there a less burdensome method for addressing the purpose of the amended regulations? *14 Del. C.* requires that we promulgate these regulations.

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

### **1502 Regulation Delaware Performance Appraisal System For Teachers**

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

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

“Artifact” means material(s) that the teacher has developed to engage students in learning or to support student learning relative to appropriate goals, and includes assignments, activities, projects, and assessments.

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

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

“Basic performance in a domain” means the teacher appears to understand the concepts underlying the component(s) and attempts to implement its elements, but implementation is sporadic, intermittent, or otherwise not entirely successful.

“Basic performance on a summative evaluation” means the teacher receives at least four ratings of basic or higher and no more than one unsatisfactory rating among the five domains of the summative evaluation and does not meet the criteria for a proficient or a distinguished rating.

“Conclusions” means any determination of a teacher’s performance as distinguished, proficient, basic or unsatisfactory.

“Component”, as used herein, means one of the sections of a domain, as set forth in *Enhancing Professional Practice: A Framework for Teaching* (Danielson, 1996), upon which a teacher is evaluated, as distinguished from “component” as it is used in 14 Del. C., § 1270, where it

means a major section or domain of the DPAS II system.

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

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

“Delaware Professional Teaching Standards” means standards of teaching approved by the State Board, as per 14 Del. Admin. Code 393, Delaware Professional Teaching Standards.

“Department” means the Delaware Department of Education.

“Distinguished” means performance characteristic of master teachers. Distinguished teachers are highly responsive to the needs of students and foster a high degree of autonomy in their students who take responsibility for their learning.

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

“Distinguished performance on a summative evaluation” means the teacher receives at least three distinguished ratings and no unsatisfactory or basic ratings among the five domains of the summative evaluation.

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

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

“DPAS II” means the Delaware Performance Appraisal System II.

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

“Educator” means a public school employee who holds a license issued under the provisions of 14 Del. C., Chap. 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and State Board, but does not include substitute teachers.

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

“Experienced teacher” means a teacher with three or more years of experience in Delaware who holds a continuing or an advanced license. For the purposes of this

regulation, experienced teachers who hold National Board Certification entering a Delaware public school from another state shall be considered experienced teachers.

**“Framework for Teaching”** means a framework of professional practice for teaching as set forth in *Enhancing Professional Practice: A Framework for Teaching* (Danielson, 1996).

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

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

**“Novice teacher”** means a teacher with up to three years of experience or new to Delaware.

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

**“Overall performance rating”** means a summative rating of a teacher’s performance on DPAS II.

**“Pattern of ineffective teaching for experienced teachers”** means an overall rating of unsatisfactory performance on a summative evaluation for a period of two consecutive years or an overall rating of basic or any combination of basic and unsatisfactory performance on a summative evaluation for three consecutive years.

**“Pattern of ineffective teaching for novice teachers”** means a pattern of unsatisfactory performance on the DPAS II summative evaluation for a period of two consecutive years.

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

**“Proficient”** means the teacher clearly understands the concepts underlying the domain and implements them well.

**“Proficient performance in a domain”** means the teacher clearly understands the concepts underlying the domain and implements them well.

**“Proficient performance on a summative evaluation”** means the teacher receives at least three proficient or higher ratings, no more than two basic ratings and no unsatisfactory ratings among the five domains of the summative evaluation and does not meet the criteria for a distinguished rating.

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

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

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

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

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

**“Student chronic noncompliance with school rules”** means two or more documented violations of the code of conduct in the classroom of the teacher being evaluated which disrupt the learning environment.

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

**“Student mobility”** means a student attends one school for less than 91 days in a school year.

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

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

**“Unsatisfactory performance”** means an unsatisfactory rating on a domain of DPAS II.

**“Unsatisfactory performance in a domain”** means the teacher does not yet appear to understand the concepts underlying the domain. The teacher’s performance in that domain is unacceptable.

**“Unsatisfactory performance on a summative evaluation”** means the teacher receives two or more unsatisfactory ratings in the five domains of the summative evaluation.

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

3.0 Delaware Performance Appraisal System (DPAS II) for Teachers: There shall be five domains to the Delaware Performance Appraisal System (DPAS II) for Teachers. Four of the domains are based on *Enhancing Professional Practice: A Framework for Teaching* (Danielson, 1996). Pursuant to 14 Del. C. § 1270(c), the fifth domain is based on student improvement, and includes both external and internal measures of student improvement. The DSTP shall be included in the external measures of student improvement.

### 3.1 Domains.

#### 3.1.1 Domain 1: Planning and Preparation

LEVEL OF PERFORMANCE				
COMPONENT	UNSATISFACTORY	BASIC	PROFICIENT	DISTINGUISHED
<p><u>la: Demonstrating Knowledge and Pedagogy</u></p>	<p>Teacher displays minimal content and pedagogy knowledge. makes content errors; rarely corrects student errors. Displays little or no awareness of prerequisite knowledge important for student learning.</p>	<p>Teacher displays basic content and pedagogical knowledge, but displays an incomplete awareness of prerequisite knowledge. Occasionally makes connections within the content area and with other content areas. Rarely anticipates student misconceptions.</p>	<p>Teacher displays solid content and pedagogy knowledge and an understanding of prerequisite knowledge. Makes connections within the content area and with other content areas. Anticipates student misconceptions and instructional plans reflect best practice.</p>	<p>Teacher displays extensive content and pedagogy knowledge and builds on knowledge of prerequisite relationships in the instructional plans. Makes connections within the content area and with other content areas. Seeks out causes of student misconceptions and displays a continuing quest for best practice.</p>

<p><u>lb: Demonstrating Knowledge of Students</u></p>	<p>Teacher displays minimal knowledge of student developmental characteristics, approaches to learning, knowledge, interests, or cultural heritage.</p>	<p>Teacher displays general understanding of student developmental characteristics, approaches to learning, knowledge, skills, interests, and cultural heritage. Applies this knowledge to the class as a whole.</p>	<p>Teacher displays thorough knowledge of student developmental characteristics, approaches to learning, knowledge, skills, interests, and cultural heritage. Applies this knowledge to groups of students to enrich instruction.</p>	<p>Teacher displays in-depth knowledge of developmental characteristics, approaches to learning, knowledge, skills, interests, and cultural heritage. Applies this knowledge to each student. Students understand and appreciate the different skills, interests, and cultural heritage displayed among their classmates. Teacher uses knowledge of students' prior knowledge and different approaches to learning in instructional planning.</p>
<p><u>lc: Selecting Instructional Goals</u></p>	<p>Teacher selects goals that are unclear, reflect low expectations, focus on unimportant learning, or are unsuitable for the class. Goals cannot be meaningfully assessed.</p>	<p>Teacher selects goals that are usually clear, reflect moderate expectations, and generally focus on important learning. Most goals are suitable for most of the class and most can be meaningfully assessed.</p>	<p>Teacher selects goals that are clear, reflect high expectations, and focus on important learning. All goals are suitable for most of the class and can be meaningfully assessed.</p>	<p>Teacher selects goals that are clear, reflect rigorous expectations, focus on important learning, and encourage varied approaches to learning. Goals reflect individual student needs and can be meaningfully assessed.</p>

# PROPOSED REGULATIONS

<p><u>Id. Demonstrating Knowledge of Resources</u></p>	<p><u>Teacher designs instruction that clearly lacks structure, is often inappropriate for students, or does not match the selected goals. Teacher chooses materials, activities, or student grouping that do not support the goals or engage students in learning. Sets unrealistic time allocations.</u></p>	<p><u>Teacher designs instruction that has a recognizable structure, but is sometimes uneven, is occasionally inappropriate for students, and usually matches the selected goals. Teacher chooses materials, activities, and student grouping that generally support the goals and engage student in learning. Usually sets realistic time allocations</u></p>	<p><u>Teacher designs instruction that has a clearly defined structure, is appropriate for students, and matches the selected goals. Teacher chooses materials and activities that match the goals and engage students in learning. Sets realistic time allocations and varies instructional groups to best meet the goals and student needs.</u></p>	<p><u>Teacher designs instruction that has a clearly defined structure, allows for modifications based on student needs, and matches the selected goals. Teacher chooses materials and activities that match the selected goals and actively engages students in learning. Sets realistic time allocations and often involves students in selecting groups, materials, and activities.</u></p>
--	--	--	---	--

<p><u>le: Designing Coherent Instruction</u></p>	<p><u>Content of assessment lacks congruence with instructional goals and have no clear link to DE content standards. The assessment results affect planning for student instruction only minimally.</u></p>	<p><u>Some, but not all, of the instructional goals are assessed. Assessments are unclear or have not been clearly communicated to students. Assessment results are used to plan for the entire class.</u></p>	<p><u>All instructional goals are assessed, but the approach is more suitable to some goals than to others. Assessments have been clearly communicated to students and are aligned to DE standards. A variety of assessment modes and multiple measures are used to plan for individuals and groups of students. Teacher informs students of their progress.</u></p>	<p><u>Assessment is congruent with instructional goals, clearly aligned to content standards and incorporates authentic experiences and assessment into instructional planning. Assessments have been clearly communicated to students. Students are aware of how they are meeting the established content standards. Involves students in establishing personal goals for learning based on self-assessment and assessment results.</u></p>
--	--	--	--	--

Used with permission from Charlotte Danielson, President, Princeton Education Associates

### 3.1.2 Domain 2: The Classroom Environment

LEVEL OF PERFORMANCE				
<b>COMPONENT</b>	<b>UNSATISFACTORY</b>	<b>BASIC</b>	<b>PROFICIENT</b>	<b>DISTINGUISHED</b>

# PROPOSED REGULATIONS

<p><u>2a: Creating an Environment of Respect and Rapport</u></p>	<p>Teacher interaction with some students is negative, demeaning, sarcastic or inappropriate to the age or cultural background of students. Students exhibit disrespect for teacher and for one another.</p>	<p>Teacher-student interactions are generally appropriate, but may reflect inconsistency, favoritism, or disregard for students' cultural backgrounds. Students exhibit minimal respect for teacher, but do not behave negatively toward one another.</p>	<p>Teacher-student interactions are friendly and demonstrate warmth, caring, and respect appropriate to developmental and cultural backgrounds. Students show respect for teacher. Student interactions are polite and respectful.</p>	<p>Teacher-student interactions demonstrate genuine caring and respect for individual students. Students exhibit high respect for teacher as an individual. Students demonstrate genuine caring for one another as individuals and as students.</p>	<p><u>2c: Managing Classroom Procedures</u></p>	<p>Materials are handled inefficiently. Much instructional time is lost in performing non-instructional duties and during transitions. Students not working with the teacher are not productively engaged in learning.</p>	<p>Routines for handling materials function moderately well. Some instructional time is lost performing non-instructional duties and during transitions, but generally instructional time is used effectively. Students engage in some off-task behavior in group settings.</p>	<p>Little instructional time is lost due to handling materials, performing non-instructional duties or during transitions. Tasks for group work are organized, and groups are managed so most students are engaged at all times.</p>	<p>Transitions are seamless. Groups working independently are productively engaged at all times, with students assuming responsibility for work. Routines for handling materials and systems for performing non-instructional duties are well established and efficient, with students assuming considerable responsibility for efficient operation.</p>
<p><u>2b: Establishing a Culture for Learning</u></p>	<p>Teacher or students convey a negative attitude toward the content. Instructional goals and activities and the classroom environment convey very modest expectations for student achievement.</p>	<p>Teacher communicates importance of the work, but with little conviction. Instructional goals and activities and the classroom environment convey inconsistent expectations for student achievement.</p>	<p>Teacher conveys enthusiasm for the subject. Instructional goals and activities and the classroom environment convey high expectations for student achievement.</p>	<p>Teacher consistently conveys enthusiasm for the subject. Students demonstrate, through active participation, curiosity, and attention to detail, that they value the content's importance. Both students and teacher establish and maintain, through planning of learning activities, interactions and the classroom environment, high expectations for the learning of all students.</p>	<p><u>2d: Managing Student Behavior</u></p>	<p>No standards of conduct exist, or students are confused as to what the standards are. Teacher is either unaware of student behavior or does not respond to misbehavior, or response is inconsistent or disrespectful of students' dignity.</p>	<p>Standards of conduct exist, and most students understand them. Teacher is generally aware of student behavior, but may miss the misbehavior of some students. Teacher responses to misbehavior are uneven.</p>	<p>Standards of conduct are clear to all students. Teacher is alert to student behavior at all times. Teacher response to misbehavior is appropriate and respectful of students' dignity. Teacher encourages students to assume responsibility for their own behavior.</p>	<p>Standards of conduct are clear to all students and appear to have had student involvement in their development. Teacher monitoring of student behavior is subtle. Students monitor their own and peers' behavior. Teacher response to misbehavior or is highly effective and sensitive to students' individual needs.</p>

# PROPOSED REGULATIONS

<p><u>2e: Organizing Physical Space</u></p>	<p>The classroom is unsafe. The furniture arrangement is not suited to the lesson activities. Physical resources are used poorly, or learning is not accessible to some students.</p>	<p>The classroom is safe. Furniture is adjusted for a lesson, but with limited effectiveness. Physical resources are used adequately, and at least essential learning is accessible to all students.</p>	<p>The classroom is safe. Furniture arrangement is a resource for learning activities. Physical resources are used skillfully, and all learning is equally accessible to all students. The teacher organizes, allocates, and manages physical space to support learning.</p>	<p>The classroom is safe. The teacher consistently organizes, allocates, and manages physical space to support learning. Students adjust the furniture to advance their own purposes in learning. Both teacher and students use physical resources optimally, and students ensure that all learning is equally accessible to all students.</p>
---	---	--	--	--

<p><u>3b: Using Questioning and Discussion Techniques</u></p>	<p>The teacher uses questions that are of consistently poor quality. The teacher rarely engages students in discussion.</p>	<p>The teacher uses questions that are of inconsistent quality and engages some students in discussion.</p>	<p>The teacher uses questions that are of consistently high quality and allows adequate time for student responses. The teacher engages students in discussion.</p>	<p>The teacher uses questions that are of consistently high quality and allows adequate time for student responses. The teacher engages all students in discussion and students often assume responsibility for the success of the discussion.</p>
<p><u>3c: Engaging Students in Learning</u></p>	<p>Activities and assignments are inappropriate for students' ages or backgrounds. Students are not engaged. Instructional groups are inappropriate to students or to instructional goals. Instructional materials and resources are unsuitable to the instructional goals or do not engage students. The lesson has no clearly defined structure.</p>	<p>Some activities and assignments are appropriate to students and engage them mentally. Instructional groups are partially appropriate to the students or only moderately successful in advancing the instructional goals. Instructional materials and resources are partially suitable to the instructional goals and students are moderately engaged. The lesson has a recognizable structure, although it is not uniformly maintained.</p>	<p>Most activities and assignments are appropriate to students, and almost all students are cognitively engaged. Instructional groups are productive and fully appropriate to the instructional goals. Instructional materials and resources are suitable to the instructional goals.</p>	<p>All students are cognitively engaged in activities and assignments in their exploration of content. Students initiate or adapt activities and projects to enhance understanding. Instructional groups are productive and fully appropriate to the instructional goals. Students take the initiative to influence instructional groups to advance understanding. Instructional materials and resources are suitable to the instructional goals and engage students.</p>

Used with permission from Charlotte Danielson, President, Princeton Education Associates

### 3.1.3 Domain 3: Instruction

LEVEL OF PERFORMANCE				
COMPO NENT	UNSATISFAC TORY	BASIC	PROFICI ENT	DISTING UISHED
<p><u>3a: Communicating Clearly and Accurately</u></p>	<p>Teacher's spoken or written language is unclear and may contain many grammatical errors. Vocabulary may be inappropriate, vague, or used incorrectly, leaving listeners confused.</p>	<p>Teacher's spoken and written language is clear and correct. Vocabulary is limited, or is not appropriate to listeners' age, background, or level of understanding.</p>	<p>Teacher's spoken and written language is clear and correct. Vocabulary is appropriate to listeners' age, background, and level of understanding.</p>	<p>Spoken and written language is correct and expressive, with well-chosen vocabulary that enriches discussion. Anticipates possible misunderstanding.</p>

<p><u>3d. Providing Feedback to Students</u></p>	<p>Feedback on achievement on content standards is either not provided or is uniformly poor quality and is not provided in a timely manner.</p>	<p>Feedback on achievement on content standards is inconsistent in quality. Timeliness of feedback is inconsistent.</p>	<p>Feedback on achievement on content standards is consistently high quality and is provided in a timely manner.</p>	<p>Feedback on achievement on content standards is consistently high quality and is provided in a timely manner. Students make prompt use of the feedback in their learning.</p>
<p><u>3e: Demonstrating Flexibility and Responsiveness</u></p>	<p>Teacher adheres rigidly to an instructional plan, even when a change will clearly improve a lesson. Teacher ignores students' questions or interests. The teacher gives up or blames the student or the environment for lack of success.</p>	<p>Teacher attempts to adjust a lesson, with mixed results. Teacher attempts to accommodate students' questions or interests, but with uneven effects on the coherence of a lesson. Teacher accepts responsibility for the success of all students, but has only a limited repertoire of instructional strategies to use.</p>	<p>Teacher displays an adequate repertoire of instructional strategies and makes adjustments to lessons smoothly. Teacher successfully accommodates students' questions or interests. Teacher persists in seeking approaches for students who have difficulty learning, but possesses only a moderate repertoire of strategies.</p>	<p>Teacher displays an extensive repertoire of instructional strategies. Teacher seizes a major opportunity to enhance learning, building on a spontaneous event. Teacher persists in seeking effective approaches for students who need help, using an extensive repertoire of strategies and soliciting additional resources from the school.</p>

Used with permission from Charlotte Danielson, President, Princeton Education Associates

3.1.4 Domain 4: Professional Responsibilities

LEVEL OF PERFORMANCE				
<b>COMPONENT</b>	<b>UNSATISFACTORY</b>	<b>BASIC</b>	<b>PROFICIENT</b>	<b>DISTINGUISHED</b>

<p><u>4a: Reflecting on Teaching</u></p>	<p>Teacher does not know if a lesson was effective or achieved its goals, or profoundly misjudges the success of a lesson. Teacher has no suggestions for how to improve a lesson another time.</p>	<p>Teacher has a generally accurate impression of a lesson's effectiveness and the extent to which instructional goals were met. Teacher makes general suggestions about how to improve a lesson.</p>	<p>Teacher makes an accurate assessment of a lesson's effectiveness and the extent to which it achieved its goals and can support the judgment. Teacher makes some specific suggestions about how a lesson may be improved.</p>	<p>Teacher makes a thoughtful and accurate assessment of a lesson's effectiveness and the extent to which it achieved its goals, citing many specific examples to support the judgment. The teacher offers specific alternative actions, complete with probable successes of different approaches.</p>
<p><u>4b: Maintaining Accurate Records</u></p>	<p>The teacher has a limited system for maintaining instructional and non-instructional information or the records are in complete or in disarray, resulting in errors and confusion.</p>	<p>The teacher has a system for maintaining instructional and non-instructional information that is usually complete and usually in order.</p>	<p>The teacher has a system for maintaining instructional and non-instructional information that is complete and accurate. The records are in order.</p>	<p>The teacher has a system for maintaining instructional and non-instructional information is complete, effective, efficient, and accurate. Includes student, family, and educator feedback in continuously improving the system.</p>
<p><u>4c: Communicating with Families</u></p>	<p>Teacher provides minimal information about the instructional program. Ignores or diminishes concerns of families and takes no action to respond to these issues.</p>	<p>Teacher usually provides information about the instructional program and attempts to address families' concerns with action and follow-up.</p>	<p>Teacher consistently provides information about the instructional program and addresses families' concerns promptly and appropriately.</p>	<p>Teacher consistently provides information about the instructional program and asks students and families for ways to improve communication. Addresses families' concerns promptly and appropriately and provides follow-up when needed.</p>

# PROPOSED REGULATIONS

<b>4d. Contributing to the School and District</b>	Teacher engages in no professional development activities to enhance knowledge or skill, and makes no effort to share knowledge with others or to assume professional responsibilities.	Teacher participates in professional activities to a limited extent when they are convenient, and finds limited ways to contribute to the profession.	Teacher seeks out opportunities for professional development to enhance content knowledge and pedagogical skill and participates actively in assisting other educators.	Teacher seeks out opportunities for professional development and makes a systematic attempt to conduct action research in the classroom. Teacher initiates important activities to contribute to the profession.
--	---	---	---	--

<b>5b: Identifies multiple measures and a variety of assessments (e.g., DSTP I &amp; II, pre- &amp; post-testing, performances, portfolios, oral presentations, projects) to document student improvement</b>	Does not provide evidence of student improvement toward meeting the standards, or evidence provided shows that students are not making improvement toward standards.	Provides limited evidence of some student improvement toward meeting the standards.	Provides clear evidence of student improvement toward meeting the standards using multiple evidence sources and demonstrating an understanding of the use of the data to address students' instructional needs.	Provides clear, consistent and convincing evidence of student improvement toward meeting the standards by providing evidence of student performance using a rich variety of multiple measures and assessments and documenting how the data were used to address students' instructional needs.
---	--	---	---	--

Used with permission from Charlotte Danielson, President, Princeton Education Associates

### 3.1.5 Domain 5: Student Improvement

LEVEL OF PERFORMANCE				
COMPONENT	UNSATISFACTORY	BASIC	PROFICIENT	DISTINGUISHED
<b>5a: Uses data from the DSTP I school accountability performance rating to help educators make instructional decisions</b>	There is no evidence that DSTP school accountability performance rating data inform planning or impact on instructional decisions. There is no evidence of student improvement.	There is some evidence that DSTP school accountability performance rating data inform planning or impact on instructional decisions. Some evidence of student improvement is found.	There is clear evidence that DSTP school accountability performance rating data inform planning and impact on instructional decisions. Clear evidence of student improvement is found.	There is clear and convincing evidence that DSTP school accountability performance rating data are used to inform planning and impact on instructional decisions. Clear, consistent and convincing evidence of student improvement is found.

<b>5c: Provides evidence of student improvement toward standards through DSTP I &amp; II scores and other sources of data</b>	Is unaware of the distribution in student achievement or makes no effort to close the gap by addressing the different needs of individual students or groups of students within the class. Measurable discrepancies in student learning persist.	Is aware of the distribution in student achievement and makes a limited effort to close the gap by addressing the different needs of individual students or groups of students within the class. The distribution in student achievement within the class is beginning to close.	Is very aware of the distribution in student achievement and makes a concerted effort to close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that the distribution in student achievement is being closed.	Is proactive in addressing the distribution in student achievement and uses research-based strategies to effectively close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that students are achieving at higher levels and that the distribution in student achievement is being closed. The teacher provides leadership to colleagues in the identification and use of effective strategies to address the inequitable distribution in student achievement.
---	--	--	---	--

3.1.5.1 Pursuant to 14 Del. C. § 1270(c), mitigating factors, including student absence, student mobility, student chronic noncompliance with school rules, chronic failure by parents to abide by the Parents' Declaration of Responsibilities, and other factors that may adversely affect a teacher's evaluation which include, but are not limited to, environmental disruptions over which the teacher has no control, an external event, such as the death or



serious injury of a student, which impacts the school or district, as may be jointly agreed upon by the teacher and the evaluator, must be taken into consideration in rating Domain 5, and must be included in any discussion between the evaluator and the teacher. Scores of students who are impacted by any of the above mitigating factors are eliminated from consideration of a teacher's performance on Domain 5.

3.2 Each domain shall be weighted equally in determining an overall rating for a teacher. Using a set of rubrics, each domain shall be rated "unsatisfactory", "basic", "proficient", or "distinguished". An annual summative evaluation shall be completed for each teacher, and shall result in a rating for each domain and an overall rating of performance.

3.2.1 A rating scale shall be used to rate each domain, as well as to derive the overall rating of the DPAS II evaluation. The ratings are as follows

3.2.1.1 Distinguished Performance in a Domain -- Teachers at this level are master teachers and make a contribution to the field, both in and outside of their school.

3.2.1.2 Proficient Performance in a Domain -- The teacher clearly understands the concepts underlying the domain and implements them well.

3.2.1.3 Basic Performance in a Domain -- The teacher appears to understand the concepts underlying the component and attempts to implement its elements, but implementation is sporadic, intermittent, or otherwise not entirely successful.

3.2.1.4 Unsatisfactory Performance in a Domain -- The teacher does not yet appear to understand the concepts underlying the domain. The teacher's performance in that domain is unacceptable, and an assistance plan shall be developed to focus the teacher on strategies to improve performance in the identified domain.

3.2.2 Teachers shall receive an overall rating, annually, of "distinguished", "proficient", "basic", or "unsatisfactory". Such rating shall be a cumulative rating, arrived at in accordance with the procedures for overall performance on a summative evaluation and scoring guide, based on ratings on all five domains over the school year.

### 3.3 Summative Domain Ratings.

3.3.1 Distinguished Performance in a Domain on a Summative Evaluation--The teacher receives no unsatisfactory or basic ratings within that same domain for all formative materials being considered for the domain, and an overall score for that domain greater than 2.5, when averaging the score for that domain on all formative materials being considered for the summative evaluation (with each distinguished domain being assigned a score of 3, each proficient domain a score of 2, each basic domain a score of 1 and each unsatisfactory domain a score of zero).

3.3.2 Proficient Performance in a Domain on a

Summative Evaluation --The teacher receives no unsatisfactory ratings within that same domain for all formative materials being considered for the domain, and an overall score for that domain greater than 1.5, when averaging the score for that domain on all formative materials being considered for the summative evaluation (with each distinguished domain being assigned a score of 3, each proficient domain a score of 2, each basic domain a score of 1 and each unsatisfactory domain a score of zero).

3.3.3 Basic Performance in a Domain on a Summative Evaluation -- The teacher receives an overall score for that domain greater than .5 when averaging the score for that domain on all formative materials being considered for the summative evaluation (with each distinguished domain being assigned a score of 3, each proficient domain a score of 2, each basic domain a score of 1 and each unsatisfactory domain a score of zero).

3.3.4 Unsatisfactory Performance in a Domain on a Summative Evaluation--The teacher receives an overall score for that domain less than or equal to .5 when averaging the score for that domain on all formative materials being considered for the summative evaluation (with each distinguished domain being assigned a score of 3, each proficient domain a score of 2, each basic domain a score of 1 and each unsatisfactory domain a score of zero).

### 3.4 Overall Performance on a Summative Evaluation.

3.4.1 Distinguished Performance on a Summative Evaluation -- The teacher receives at least three distinguished ratings and no unsatisfactory or basic ratings among the five domains of the summative evaluation.

3.4.2 Proficient Performance on a Summative Evaluation -- The teacher receives at least three proficient or higher ratings, no more than two basic ratings and no unsatisfactory ratings among the five domains of the summative evaluation and does not meet the criteria for a distinguished rating.

3.4.3 Basic Performance on a Summative Evaluation -- The teacher receives at least four ratings of basic or higher, and no more than one unsatisfactory rating among the five domains of the summative evaluation and does not meet the criteria for a proficient or a distinguished rating.

3.4.4 Unsatisfactory Performance on a Summative Evaluation -- The teacher receives two or more unsatisfactory ratings in the five domains of the summative evaluation.

### 3.4.5 Summative Evaluation Scoring Guide

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

Number of Distinguished Domains	Number of Proficient Domains	Number of Basic Domains	Number of Unsatisfactory Domains	Overall Summative Rating
5	0	0	0	Distinguished
4	1	0	0	Distinguished
3	2	0	0	Distinguished
4	0	1	0	Proficient
3	1	1	0	Proficient
3	0	2	0	Proficient
2	3	0	0	Proficient
2	2	1	0	Proficient
2	1	2	0	Proficient
1	4	0	0	Proficient
1	3	1	0	Proficient
1	2	2	0	Proficient
0	5	0	0	Proficient
0	4	1	0	Proficient
0	3	2	0	Proficient
4	0	0	1	Basic
3	1	0	1	Basic
3	0	1	1	Basic
2	2	0	1	Basic
2	1	1	1	Basic
2	0	3	0	Basic
2	0	2	1	Basic
1	3	0	1	Basic
1	2	1	1	Basic
1	1	3	0	Basic
1	1	2	1	Basic
1	0	3	1	Basic
0	3	1	1	Basic
0	2	3	0	Basic
0	2	2	1	Basic
0	1	4	0	Basic
0	1	3	1	Basic
0	0	5	0	Basic
0	0	4	1	Basic

3	0	0	2	Unsatisfactory
2	1	0	2	Unsatisfactory
2	0	1	2	Unsatisfactory
2	0	0	3	Unsatisfactory
1	2	0	2	Unsatisfactory
1	1	1	2	Unsatisfactory
1	0	2	2	Unsatisfactory
1	0	1	3	Unsatisfactory
1	0	0	4	Unsatisfactory
0	3	0	2	Unsatisfactory
0	2	1	2	Unsatisfactory
0	2	0	3	Unsatisfactory
0	1	2	2	Unsatisfactory
0	1	1	3	Unsatisfactory
0	1	0	4	Unsatisfactory
0	0	3	2	Unsatisfactory
0	0	2	3	Unsatisfactory
0	0	1	4	Unsatisfactory
0	0	0	5	Unsatisfactory

### 3.5 Pattern of Ineffective Teaching.

3.5.1 A novice teacher receives a summative evaluation with an overall rating of unsatisfactory performance for a period of two consecutive years.

3.5.2 An experienced teacher receives summative evaluations with an overall rating of unsatisfactory performance for two consecutive years.

3.5.3 An experienced teacher receives summative evaluations with an overall rating of basic or any combination of basic and unsatisfactory for three consecutive years.

3.5.4 The provisions in 3.5.3 do not apply to an experienced teacher who changes grade level or content area for the first year in a new position.

3.5.5 When a pattern of ineffective teaching is established, a local school district may move to terminate a teacher, as defined by 14 Del. C., § 1401, for incompetency pursuant to 14 Del. C., § 1411 or § 1420.

### 4.0 Procedures for Novice Teachers.

4.1 Novice teachers shall be observed a minimum of two (2) times each year during the three-year term of the Initial License. A classroom observation for teachers is a means of collecting some of the data required to analyze a lesson and to assess performance, and generally lasts for the entire class period. The classroom observation will assess

Domain One, Planning and Preparation; Domain Two, The Classroom Environment; and Domain Three, Instruction. The evaluator is not required to assess every component of a domain in the course of an observation. The two required observations shall be announced and shall be preceded by a pre-observation planning conference between the evaluator and the teacher. Additional observations may be initiated at the discretion of the evaluator, and may be announced or unannounced. Unannounced observations shall follow the same procedures set forth for announced observations, with the exception of completion of the pre-observation form by the teacher and the pre-observation conference. The report of each observation shall rate each component “distinguished”, “proficient”, “basic”, or “unsatisfactory”.

4.1.1 The pre-observation conference form shall be completed by the teacher prior to the pre-observation conference. Two copies shall be brought to the conference. The pre-observation conference form shall form the basis for the pre-observation conference. The pre-observation conference shall be held at a mutually agreed upon time prior to the date of the scheduled observation.

4.1.2 Within two (2) working days following each observation, the evaluator shall meet with the teacher to discuss the observation and to provide feedback regarding strengths and identified areas for growth. The evaluator may seek clarification or request that additional information or data be shared to address any questions raised during the observation.

4.1.3 Within two (2) working days of the post-observation conference, the evaluator shall provide the teacher with a concise written narrative, using the approved DPAS II lesson analysis forms, which describes performance for each domain, and which focuses on the behaviors in that domain, as described in the accompanying rubric. The report of each observation shall rate each domain “distinguished”, “proficient”, “basic”, or “unsatisfactory”. The teacher may submit a lesson analysis report response form within ten days of receipt of the report, which shall be appended to the lesson analysis report.

4.1.4 Although it is anticipated that the written narrative report will closely mirror the information shared at the post-observation conference, an additional conference may be requested by either the teacher or the evaluator following receipt of the written narrative. Such request must be honored.

4.1.5 If any domain is rated unsatisfactory, an assistance plan shall be developed in accordance with the procedures set forth in this regulation.

4.2 In addition to the observations and the pre- and post-conferences associated with them, a professional responsibilities conference shall be held annually with the novice teacher. The professional responsibilities conference will generate data for assessing Domain Four, Professional Responsibilities; and Domain Five, Student Improvement.

That conference shall focus on evidence of directed professional growth generated through the induction program, DSTP school accountability performance rating, artifacts of student learning provided by the teacher, and artifacts as specified for novice teachers. Within two (2) working days following the conference, the evaluator shall provide the teacher with a concise narrative using the approved DPAS II professional responsibilities and student improvement report form, which shall rate each domain as “distinguished”, “proficient”, “basic”, or “unsatisfactory”. The teacher may submit a professional responsibilities and student improvement report response form within ten (10) days of receipt of the report, which shall be appended to the professional responsibilities and student improvement report. An additional conference may be requested by either the teacher or the evaluator following receipt of the written narrative. Such request must be honored.

4.3 The evaluator shall complete an annual summative evaluation, using the approved DPAS II summative evaluation form, which draws upon all of the information gathered through observations and conferences, and which includes external measures of student learning. The summative evaluation shall result in an overall rating of “distinguished”, “proficient”, “basic”, or “unsatisfactory”. This evaluation shall be provided to the teacher. The teacher may submit a summative evaluation response form within ten (10) days of receipt of the evaluation, which shall be appended to the summative evaluation. A conference may be requested by either the evaluator or the teacher to discuss the summative evaluation. Such request must be honored.

4.4 An annual summative evaluation which results in an overall rating of unsatisfactory shall require the development of an assistance plan, as set forth in 6.0 of this regulation, if one has not already been developed as a result of a previous observation report. In the event an assistance plan already exists, it shall be thoroughly reviewed and revised, as necessary, to address the unsatisfactory aspects of the teacher’s performance.

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

4.6 Nothing in the foregoing restricts the evaluator from conducting more than the minimum prescribed observations. Additional observations conducted at the discretion of the evaluator may be announced or unannounced.

## 5.0 Procedures for Experienced Teachers.

5.1 Experienced teachers shall receive a minimum of one (1) announced observation, one (1) professional responsibilities conference, and a summative evaluation annually, unless waived pursuant to 14 Del. C., §1270. Additional observations, announced or unannounced, may be conducted as deemed appropriate by the evaluator.

Unannounced observations shall follow the same procedures set forth for announced observations, with the exception of completion of the pre-observation form by the teacher and the pre-observation conference. The classroom observation, which generally lasts for the entire class period, will assess Domain One, Planning and Preparation; Domain Two, The Classroom Environment; and Domain Three, Instruction. The evaluator is not required to assess every component of a domain in the course of an observation. The report of each observation shall rate each component "distinguished", "proficient", "basic", or "unsatisfactory".

5.1.1 The pre-observation conference form shall be completed by the teacher prior to the pre-observation conference. Two copies shall be brought to the conference. The pre-observation conference form shall form the basis for the pre-observation conference. The pre-observation conference shall be held at a mutually agreed upon time prior to the date of the scheduled observation.

5.1.2 Within two (2) working days following each observation, the evaluator shall meet with the teacher to discuss the observation and to provide feedback regarding strengths and identified areas for growth. The evaluator may seek clarification or request that additional information or data be shared to address any questions raised during the observation.

5.1.3 Within two (2) working days of the post-observation conference, the evaluator shall provide the teacher with a concise written narrative, using the approved DPAS II lesson analysis forms, which describes performance for each domain, and which focuses on the behaviors in that domain, as described in the accompanying rubrics. The report of each observation shall rate each domain "distinguished", "proficient", "basic", or "unsatisfactory". The teacher may submit a lesson analysis report response form within ten (10) days of receipt of the report, which shall be appended to the lesson analysis report.

5.1.4 Although it is anticipated that the written narrative report will closely mirror the information shared at the post-observation conference, an additional conference may be requested by either the teacher or the evaluator following receipt of the written narrative. Such request must be honored.

5.1.5 In addition to the observations and the pre-and post-conferences associated with them, a professional responsibilities conference shall be held annually with the experienced teacher. The professional responsibilities conference will generate data for assessing Domain Four, Professional Responsibilities, and Domain Five, Student Improvement. That conference shall focus on evidence of professional development, DSTP school accountability performance rating, artifacts of student learning provided by the teacher, and sharing of professional development artifacts. The evaluator shall provide the teacher with a concise written narrative, using the approved DPAS II

professional responsibilities and student improvement report form, which shall rate each domain as "distinguished", "proficient", "basic", or "unsatisfactory". The teacher may submit a professional responsibilities and student improvement report response form within ten (10) days of receipt of the report, which shall be appended to the professional responsibilities and student improvement report. An optional conference following the completion of the rubrics for Domains 4 and 5 may be requested by either the teacher or the evaluator. Such request must be honored.

5.2 The evaluator shall complete an annual summative evaluation, using the approved DPAS II summative evaluation form, which draws upon information gathered through observation(s) and conferences, which includes external measures of student learning, and which includes evidence gathered from the artifact review. The summative evaluation shall result in an overall rating of "distinguished", "proficient", "basic", or "unsatisfactory". The teacher may submit a summative evaluation response form within ten (10) days of receipt of the evaluation, which shall be appended to the summative evaluation.

5.3 If any domain of a summative evaluation is rated unsatisfactory, an assistance plan shall be developed in accordance with 6.0 of this regulation.

5.4 An annual summative evaluation which results in an overall rating of unsatisfactory or basic shall require the development of an assistance plan, if one has not already been developed as a result of a previous observation report. In the event an assistance plan already exists, it shall be thoroughly reviewed and revised, as necessary, to address the unsatisfactory nature of the teacher's performance. The criteria set forth in an assistance plan must be designed to result in an overall summative rating of "proficient" at the satisfactory conclusion of the assistance plan.

5.5 Experienced teachers who receive an overall rating of "proficient" or "distinguished" may be granted a waiver from the required observation for one year. During the year in which the waiver is in effect, the experienced teacher shall engage in self-directed professional development related to the teacher's assignment and the Delaware Teacher Standards. The professional development plan shall be in writing and shall focus around the five domains. During the waiver year, a professional responsibilities conference shall take place to review progress on the professional development plan. In the event that a situation or concern, which shall include, but is not limited to, classroom management problems, inadequate planning, an inappropriate classroom environment, or failure to engage in professional responsibilities, arises during the year for which the waiver is granted, the evaluator may conduct observations, announced or unannounced.

5.6 Evaluators and teachers being evaluated shall sign all evaluation forms

indicating that the documents have been reviewed.

5.7 Nothing in the foregoing restricts the evaluator from conducting more than the minimum prescribed observations. Additional observations conducted at the discretion of the evaluator may be announced or unannounced.

5.8 Experienced teachers with previous satisfactory evaluations on DPAS I shall be deemed to have been rated “proficient” and shall be eligible for a one year waiver in the year following the designation of the rating of “proficient”. For the purposes of implementation of DPAS II, teachers so rated may be assigned by the building administrator to a waiver year or to a summative evaluation year.

6.0 The goal of an assistance plan is to provide a structured vehicle to assist a novice teacher whose performance is unsatisfactory to improve performance to at least a basic level and to assist an experienced teacher whose performance is unsatisfactory or basic to improve performance to a proficient level. An assistance plan shall be developed for a novice teacher whose performance overall or in any domain on the annual DPAS II summative evaluation is rated as “unsatisfactory”. An assistance plan shall be developed as a result of an unsatisfactory or basic rating on any domain during the gathering of evidence for a summative evaluation. An assistance plan shall be developed for an experienced teacher who receives an overall rating of “unsatisfactory” or “basic” for one year. If an assistance plan already exists in any of the above instances, it shall be thoroughly reviewed and revised, as necessary, to address the basic or unsatisfactory nature of the teacher’s performance. Recommendations for assistance may be written as a result of an unsatisfactory rating on any component of any domain in the evaluation process.

6.1 Assistance plans must include the following:

6.1.1 Definition of the specific deficiencies, which must be stated in terms of DPAS II rubrics for evaluating the identified domains.

6.1.2 Measurable goals for improving the deficiencies to satisfactory levels. All goals must be directly linked to the Delaware Professional Teaching Standards and DPAS II rubrics for evaluating the identified domain(s) and component(s).

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

6.1.4 Resources for each professional development activity must be identified and made accessible to the educator. Such resources may include, but are not limited to, opportunities for the teacher to work with mentors, curriculum specialists, and veteran teachers to implement the assistance plan.

6.1.5 Evidence that must be provided and behaviors that must be demonstrated at the end of the plan.

These expectations must be stated in terms of DPAS II rubrics for evaluating the identified domain(s) and component(s).

6.1.6 Procedures for evaluating and documenting improvement.

6.1.7 Timelines, including intermediate progress check-points and a final completion date, must be specified. These dates may be adjusted by mutual agreement of the teacher and the evaluator during the assistance plan process.

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

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

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

8.0 Challenge Process: A teacher may challenge the fairness of the evaluation process and the conclusions reached in the DPAS II evaluation.

8.1 A Level I challenge applies to all challenges brought by novice teachers, and to all challenges brought by experienced teachers, except those involving an unsatisfactory or basic overall rating on a summative evaluation.

8.1.1 A teacher may initiate a Level I challenge by filing a DPAS II Level I challenge form with the evaluator within 10 calendar days of receiving the written evaluation. The challenge shall set forth the grounds for the challenge in reasonable detail and shall identify the remedy sought.

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

8.1.3 If the teacher is not satisfied with the decision of the evaluator, he/she may forward the challenge form and supporting documentation to the district superintendent or charter school administrator or designee for review. The superintendent or charter school administrator or designee shall be a trained, certified

evaluator and shall not be a building level administrator in the same building as the teacher who filed the challenge.

8.1.4 Within 10 calendar days of receipt of the challenge form and supporting documentation, the district superintendent or charter school administrator or designee shall provide a written response either supporting or not supporting the challenge. If the remedy sought is granted, the revised evaluation document replaces the challenged document.

8.1.5 The decision of the district superintendent or charter school administrator or designee shall be final.

8.2 A Level II challenge applies only to challenges brought by experienced teachers involving an unsatisfactory or basic overall rating on a summative evaluation.

8.2.1 A teacher may initiate a Level II challenge by filing a DPAS II Level II challenge form with the district superintendent or charter school administrator or designee within 10 calendar days of the summative evaluation post conference. The challenge shall set forth the grounds for the challenge in reasonable detail and shall identify the remedy sought. The district superintendent or charter school administrator or designee shall be a trained, certified evaluator and shall not be a building level administrator in the same building as the teacher who filed the challenge.

8.2.2 Within 10 calendar days of receipt of the challenge, the district superintendent or charter school administrator or designee shall hold an informal hearing on the merits of the challenge, unless extensions are mutually agreed upon. At the hearing, the parties may be represented by an individual of their choice, may present evidence, and may call witnesses. The district superintendent or charter school administrator or designee shall provide a written decision to both parties within 10 days of the hearing.

8.2.3 The decision of the district superintendent or charter school administrator or designee shall be final.

9.0 Evaluators must be certified in accordance with regulations for credentialing for evaluators promulgated by the Standards Board and administered by the Department. Prior to conducting evaluations, evaluators must provide evidence of satisfactory completion of the specified training program and shall demonstrate competency as evaluators. Credentialing as an evaluator is renewable every five years.

10.0 Pilot of the Delaware Performance Appraisal System II.

10.1 The Delaware Performance Appraisal System II is a comprehensive system of evaluation and quality assurance for educators. It represents current research and best practice. A pilot will be conducted during the 2003-04 school year to determine:

10.1.1 The effectiveness and adequacy of the training.

10.1.2 The application of the evaluation process.

10.2 The pilot will take place in a minimum of three school districts, one in each county. In order to gather sufficient data from the pilot, a pilot district must agree to participate with all schools and all educators, including teachers, specialists and administrators.

10.3 The Department will provide training prior to the implementation of the pilot to three educators, one of whom shall be an administrator and two of whom shall be teachers or specialists from each school within each pilot district. For schools with more than 40 teachers and specialists, one additional teacher for each 25 teachers beyond 40 shall be included in the training. In addition, one district administrator for each 15 administrators employed by each pilot district shall be included in the training.

10.4 The educators trained in each pilot district shall train all educators in the district in *Enhancing Professional Practice: A Framework for Teaching*, the expectations of the system, and the DPAS II process.

10.5 All teachers in each pilot district shall participate in the DPAS II pilot, except those teachers who have been placed on an improvement plan pursuant to the provisions of DPAS I (14 DE Admin. Code 110).

10.5.1 Teachers on an improvement plan pursuant to DPAS I shall be evaluated using DPAS I during the pilot period.

10.6 Evaluations conducted as part of the DPAS II pilot shall be considered official evaluations, except that, in the event a teacher evaluated as part of the DPAS II pilot receives an unsatisfactory rating on any domain of DPAS II or on an annual summative evaluation which results in the development of an assistance plan, the teacher will be placed on an improvement plan under DPAS I and any subsequent evaluations conducted during the pilot period shall be conducted in accordance with the provisions of DPAS I. An experienced teacher who receives an overall summative rating of basic during the pilot year shall have an assistance plan developed in accordance with the procedures set forth in 6.0 of this regulation. An overall rating of unsatisfactory or basic performance during the pilot year cannot be used in establishing a pattern of ineffective teaching.

10.7 The Department shall collect data from the participating school districts on the effectiveness of the training and of the efficiency and effectiveness of the evaluation process, including the demands of time on both the evaluators and the teachers. Data will be collected from the pilot districts at least twice during the pilot period. No later than June 1, 2004, data collected will be analyzed by the Department to determine modifications and/or revisions to the system to be recommended to the Standards Board prior to statewide implementation.

11.0 DPAS II will be implemented in all school districts and charter schools in September, 2004.

11.1 Prior to implementation, the Department shall

provide training using the formula set forth in 10.3 above, or such alternative as may be developed as the result of the DPAS II pilot.

11.2 The Department shall implement a monitoring system for DPAS II to ensure that on-going training is provided to new teachers and evaluators, that all evaluators are properly trained and credentialed, and to ensure that all districts and charter schools are employing DPAS II in accordance with this regulation.

### **1503 Regulation Delaware Performance Appraisal System For Specialists**

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

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

**“Artifact”** means material(s) that the specialist has developed to engage students in learning or to support student learning relative to appropriate goals, and includes assignments, activities, projects, and assessments.

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

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

**“Basic performance in a domain”** means the specialist appears to understand the concepts underlying the component(s) and attempts to implement its elements, but implementation is sporadic, intermittent, or otherwise not entirely successful.

**“Basic performance on a summative evaluation”** means the specialist receives at least four ratings of basic or above and no more than one unsatisfactory rating among the five domains under the summative evaluation.

**“Conclusions”** means any determination of a specialist’s performance as distinguished, proficient, basic or unsatisfactory.

**“Component”**, as used herein, means one of the sections of a domain, as set forth in *A Framework for Teaching*, upon which a specialist is evaluated, as distinguished from component as it is used in 14 Del. C. §

1270, where it means a major section or domain of the DPAS II system.

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

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

**“Delaware Professional Teaching Standards”** means standards of teaching approved by the State Board, as per 14 Del. Admin. Code 393, Delaware Professional Teaching Standards.

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

**“Distinguished”** means performance characteristic of master specialists. Distinguished specialists are highly responsive to the needs of students and foster a high degree of autonomy in their students who take responsibility for their learning.

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

**“Distinguished performance on a summative evaluation”** means the specialist receives at least three distinguished ratings, no more than two proficient ratings, no more than one basic rating and no unsatisfactory ratings among the five domains of the summative evaluation.

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

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

**“DPAS II”** means the Delaware Performance Appraisal System II.

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

**“Educator”** means a public school employee who holds a license issued under the provisions of 14 Del. C., Chap. 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and State Board, but does not include substitute teachers.

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

**“Experienced specialist”** means a specialist with three

or more years of experience in Delaware who holds a continuing or an advanced license.

**“Frameworks for Teaching”** means a framework of professional practice for teaching as set forth in *Enhancing Professional Practice* (Danielson, 1996).

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

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

**“Novice specialist”** means a specialist with up to three years of experience or new to Delaware.

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

**“Overall performance rating”** means a summative rating of a specialist’s performance on DPAS II.

**“Pattern of ineffective practice for experienced specialists”** means an overall rating of unsatisfactory performance on a summative evaluation for a period of two consecutive years or an overall rating of basic or any combination of basic and unsatisfactory performance on a summative evaluation for three consecutive years.

**“Pattern of ineffective practice for novice specialists”** means a pattern of unsatisfactory performance on the DPAS II summative evaluation for a period of two consecutive years.

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

**“Proficient”** means the specialist clearly understands the concepts underlying the domain and implements them well.

**“Proficient performance in a domain”** means the specialist clearly understands the concepts underlying the domain and implements them well.

**“Proficient performance on a summative evaluation”** means the specialist receives at least three proficient or higher ratings, no more than two basic ratings and no unsatisfactory ratings among the five domains of the summative evaluation and does not meet the criteria for a distinguished rating.

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

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

**“Specialist”** means a certificated/licensed professional who works in the public schools as part of the school team, provides expertise and delivers professional services to students, teachers, staff and/or families. Guidance counselors, instructional support specialists, library media specialists, school psychologists, school nurses, student support specialists, and therapeutic services specialists are considered specialists for the purposes of evaluation under the DPAS II system.

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

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

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

**“Student chronic noncompliance with school rules”** means two or more documented violations of the code of conduct in the setting of the specialist being evaluated which disrupt the learning environment.

**“Student improvement”** means growth over time on the DSTP and other assessment measure toward curriculum standards, as jointly determined by evaluators and specialists.

**“Student mobility”** means a student attends one school for less than 91 days in a school year.

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

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

**“Unsatisfactory performance”** means an unsatisfactory rating on a domain of DPAS II.

**“Unsatisfactory performance in a domain”** means the specialist does not yet appear to understand the concepts underlying the domain. The specialist’s performance in that domain is unacceptable.

**“Unsatisfactory performance on a summative evaluation”** means a specialist receives two or more unsatisfactory ratings in the five domains of the summative evaluation.

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

3.0 Delaware Performance Appraisal System (DPAS II) for Specialists:



# PROPOSED REGULATIONS

There shall be five (5) domains to the Delaware Performance Appraisal System (DPAS II) for Specialists. Pursuant to 14 **Del. C.** § 1270(c), the fifth domain is based on student improvement, and includes both external and internal measures of student improvement. The DSTP shall

be included in the external measures of student improvement.

### 3.1 A Framework for Specialists: Guidance Counselors

#### 3.1.1 Domain 1: Planning and Preparation

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>1a</b> <u>Demonstrating knowledge of research</u>	Displays little understanding of prerequisite knowledge important for the counseling process.	Indicates some awareness of prerequisite learning although such knowledge may be incomplete or inaccurate.	Plans and practices reflect understanding of prerequisite relationships among counseling topics and concepts.	Actively builds on knowledge of prerequisite relationships when describing counseling process or seeking causes for misunderstanding.
<b>1b</b> <u>Demonstrating knowledge of standards of practice</u>	Does not adhere to National School Counseling standards or ethical standards, including confidentiality	Is aware of the National School Counseling Standards and the ethical standards, including confidentiality	Consistently adheres to the National School Counseling Standards and the ethical standards and respects confidentiality	Promotes the National School Counseling Standards and ethical standards with staff and community
<b>1c</b> <u>Demonstrating knowledge of student development</u>	Counselor displays little knowledge of developmental stages of students.	Counselor displays some understanding of developmental stages of students.	Counselor displays accurate knowledge of typical developmental characteristics of students as well as exceptions to that development and can apply these.	Counselor displays thorough knowledge of typical developmental characteristics of students and exceptions to that development. Counselor additionally displays thorough knowledge of internal and external influences that may inhibit or enhance that development.
<b>1d</b> <u>Demonstrating knowledge of student needs</u>	Displays little knowledge of students' needs.	Displays some knowledge of students' needs.	Displays accurate knowledge of students' needs and presents the resources for students to address these needs.	Displays accurate knowledge of students' needs and accesses the resources to work with students to fulfill those needs.
<b>1e</b> <u>Designing coherent programs based on state standards</u>	Little or no components of program are designed or based on the state counseling standards and is inappropriate based on students' age, needs, and background.	Minimal components of program are designed or based on state counseling standards and is minimally appropriate based on students' age, needs, and background.	Program is designed and based on state counseling standards and is appropriate based on students' age, needs, and backgrounds.	Takes a leadership role in designing programs based on state counseling standards and is appropriate based on students' age, needs, and background.

#### 3.1.2 Domain 2: Professional Practice and

#### Delivery of Service

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>2a</b> <u>Implementing developmentally appropriate programs</u>	Program is inappropriate for students in terms of their age, needs, or backgrounds.	Some components of the program are based on state counseling standards and are appropriate to students' age, needs, and background but others are not.	Program components are based on state counseling standards and are appropriate to students' age, needs, and backgrounds and students are actively engaged.	Presentations are made to the staff and community to advocate for programming and needs.

# PROPOSED REGULATIONS

<p><b>2b</b> <b>Evaluating programs</b></p>	<p>Does not know if the program is effective or has achieved its goals. No evaluation tools are in place.</p>	<p>Has a generally accurate impression of the program's effectiveness and the extent to which goals were met. Minimal evaluation tools were used.</p>	<p>Makes an accurate assessment of the program's effectiveness and the extent to which it achieved its goals and utilizes evaluation tools to support state standards.</p>	<p>Program effectiveness is assessed and changes made after surveying students, staff, parents and community on a regular basis.</p>
<p><b>2c</b> <b>Providing a culture conducive to learning</b></p>	<p>Is not involved in developing or supporting programs that convey expectations for all students to succeed in school.</p>	<p>Is sometimes involved in developing programs that some-times convey positive regard for students and expectations that students will be successful in school.</p>	<p>Is involved in developing services and programs that convey an attitude of positive regard and which expect all students to be successful in school.</p>	<p>Is involved in developing programs that convey an attitude of positive regard and expects all students to be successful in school. Counselor takes a leadership role in promoting a unified school climate.</p>
<p><b>2d</b> <b>Monitoring student educational progress</b></p>	<p>Does not monitor student progress in meeting state counseling standards, DSTP standards, and graduation requirements.</p>	<p>Does some monitoring of student progress in meeting state counseling standards, DSTP standards, and graduation requirements.</p>	<p>Monitors student progress in meeting state counseling standards, DSTP standards, and graduation requirements.</p>	<p>Takes on active, proactive stance in monitoring student progress in meeting state counseling standards, DSTP standards, and graduation requirements.</p>
<p><b>2e</b> <b>Providing brief counseling sessions</b></p>	<p>Demonstrates little or no rapport with students to work together, individually or in small groups, on student issues and needs.</p>	<p>Demonstrates minimal rapport with students to work together, individually or in small groups, on student issues, needs, or goals.</p>	<p>Demonstrates rapport with students to work together, individually or in small groups, on student issues, needs, or goals.</p>	<p>Demonstrates exceptional rapport with all students to work together, individually or in small groups, on student issues, needs, or goals and utilizes professional contact and referrals as appropriate.</p>

### 3.1.3 Professional Collaboration and Consultation

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<p><b>3a</b> <b>Communicating effectively</b></p>	<p>Spoken language is inaudible or written language is illegible. Spoken or written language may contain many grammar and syntax errors. Vocabulary may be inappropriate, vague, or used incorrectly, leaving listeners confused. Counselor does not provide written communication to students, staff and families.</p>	<p>Spoken language is audible and written language is legible. Both are used correctly. Vocabulary is correct but limited or is not appropriate to listeners' age, background, or level of understanding. Counselor provides some written communication to students, staff, and families.</p>	<p>Spoken and written language is clear and correct. Vocabulary is appropriate to listeners' age, background, and level of understanding. Counselor has a variety of written ways to communicate with students, staff, and families.</p>	<p>Spoken and written language is correct and expressive, with well-chosen vocabulary that enriches discussion and anticipates possible misunderstanding. Counselor uses multi media to communicate with students, staff, families and communities.</p>
<p><b>3b</b> <b>Promoting partnerships with parents, educators, and communities</b></p>	<p>Does not communicate or partner with educators, families, or the community.</p>	<p>Makes a limited attempt to participate in partnerships with educators, families, and the community.</p>	<p>Creates partnerships with educators, families, and the community and acknowledges he various influences that affect students' wellness, learning, and achievement.</p>	<p>Creates partnerships with educators, families, and the community, acknowledging the various influences that affect students' wellness, learning, and achievement. Additionally, the counselor uses an extensive repertoire of strategies and resources to respond to the various influences.</p>

<b>3c</b> <b>Developing collaborative service delivery to improve student achievement</b>	Does not work with others (faculty, parents, agencies) to improve student achievement.	Does some work with others (faculty, parents, agencies) to improve student achievement.	Works with others (faculty, parents, agencies) to improve student achievement.	Consistently works with others (faculty, parents, agencies) to improve student achievement.
<b>3d</b> <b>Demonstrating flexibility and responsiveness</b>	Adheres rigidly to a program even when a change will clearly make an improvement.	Rarely attempts to adjust the program to address the needs of the school and community.	Attempts to adjust the program to address the needs of the school and community.	Frequently makes adjustments to program to address the needs of the school community.

3.1.4 Domain 4: Professional Responsibilities

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>4a</b> <b>Maintaining accurate records</b>	Has little or no system for maintaining information and records are in disarray, resulting in errors and confusion.	The system for maintaining information is partially complete.	The system for maintaining information is complete and records are in order.	The system for maintaining information is complete and records are accurate and in order. Information can be easily understood.
<b>4b</b> <b>Engaging in professional development</b>	Does not engage in professional development activities and does not participate in in-service training to enhance knowledge, skill or long range planning	Participates in professional development activities only when required and does limited long range planning.	Seeks out opportunities for professional development to enhance content knowledge and skill and does long range planning.	Seeks out opportunities for professional development and makes a systematic attempt to apply new knowledge and skills to enhance service delivery and is willing to lead workshops to share knowledge, skills and long range planning at the district, state and national level.
<b>4c</b> <b>Promoting service to students</b>	Contributes to school practices that result in some students being ill served by the school.	Does not knowingly contribute to some students being ill served by the school.	Works within the context of a particular team or department to ensure that all students receive a fair opportunity to succeed.	Makes a particular effort to challenge negative attitudes and helps ensure that all students, particularly those traditionally under-served, are honored in the school.
<b>4d</b> <b>Communicating with families</b>	Counselor does not provide feedback in a timely way.	Counselor provides some feedback to family on student needs and progress.	Consistently provides feedback to family on student needs and progress.	In an effective way, initiates multiple forms of communication with the family.

3.1.5 Domain 5: Student Improvement

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>5a</b> <b>Uses data from the DSTP I School Accountability Performance Rating to help educators make instructional decisions.</b>	There is no evidence that DSTP School Accountability Performance Rating data inform planning or impact on instructional decisions. There is no evidence of student improvement.	There is limited evidence that DSTP School Accountability Performance Rating data inform planning or impact on instructional decisions. Limited evidence of student improvement is found.	There is clear evidence that DSTP School Accountability Performance Rating data inform planning and impact on instructional decisions. Clear evidence of student improvement is found.	There is clear and convincing evidence that DSTP School Accountability Performance Rating data are used to inform planning and impact on instructional decisions. Clear, consistent and convincing evidence of student improvement is found.

# PROPOSED REGULATIONS

<p><b>5b</b> <u>Identifies multiple measures and a variety of assessments (e.g., DSTP I &amp; II on-line scores, pre &amp; post-testing, performances, portfolios, oral presentations, projects) to document student improvement</u></p>	<p><u>Does not provide evidence of student improvement toward meeting the standards, or evidence provided shows that students are not making improvement toward standards.</u></p>	<p><u>Provides limited evidence of student improvement toward meeting the standards.</u></p>	<p><u>Provides clear evidence of student improvement toward meeting the standards using multiple evidence sources and demonstrating an understanding of the use of the data to address students' instructional needs.</u></p>	<p><u>Provides clear, consistent and convincing evidence of student improvement toward meeting the standards by providing evidence of student performance using a rich variety of multiple measures and assessments and documenting how the data were used to address students' instructional needs.</u></p>
<p><b>5c</b> <u>Provides evidence of student improvement toward standards through DSTP I &amp; II scores and other sources of data</u></p>	<p><u>Is unaware of the distribution in student achievement or makes no effort to close the gap by addressing the different needs of individual students or groups of students within the class. Measurable discrepancies in student learning persist.</u></p>	<p><u>Is unaware of the distribution in student achievement and makes a limited effort to close the gap by addressing the different needs of individual students or groups of students within the class. The distribution in student achievement within the class is beginning to close.</u></p>	<p><u>Is very aware of the distribution in student achievement and makes a concerted effort to close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that the distribution in student achievement is being closed.</u></p>	<p><u>Is proactive in addressing the distribution in student achievement and uses research-based strategies to effectively close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that students are achieving at higher levels and that the distribution in student achievement is being closed. The specialist provides leadership to colleagues in the identification and use of effective strategies to address the distribution in student achievement.</u></p>

3.2 A Framework for Specialists: Instructional Support

**DOMAIN ONE: PLANNING AND PREPARATION**

Specialists

3.2.1 Domain One: Planning and Preparation

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<p><b>1a</b> <u>Knowledge of content</u></p>	<p><u>Makes content errors or does not correct content errors made by others</u></p>	<p><u>Displays basic content knowledge but cannot articulate connections with other parts of the discipline or with other disciplines</u></p>	<p><u>Displays solid content knowledge and makes connections with other parts of the discipline or with other disciplines</u></p>	<p><u>Displays extensive content knowledge, with evidence of continuing pursuit of such knowledge, and makes connections with other parts of the discipline or with other disciplines</u></p>
<p><b>1b</b> <u>Knowledge of content standards (state and/or national)</u></p>	<p><u>Displays little knowledge of how to use content standards for instruction and to build an understanding of how they are interrelated</u></p>	<p><u>Displays knowledge of how to use content standards but may lack the understanding of how to use them to build understanding of how they are interrelated</u></p>	<p><u>Displays knowledge of the content standards and uses them to develop plans that lead to the understanding of how they are integrated and interrelated</u></p>	<p><u>Displays knowledge of the content standards and uses them to develop plans that lead to the understanding of how they are integrated and interrelated and involves students in seeking and identifying the relationships</u></p>

# PROPOSED REGULATIONS

<b><u>1c</u></b> <b><u>Knowledge of prerequisite relationships</u></b>	<u>Displays little understanding of prerequisite important for student/educator learning of the content</u>	<u>Indicates some awareness of prerequisite learning although such knowledge may be incomplete or inaccurate</u>	<u>Plans and practices reflect understanding of prerequisite relationships among topics and concepts</u>	<u>Actively builds on knowledge of prerequisite relationships when describing instruction or seeking causes for learner misunderstanding</u>
<b><u>1d</u></b> <b><u>Knowledge of content-related pedagogy</u></b>	<u>Displays little understanding of pedagogical issues involved in learning of the content</u>	<u>Displays basic pedagogical knowledge but does not anticipate misconceptions</u>	<u>Pedagogical practices reflect current research on best practice within the discipline but without anticipating misconceptions</u>	<u>Pedagogical practices reflect current research on best practice within the discipline and anticipate learner misconceptions</u>
<b><u>1e</u></b> <b><u>Resources for educators</u></b>	<u>Is unaware of the resources available through the school/district/state</u>	<u>Displays limited awareness of resources available through the school/district/state</u>	<u>Is fully aware of resources available through the school/district/state for educators they assist</u>	<u>In addition to being aware of resources, actively seeks other materials to enhance instruction from various sources and shares those with educators whom they serve</u>
<b><u>1f</u></b> <b><u>Resources for parents</u></b>	<u>Is unaware of resources available to parents who desire them</u>	<u>Displays limited awareness of resources available through school, district, or state</u>	<u>Is fully aware of resources available through school, district, or state and knows how to gain access for parents</u>	<u>In addition to being aware of resources available through school, district, or state, is aware of additional resources available through the community and help parents gain access to them</u>
<b><u>1g</u></b> <b><u>Resources for students</u></b>	<u>Is unaware of resources available to assist students who need them</u>	<u>Displays limited awareness of resources available through school, district, or state</u>	<u>Is fully aware of resources available through school, district, or state and knows how to gain access for students</u>	<u>In addition to being aware of resources available through school, district, or state, is aware of additional resources available through the community and assist students in gaining access to them.</u>
<b><u>1h</u></b> <b><u>Knowledge of characteristics of adult learners</u></b>	<u>Displays little knowledge of the characteristics of adult learners and how to plan and/or delivery may inhibit learning</u>	<u>Displays limited knowledge of characteristics of adult learners and plans and delivery may be inconsistent with needs of the learners</u>	<u>Displays knowledge of the characteristics of adult learners and demonstrates it in the plans and delivery of sessions</u>	<u>Displays knowledge of the characteristics of adult learners and demonstrates it in the plans and delivery of sessions by reacting to needs of the participants and including them in the process</u>

<b><u>1i</u></b> <b><u>Knowledge of adults varied approaches to learning</u></b>	<u>Displays little use of varied approaches to learning in adults</u>	<u>Displays limited use of varied approaches to learning in adults and/or applies it inconsistently</u>	<u>Displays knowledge of a variety of approaches to learning in adults and applies them in the delivery of services</u>	<u>Displays knowledge of a variety of approaches to learning in adults and applies them in delivery and makes use of feedback in planning for future sessions</u>
<b><u>1j</u></b> <b><u>Knowledge of teaching standards</u></b>	<u>Displays little knowledge of the Delaware Teacher Standards</u>	<u>Displays limited understanding of the Delaware Teacher Standards</u>	<u>Displays clear understanding of the Delaware Teacher Standards as demonstrated in practice and planning</u>	<u>Displays clear understanding of the Delaware Teacher Standards as demonstrated in practice and planning and engages the learners in understanding of identifying them in their own practices</u>

# PROPOSED REGULATIONS

<b>1k</b> <b>Knowledge of standards (state and national) for staff development</b>	<u>Displays little knowledge of the content standards and their relationship to other disciplines and/or programs</u>	<u>Displays knowledge of the content standards but it may be limited in depth and/or understanding of relationship to other disciplines or programs</u>	<u>Displays knowledge of content standards and is able to identify the relationship between the disciplines and other programs</u>	<u>Displays knowledge of content standards and is able to identify the relationship between the disciplines and other programs and takes an active role in the development and implementation of the standards in their work setting</u>
---	---	---	--	--

### 3.2.2 Domain Two: Delivery of Service

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>2a</b> <b>Communicating clearly and accurately</b>	<u>Spoken language is inaudible or written language is illegible. Spoken or written language may contain grammar and syntax errors. Vocabulary may be inappropriate, vague, or used incorrectly, leaving learners confused.</u>	<u>Spoken language is audible and written language is legible. Both are used correctly. Vocabulary is correct but limited or is not appropriate to learners' ages or backgrounds.</u>	<u>Spoken and written language is clear and correct. Vocabulary is appropriate to the learners' ages and interests.</u>	<u>Spoken and written language is correct and expressive, with well-chosen vocabulary that enriches the lesson.</u>
<b>2b</b> <b>Interactions with educators</b>	<u>Interaction with at least some learners is negative, demeaning, sarcastic, or inappropriate to the age or culture of the learners. Learners exhibit disrespect for the instructional support specialist.</u>	<u>Interactions are generally appropriate but may reflect occasional inconsistencies, favoritism, or disregard for the learners' cultures. Learners may exhibit only minimal respect for the instructional support specialist.</u>	<u>Interactions are friendly and demonstrate general warmth, caring, and respect. Such interactions are appropriate to developmental and cultural norms. Learners exhibit respect for the instructional support specialist.</u>	<u>Demonstrates genuine caring and respect for individual learners. Learners exhibit respect for the instructional support specialist as an individual, beyond that for the role.</u>
<b>2c</b> <b>Expectations for learning and achievement</b>	<u>Instructional goals and activities, interactions, and the classroom environment convey only modest expectations for learner achievement</u>	<u>Instructional goals and activities, interactions, and the classroom environment convey inconsistent expectations for learner achievement.</u>	<u>Instructional goals and activities, interactions, and the classroom environment convey high expectations for learner achievement.</u>	<u>Both learners and the instructional support specialist establish and maintain through planning of learning activities, interactions, and the classroom environment high expectations for the learning of all learners.</u>
<b>2d</b> <b>Creating engaging learning</b>	<u>Designs activities and assignments for learners that are inappropriate, not mentally engaging, not clearly defined, and/or that suffer from pacing that is too slow or rushed, or both.</u>  pac	<u>Designs activities and assignments, some of which are appropriate and mentally engaging. The activities have a recognizable structure, although it is not uniformly maintained throughout. Pacing is inconsistent.</u>	<u>Designs activities and assignments with a clearly defined structure and consistent pacing that are appropriate and that cognitively engage almost all learners.</u>	<u>Designs activities and assignments with a clearly defined structure and consistent pacing that is appropriate and that cognitively engage all learners. The activities allow for reflection and closure as appropriate.</u>
<b>2e</b> <b>Information about instructional programs</b>	<u>Provides little information about instructional programs to families.</u>	<u>Participates in the school's activities for parent communication, but offers little additional information.</u>	<u>Provides frequent information to parents, as appropriate, about the instructional program.</u>	<u>Provides frequent information to parents, as appropriate, about instructional programs and explains how these impact student achievement.</u>

# PROPOSED REGULATIONS

<b>2f</b> <b>Engaging families in the instructional program</b>	Makes no attempt to engage families in the instructional program, or such attempts are inappropriate.	Makes modest and inconsistently successful attempts to engage families in instructional programs.	Efforts to engage families in the instructional program are frequent and successful.	Efforts to engage families in the instructional program are frequent and successful with a positive effect on student achievement.
<b>2g</b> <b>Relationships with Colleagues</b>	Relationships with colleagues are negative or self-serving	Maintains cordial relationships with colleagues to fulfill the duties that the school or district requires	Support and cooperation characterize relationship with colleagues	Support and cooperation characterize relationships with colleagues. Takes initiative in assuming leadership among the faculty.
<b>2h</b> <b>Service to School</b>	Avoids becoming involved in school events	Participates in school event when specifically asked	Volunteers to participate in school events, making a substantial contribution	Volunteers to participate in school events, making a substantial contribution, and assumes a leadership role in at least some aspect of school life.
<b>2i</b> <b>Participation to school and district projects</b>	Avoids becoming involved in school and district projects	Participates in school and district projects when specifically asked	Volunteers to participate in school and district projects, making a substantial contribution	Volunteers to participate in school and district projects, making a substantial contribution, and assumes a leadership role in a major school or district project.

**3.2.3 Domain Three: Professional Collaboration and Consultation**

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>3a</b> <b>Resources for professional development</b>	Is unaware of resources available through the district, state, or country	Has limited knowledge of resources available through the district, state, or country	Is fully aware of resources available through the district, state, or country	In addition to being aware of various resources, actively seeks other quality materials to enhance instruction and may even be instrumental in developing new material and provides it for the educational community
<b>3b</b> <b>Involvement in the professional community</b>	Avoids being involved in the professional community	Participates in the professional community when specifically asked to do so	Volunteers to participate in professional development events, making a substantial contribution	Volunteers to participate in professional development events, making a substantial contribution, and assumes a leadership role
<b>3c</b> <b>SERVICE</b>	Is alert to educator needs	Attempts to educators are inconsistent	Is effective in serving educators	Is highly proactive in serving educators, seeking out resources when necessary and providing them to the educational community
<b>3d</b> <b>Advocacy</b>	Fails to advocate for educators' needs and concerns	Inconsistently attempts to advocate for educators' needs and concerns	Effectively advocates for educators' needs and concerns	Effectively advocates for educators' needs and concerns and seeks resources/support from a variety of sources

**DOMAIN FOUR: PROFESSIONAL RESPONSIBILITIES**

**3.2.4 Domain Four: Professional Responsibilities**

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished

# PROPOSED REGULATIONS

<b>4a</b> <b>Maintaining accurate records</b>	System for maintaining information on instructional programs is in disarray	System for maintaining information on instructional programs is rudimentary and only partially effective	System for maintaining information on instructional programs is effective	System for maintaining information on instructional programs is effective and efficient and shared with the educational community
<b>4b</b> <b>Use of feedback from colleagues</b>	Does not use the evaluation feedback from colleagues or blames them for the non-success of the presentation	Attempts to use feedback from a presentation, with mixed results	Uses the feedback from a presentation to make adjustments that occur smoothly	Uses the feedback to make appropriate adjustments that occur smoothly and enhance the learning and/or climate
<b>4c</b> <b>Enhancement of content knowledge and pedagogical skill</b>	Engages in no professional development activities to enhance knowledge or skill	Participates in professional activities to a limited extent when they are convenient	Seeks out opportunities for professional development to enhance content knowledge and pedagogical skill	Seeks out opportunities for professional development and makes a systematic attempt to conduct action research in the classroom
<b>4d</b> <b>Service to the profession</b>	Makes no effort to share knowledge with others or to assume professional responsibilities	Finds limited ways to contribute to the profession	Participates actively in assisting other educators	Initiates important activities to contribute to the profession, such as mentoring new teachers, writing articles for publication, and making presentations.
<b>4e</b> <b>Accuracy of reflecting on professional practice</b>	Does not know if a lesson was effective or achieved its goals, or profoundly misjudges the success of a lesson	Has a generally accurate impression of a lesson's effectiveness and the extent to which instructional goals were met	Makes an accurate assessment of a lesson's effectiveness and the extent to which it achieved its goals and can cite general references to support the judgment	Makes a thoughtful and accurate assessment of a lesson's effectiveness and the extent to which it achieved its goals, citing many specific examples from the lesson and weighing the relative strength of each
<b>4f</b> <b>Use of reflection in future teaching</b>	Has no suggestions for how a lesson may be improved another time	Makes general suggestions about how a lesson may be improved	Makes a few specific suggestions of what s/he may try another time	Drawing on an extensive repertoire of skills, offers specific alternative actions, complete with probably successes of different approaches.

### 3.2.5 Domain Five: Student Improvement

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>5a</b> Uses data from the DSTP I School Accountability Performance Rating to help educators make instructional decisions	There is no evidence that DSTP School Accountability Performance Rating data inform planning or impact on instructional decisions. There is no evidence of student improvement.	There is limited evidence that DSTP School Accountability Performance Rating data inform planning or impact on instructional decisions. Limited evidence of student improvement is found.	There is clear evidence that DSTP School Accountability Performance Rating data inform planning and impact on instructional decisions. Clear evidence of student improvement is found.	There is clear and convincing evidence that DSTP School Accountability Performance Rating data are used to inform planning and impact on instructional decisions. Clear, consistent and convincing evidence of student improvement is found.



<p><b>5b</b> <u>Identifies multiple measures and a variety of assessments (e.g., DSTP I &amp; II on-line scores, pre &amp; post-testing, performances, portfolios, oral presentations, projects) to document student improvement.</u></p>	<p><u>Does not provide evidence of student improvement toward meeting the standards, or evidence provided shows that students are not making improvement toward standards.</u></p>	<p><u>Provides limited evidence of student improvement toward meeting the standards.</u></p>	<p><u>Provides clear evidence of student improvement toward meeting the standards using multiple evidence sources and demonstrating an understanding of the use of the data to address students' instructional needs.</u></p>	<p><u>Provides clear, consistent and convincing evidence of student improvement toward meeting the standards by providing evidence of student performance using a rich variety of multiple measures and assessments and documenting how the data were used to address students' instructional needs.</u></p>
<p><b>5c</b> <u>Provides evidence of student improvement toward standards through DSTP I &amp; II scores and other sources of data</u></p>	<p><u>Is unaware of the distribution in student achievement or makes no effort to close the gap by addressing the different needs of individual students or groups of students within the class. Measurable discrepancies in student learning persist.</u></p>	<p><u>Is aware of the distribution in student achievement and makes a limited effort to close the gap by addressing the different needs of individual students or groups of students within the class. The distribution in student achievement within the class is beginning to close.</u></p>	<p><u>Is very aware of the distribution in student achievement and makes a concerted effort to close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that the distribution in student achievement is being closed.</u></p>	<p><u>Is proactive in addressing the distribution in student achievement and uses research-based strategies to effectively close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that students are achieving at higher levels and that the distribution in student achievement is being closed. The specialist provides leadership to colleagues in the identification and use of effective strategies to address the distribution in student achievement.</u></p>

3.3 A Framework for Specialists: Library Media Specialists

3.3.1 Domain 1: Planning and Preparation

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<p><b>1a</b> <u>Demonstrating knowledge of professional school library media practice and pedagogy</u></p>	<p><u>Displays little understanding of professional ethics, pedagogical issues and the current research literature pertaining to professional practice.</u></p>	<p><u>Displays basic knowledge of professional ethics, pedagogical issues and the current research literature pertaining to professional practice but does not anticipate student misconceptions.</u></p>	<p><u>Practice reflects current research on best practice with regard to professional ethics, current research literature and pedagogical issues and anticipates student misconceptions.</u></p>	<p><u>Displays continuing search for best practice with regard to professional ethics, current research literature, and pedagogical issues. Possesses a clear understanding of student developmental stages as tied to the delivered curriculum. Identifies and minimizes potential areas of misconception.</u></p>

# PROPOSED REGULATIONS

<b>1b</b> <b>Demonstrating knowledge of content standards</b>	<u>Demonstrates little understanding of applicable Delaware Content Standards and district curriculum.</u>	<u>Demonstrates basic knowledge of applicable Delaware Content Standards and district curriculum but cannot articulate connections between the content and other disciplines.</u>	<u>Demonstrates thorough knowledge of applicable Delaware Content Standards and district curriculum and makes connections between the content and other disciplines.</u>	<u>Demonstrates extensive knowledge of applicable Delaware content standards and district curriculum with evidence of continuing pursuit of such knowledge. Delivery of instruction clearly reflects attention to aligning content standards with information literacy standards.</u>
<b>1c</b> <b>Designing and selecting instructional goals that implement content standards</b>	<u>Displays little knowledge of principles of library and information studies needed to create an effective, integrated library media program.</u>	<u>Displays generally accurate knowledge of principles of library and information studies needed to create an effective, integrated library media program.</u>	<u>Displays knowledge of principles of library and information studies needed to create an effective, integrated library media program.</u>	<u>Displays extensive knowledge of principles of library and information studies needed to create an effective, integrated library media program. Assessment of lesson/instructional unit demonstrates collaboration on rubric development.</u>
<b>1d</b> <b>Demonstrating knowledge of students</b>	<u>Demonstrates a lack of knowledge relating to individual students' needs.</u>	<u>Demonstrate some knowledge relating to individual students' needs. Occasionally integrates that knowledge into the students' program.</u>	<u>Demonstrates thorough knowledge of individual students' needs and integrates that knowledge into the students' program. Helps students in planning and evaluating their learning.</u>	<u>Demonstrates thorough knowledge of individual students' needs and seeks specific resources to effectively address those needs. Helps students identify and use their own strengths in planning and evaluating their own learning.</u>

### 3.3.2 Domain 2: Professional Practice and Delivery of Service

Component	Level of Performance				
	Unsatisfactory	Unsatisfactory	basic	proficient	distinguished
<b>2a</b> <b>Establishing a culture for learning in an environment of respect and rapport</b>	<u>Rarely works with others to develop an information program or to create an inviting physical environment. Is unaware of the important role that the library plays in curriculum and does little to encourage use.</u>	<u>Sometimes works with others to develop and implement a program in a pleasant physical environment. Supports the idea of an atmosphere in which students and staff could find necessary information successfully.</u>	<u>Works consistently with others to develop and implement a collaborative program in an inviting environment. Creates a productive learning environment for focused learning, ensuring that students and staff use ideas and information effectively.</u>	<u>Expands collaborative opportunities with staff to create a dynamic learning environment that stimulates successful independent inquiry by both students and staff. Shapes a welcoming environment in which all users feel empowered to succeed.</u>	
<b>2b</b> <b>Translating instructional goals into learning experiences</b>	<u>Makes no attempt to integrate information literacy through collaboration, planning, implementation, and assessment of learning. Learning activities are not suitable to students or to the instructional goals and do not progress in a sequential manner and do not reflect recent professional research.</u>	<u>Occasionally integrates information literacy through collaboration, planning, implementation, and assessment of learning. Few of the learning activities are suitable to students or to the instructional goals. Progression on activities in the unit is uneven and only some activities reflect recent professional research.</u>	<u>Often integrates information literacy through collaboration, planning, and assessment of learning. Most of the learning activities are suitable to students and to the instructional goals. Progression of activities in the unit is fairly even and most activities reflect recent professional research.</u>	<u>Consistently integrates information literacy through collaboration, planning, implementation, and assessment of learning. Learning activities are highly relevant to students and instructional goals while progressing coherently, producing a unified whole and reflecting recent professional research.</u>	

<p><b>2c</b> <b>Developing and managing the library collection</b></p>	<p>Does not maintain an organized collection of materials. Resources purchased rarely support or enrich state and district curriculum objectives. Makes no effort to be current in knowledge of the curriculum and does not use selection tools for choosing library materials. Rarely, if ever, processes materials in an efficient manner and fails to alert students and staff of new acquisitions to the collection.</p>	<p>Has a mostly organized collection of materials that often support and enrich state and district curriculum objectives. Sometimes is not current in knowledge of the curriculum and occasionally uses current selection tools for choosing library materials. Attempts to process materials in an efficient manner and at times alerts students and staff of new acquisitions to the collection.</p>	<p>Has an organized and varied collection of materials and resources that supports and enriches state and district curriculum objectives. Strives to remain current in knowledge of the curriculum and uses up-to-date selection tools for choosing library materials. Processes materials in an efficient and timely manner and publicizes new acquisitions to students and staff.</p>	<p>Maintains a highly organized and varied collection of resources that support and enrich state and district curriculum objectives. Is always current in knowledge of the curriculum and uses up-to-date selections tools for choosing library materials in an efficient and timely manner. Seeks ongoing and innovative ways of publicizing new acquisitions and alerts teachers and staff to collection resources available for curriculum tie-ins.</p>
<p><b>2d</b> <b>Organizing Physical Space</b></p>	<p>Physical space is unsafe and inappropriate. Does not provide adequate access to resources and information for students and staff library in the library media center.</p>	<p>Organizes a safe physical environment. Accessibility to resources and information is limited in the library media center.</p>	<p>Aware of design trends and organizes physical environment safe and developmentally appropriate for all students. Usually provides equitable access to an extensive variety of resources and information in the library media center.</p>	<p>Keeps current with design trends and organizes physical environment to ensure that it is safe and developmentally appropriate for all students. Guarantees equitable access to an extensive variety of resources and information in a stimulating library media center.</p>

3.3.3 Domain 3: Professional Collaboration and

Consultation

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<p><b>3a</b> <b>Participating in curriculum development and assessment projects</b></p>	<p>Fails to assume a role in curriculum development and assessment projects.</p>	<p>Participates in curriculum development and assessment projects when required.</p>	<p>Actively participates in curriculum development and assessment projects.</p>	<p>Exercises leadership role and serves as a catalyst in curriculum development and assessment projects. Designs unique library components of a unit that are aligned with Delaware content standards.</p>
<p><b>3b</b> <b>Collaborating with individual teachers</b></p>	<p>Does not collaborate with teachers to integrate information literacy and promote student achievement.</p>	<p>Collaborates occasionally with teachers to integrate information literacy and promote student achievement.</p>	<p>Collaborates often with teachers to integrate information literacy and promote student achievement.</p>	<p>Collaborates extensively with teachers to integrate information literacy and promote student achievement.</p>
<p><b>3c</b> <b>Consulting with administrators</b></p>	<p>Makes no attempt to communicate and create a partnership with the building administrator to develop the goals of the program.</p>	<p>Updates the building administrator on the goals of the library media program.</p>	<p>Interacts with the building administrator to identify the goals of the program. Communicates status of goals and implementation regularly.</p>	<p>Creates an active partnership with the building administrator to develop the goals of the program. Communicates and seeks input on ways to design a program to better meet the needs of the school community.</p>
<p><b>3d</b> <b>Proving leadership using instructional resources and technologies</b></p>	<p>Fails to assist in providing equitable access to, and effective use of, instructional technologies.</p>	<p>Provides limited guidance in providing equitable access to, and effective use of, instructional technologies.</p>	<p>Provides guidance in providing equitable access to, and effective use of, instructional resources and technologies.</p>	<p>Leads in providing equitable access to, and effective use of, instructional resources and technologies</p>

# PROPOSED REGULATIONS

## 3.3.4 Domain 4: Professional Responsibilities

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>4a</b> <u>Reflecting on practice</u>	<u>Is unaware of the program's effectiveness or if its goals were achieved. Profoundly midjudges the success of the program and has no suggestions of how the program can be improved.</u>	<u>Has a generally accurate impression of the effectiveness of the library program and the extent to which instructional goals were met. Makes general suggestions about how the program can be improved.</u>	<u>Makes a summative assessment of the effectiveness of the library program and the extent to which it achieved its goals. Makes specific suggestions to increase the program's success.</u>	<u>Makes a detailed assessment of the library program. Assessment uses information gathered from self-evaluation, analyses of collaborative activities, as well as input from students and staff. Draws on an extensive repertoire of skills, offering alternative actions to enhance success.</u>
<b>4b</b> <u>Communicating with families</u>	<u>Provides minimal information about the library media program.</u>	<u>Occasionally provides information about the library media program.</u>	<u>Often provides information about the library media program through communications with students, staff, and the community.</u>	<u>Frequently provides information about the library media program through extensive on-going activities and communications with students, staff, families, and the community.</u>
<b>4c</b> <u>Growing and developing professionally</u>	<u>Engages in no professional development activities to enhance knowledge or skill. Makes no effort to share knowledge with others or assume professional responsibilities.</u>	<u>Participates in professional development activities to a limited extent when convenient. Finds limited ways to contribute to the profession.</u>	<u>Participates in professional development and models lifelong learning. Participates actively in assisting others in the profession.</u>	<u>Seeks out opportunities for professional development and models a strong commitment to lifelong learning. Initiates and leads important activities that contribute to the profession.</u>
<b>4d</b> <u>Demonstrating professionalism</u>	<u>Does not have a formal or informal policy that addresses the issue of selection, challenges, copyright, intellectual freedom, confidentiality, and acceptable use. Does not have an appropriate procedure when faced with challenges to materials in the collection.</u>	<u>Has informal or dated policy to address issues of selection/deselection, challenges, copyright, intellectual freedom, equity, confidentiality, and acceptable use. Removes challenged material from the collection before following proper procedures.</u>	<u>Has a clearly defined mission that is communicated to the school community. The written policy addresses selection/deselection, challenges, copyright, intellectual freedom, equity, confidentiality, and acceptable use. The policy is both modeled and taught. Challenges are handled according to a written policy that ensures that input is received from all concerned parties.</u>	<u>Ensures that the mission of the program is based on the highest professional standards. Makes extensive use of the policy and revises it as necessary. Supports, models, and teaches the concepts of intellectual freedom and ethical uses of ideas, information, and resources to the school community. The importance of intellectual freedom in the American culture is addressed with students at all grade levels.</u>

## 3.3.5 Domain 5: Student Improvement

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>5a</b> <u>Uses data from DSTP I School Accountability Performance Rating to help educators make instructional decisions</u>	<u>There is no evidence that DSTP School Accountability Performance Rating data inform planning or impact on instructional decisions. There is no evidence of student improvement.</u>	<u>There is limited evidence that DSTP School Accountability Performance Rating data inform planning or impact on instructional decisions. Limited evidence of student improvement is found.</u>	<u>There is clear evidence that DSTP School Accountability Performance Rating data inform planning and impact on instructional decisions. Clear evidence of student improvement is found.</u>	<u>There is clear and convincing evidence that DSTP School Accountability Performance Rating data are used to inform planning and impact on instructional decisions. Clear, consistent and convincing evidence of student improvement is found.</u>

<p><b>5b</b> <u>Identifies multiple measures and a variety of assessments (e.g., DSTP I &amp; II on-line scores, pre- &amp; post-testing, performances, portfolios, oral presentations, projects) to document student improvement</u></p>	<p>Does not provide evidence of student improvement toward meeting the standards, or evidence provided shows that students are not making improvement toward standards.</p>	<p>Provides limited evidence of some student improvement toward meeting the standards.</p>	<p>Provides clear evidence of student improvement toward meeting the standards using multiple evidence sources and demonstrating an understanding of the use of the data to address students' instructional needs.</p>	<p>Provides clear, consistent and convincing evidence of student improvement toward meeting the standards by providing evidence of student performance using a rich variety of multiple measures and assessments and documenting how the data were used to address students' instructional needs.</p>
<p><b>5c</b> <u>Provides evidence of student improvement toward standards through DSTP I &amp; II scores and other sources of data</u></p>	<p>Is unaware of the distribution in student achievement or makes no effort to close the gap by addressing the different needs of individual students or groups of students within the class. Measurable discrepancies in student learning persist.</p>	<p>Is aware of the distribution in student achievement and makes a limited effort to close the gap by addressing the different needs of individual students or groups of students within the class. The distribution in student achievement within the class is beginning to close.</p>	<p>Is very aware of the distribution in student achievement and makes a concerted effort to close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that the distribution in student achievement is being closed.</p>	<p>Is proactive in addressing the distribution in student achievement and uses research-based strategies to effectively close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that students are achieving at higher levels and that the distribution in student achievement is being closed. The specialist provides leadership to colleagues in the identification and use of effective strategies to address the distribution in student achievement.</p>

**3.4.1 Domain 1: Planning and Preparation**

**3.4 A Framework for Specialists: School Nurses**

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<p><b>1a</b> Demonstrating knowledge of client characteristics</p>	<p>Displays little or no knowledge and sensitivity to client characteristics (such as appropriate developmental levels, physical/emotional norms, cultural and ethnic backgrounds) and does not indicate that such knowledge is valuable.</p>	<p>Displays generally accurate knowledge and sensitivity to client characteristics (such as appropriate developmental levels, physical/emotional norms, cultural and ethnic backgrounds), but inconsistent application.</p>	<p>Displays accurate knowledge and sensitivity to client characteristics (such as appropriate developmental levels, physical/emotional norms, cultural and ethnic backgrounds) and demonstrates value of this knowledge.</p>	<p>Displays extensive knowledge and sensitivity to client characteristics (such as appropriate developmental levels, physical and emotional norms, cultural and ethnic backgrounds).</p>
<p><b>1b</b> <u>Demonstrating knowledge of professional school nursing practice</u></p>	<p>Displays little or no knowledge of standards of professional school nursing and evidence-based practice.</p>	<p>Displays generally accurate knowledge of standards of professional school nursing and evidence-based practice.</p>	<p>Displays thorough understanding and knowledge of standards of professional school nursing and evidence-based practice.</p>	<p>Displays extensive knowledge and is considered an expert in standards of professional school nursing and evidence-based practice.</p>

# PROPOSED REGULATIONS

<p><b>1c</b> <b>Planning for delivery of services</b></p>	<p>Does not create a safe and healthy environment through such activities as school entry requirement documentation, medication regime, utilization of space, storage of equipment, and emergency preparation.</p>	<p>Creates a minimally safe and healthy environment through such activities as inconsistent school entry requirement compliance, safe storage of medication, adequate utilization of space, storage of equipment, and emergency preparation. Inconsistently bases school health program on student and community needs.</p>	<p>Provides a safe and healthy environment through such activities as consistent school entry requirement compliance, safe storage of medication, skillful use and accommodation of space, and storage of equipment. Has emergency training and emergency response plan for school with some development of individual health care plans and emergency care. Bases school health program on student and community needs.</p>	<p>In addition to providing a safe and healthy environment, anticipates and plans for future needs. Has developed/contributed to school-wide crisis plan and student emergency care plans are available. Provides emergency training to staff/student/community. Develops individualized health care plans for students with chronic illness, assuring student input throughout process. Bases school health program on student/community needs from data collected through needs assessments.</p>
---	--	---	--	--

### 3.4.2 Domain 2: Professional Practice and

#### Delivery of Service

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<p><b>2a</b> <b>Demonstrating clinical practice</b></p>	<p>Displays little or no use of: 1) the nursing process (data collection, assessment, intervention, outcome and evaluation) 2) appropriate client management (i.e., inadequate medication regime, screenings and referrals and inappropriate emergency care). 3. effective and timely delivery of care (i.e. priority setting, procedures, monitoring and follow-up).</p>	<p>Displays generally accurate knowledge but inconsistently applies: 1) the nursing process (data collection, assessment, intervention, outcome and evaluation) 2) appropriate client management (i.e., adequate medication regime, screenings and referrals and appropriate emergency care). 3. effective and timely delivery of care (i.e. priority setting, procedures, monitoring and follow-up).</p>	<p>Displays accurate knowledge and consistent use of: 1) the nursing process (data collection, assessment, intervention, outcome and evaluation) 2) appropriate client management (i.e., adequate medication regime, screenings and referrals, appropriate emergency care). 3. effective and timely delivery of care (i.e., priority setting, procedures, monitoring and follow-up).</p>	<p>Displays extensive knowledge and use of: 1) the nursing process (data collection, assessment, intervention, outcome and evaluation) 2) appropriate client management (i.e., adequate medication regime, screenings and referrals and appropriate emergency care). 3. effective delivery of care (i.e. priority setting, procedures, monitoring and follow-up). Is considered an expert and contributes to the professional body of school nursing knowledge.</p>
<p><b>2b</b> <b>Providing health education</b></p>	<p>Lacks commitment to health education and is unaware of resources available for health education</p>	<p>Limited health education given to individuals and does not provide information to groups when requested based on limited knowledge.</p>	<p>Promotes health education in all student interactions. Provides staff education related to health issues. If time allows will present to groups, if requested.</p>	<p>Promotes health education in all student, family and staff interactions and actively seeks out and implements health programs within the school community.</p>
<p><b>2c</b> <b>Promoting wellness</b></p>	<p>Does not promote and is unaware of wellness as it relates to the educational system: (such as promotes infection control, participates in Wellness Events, provides resources and creates an environment that promotes health and safety)</p>	<p>Limited promotion and awareness of wellness as it relates to the educational system: (such as promotes infection control, participates in Wellness Events, provides resources and creates an environment that promotes health and safety)</p>	<p>Promotes and fully aware of wellness as it relates to the educational system: (such as actively promotes infection control, participates in Wellness Events, provides resources and creates an environment that promotes health and safety)</p>	<p>In addition to actively promoting wellness as it relates to the educational system, is a leader within the school, promoting health, (monitors infection control, plans and coordinates Wellness Events, seeks out and provides resources and creates an environment that promotes health and safety)</p>

### 3.4.3 Domain 3: Professional Collaboration and

Consultation

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<u>3a. Communicating and collaborating with students and families.</u>	<u> Ignores or diminishes concerns of students and family. Does not maintain confidentiality and can be disrespectful in interactions in verbal and written communication. Does not illicit feedback from students or family. Is inflexible in working with students and families.</u>	<u> Attempts to accommodate students' and families' concerns in verbal and written interactions and sharing of information, but inconsistent in application. Use of language may not be understood by students and families. Respectful of students and families in most situations and may illicit feedback from families to ascertain understanding. At times is inflexible in working with students and families.</u>	<u> Consistently listens respectfully and responds appropriately with warmth and caring about the students' and families' concerns. Consistently shares information in appropriate language in verbal and written form. Seeks out and requests feedback from student and family interaction in the interest of sharing and clarifying information. Is flexible in interactions with students and families. Is considered a trusted advocate.</u>	<u> In addition to proficient category, school nurse is able to handle difficult situations appropriately, communicates frequently and often with families either through letters home or information in school newsletter. Treats all interactions with sincere respect and empathy. Is flexible and creative in meeting the health needs of students.</u>
<u>3b Consulting and collaboration with administrators and staff</u>	<u> Does not share student information appropriately on an as needed basis. Does not respect student confidentiality. Little attempt to establish harmonious relationships. Demonstrates little respect of other school programs. Is inflexible in changing situations.</u>	<u> Shares information appropriately on an as needed basis, but can be inconsistent or not timely in sharing information. Does not always exhibit respect of educational staff or programs and may have difficulty working with some individuals. May not participate in meetings designed for the benefit of the student (504, IEP, conferences). At times is inflexible in changing situations.</u>	<u> Shares information appropriately to promote student success on an as needed basis and consistently on a timely basis. Is respectful, sensitive and flexible in communications and collaborations with staff and administration. Seeks feedback on student responses and staff input. Values school programs as contributing to overall well being of students. Participates in meetings, when invited, to enhance student performance on an as needed basis (504, IEP, conferences).</u>	<u> Shows characteristics of proficient and flexible school nurse and in addition consistently seeks staff input on student and staff concerns to better student care and performance. Respects all faculty and responds to concerns with empathy and caring. Is sought after as a team member.</u>
<u>3c Consulting and collaborating with medical professionals and agencies</u>	<u> Does not establish links with medical and professional communities/resources and does not show evidence that expert advice is sought out when needed</u>	<u> May contact other health professionals/resources inconsistently, but does not demonstrate that such collaboration is necessary or important. Is not always respectful in communication with other health professionals</u>	<u> Obtains expert consultation and utilizes appropriate resources when needed. Is respectful and appropriate in communication with other health professionals. Handles difficult situations with sensitivity and concern.</u>	<u> In addition to the proficient nurse shows wide breadth of knowledge of other health professionals and actively promotes the relationships to enhance student care. Shares information with other nurses and is a model for collaboration.</u>

3.4.4 Domain 4: Professional Responsibilities

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished

# PROPOSED REGULATIONS

<u>4a</u> <b>Maintaining accurate records</b>	<u>Does not keep accurate or up-to-date records on all students.</u>	<u>Record keeping is generally accurate and up to date and partially effective for planning care.</u>	<u>Record keeping is consistently accurate, efficient, and up-to-date. School Nurse reviews incoming students health records in a timely manner</u>	<u>Record keeping is exemplary in accuracy, currency, and thoroughness. Reviews incoming students' health records in a timely manner. In addition the nurse seeks out new ideas and collaborates with other nurses to improve record keeping.</u>
<u>4b</u> <b>Growing and developing professionally</b>	<u>Does not engage in professional development activities and does not participate in in-service training to enhance knowledge or skill</u>	<u>Meets minimal requirement for licensure attending limited professional development activities.</u>	<u>Actively participates in activities for professional development exceeding requirements for licensure, keeping up-to-date with professional literature and conferences. Belongs to state nursing organizations and may mentor other school nurses</u>	<u>Actively participates in activities for professional development, exceeding requirements for licensure, keeping up-to-date with professional literature. In addition, provides in-services and opportunities for sharing knowledge for other nurses. Mentors other nurses. Participates as a leader in state and national organizations and committees to enhance and promote professional practice.</u>
<u>4c</u> <b>Reflecting on nursing practice</b>	<u>Does not evaluate services or make changes as necessary to accommodate clientele</u>	<u>With encouragement, will reflect on school nursing practice and at times make changes as necessary. Does not communicate role of school nurse effectively.</u>	<u>Consistently reflects on school nursing practice and makes improvements and changes where and when necessary. Communicates effectively the role of the school nurse to students, families, staff and community.</u>	<u>Continually reflects on school nursing practice always striving to improve practice. Actively communicates role of school nurse to all community members, through presentations at school, community newsletters or other outlets.</u>
<u>4d</u> <b>Showing professionalism</b>	<u>Does not show evidence or a sense of professionalism. Contributes to practices that are self-serving or harmful to students.</u>	<u>Generally displays a genuine sense of professionalism</u>	<u>Consistently genuine and successful professionally in working with clients. Is considered a professional nurse by staff and students.</u>	<u>Is a role model for other nurses in dealing with staff and students and in honored for efforts. Consistently is a model of professionalism and is sought out by others for consultation.</u>

### 3.4.5 Domain 5: Student Improvement

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<u>5a</u> <u>Uses data from the DSTP I School Accountability Performance Rating to help educators make instructional decisions</u>	<u>There is no evidence that DSTP School Accountability Performance Rating data inform planning or impact on instructional decisions. There is no evidence of student improvement.</u>	<u>There is limited evidence that DSTP School Accountability Performance Rating data inform planning or impact on instructional decisions. Limited evidence of student improvement is found.</u>	<u>There is clear evidence that DSTP School Accountability Performance Rating data inform planning and impact on instructional decisions. Clear evidence of student improvement is found.</u>	<u>There is clear and convincing evidence that DSTP School Accountability Performance Rating data are used to inform planning and impact on instructional decisions. Clear, consistent and convincing evidence of student improvement is found.</u>



<p><b>5b</b> <u>Identifies multiple measures and a variety of assessments (e.g., DSTP I &amp; II on-line scores, pre &amp; post-testing, performances, portfolios, oral presentations, projects) to document student improvement</u></p>	<p><u>Does not provide evidence of student improvement toward meeting the standards, or evidence provided shows that students are not making improvement toward standards.</u></p>	<p><u>Provides limited evidence of student improvement toward meeting the standards.</u></p>	<p><u>Provides clear evidence of student improvement toward meeting the standards using multiple evidence sources and demonstrating an understanding of the use of the data to address students' instructional needs.</u></p>	<p><u>Provides clear, consistent and convincing evidence of student improvement toward meeting the standards by providing evidence of student performance using a rich variety of multiple measures and assessments and documenting how the data were used to address students' instructional needs.</u></p>
<p><b>5c</b> <u>Provides evidence of student improvement toward standards through DSTP I &amp; II scores and other sources of data</u></p>	<p><u>Is unaware of the distribution in student achievement or makes no effort to close the gap by addressing the different needs of individual students or groups of students within the class. Measurable discrepancies in student learning persist.</u></p>	<p><u>Is aware of the distribution in student achievement and makes a limited effort to close the gap by addressing the different needs of individual students or groups of students within the class. The distribution in student achievement within the class is beginning to close.</u></p>	<p><u>Is very aware of the distribution in student achievement and makes a concerted effort to close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that the distribution in student achievement is being closed.</u></p>	<p><u>Is proactive in addressing the distribution in student achievement and uses research-based strategies to effectively close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that students are achieving at higher levels and that the distribution in student achievement is being closed. The specialist provides leadership to colleagues in the identification and use of effective strategies to address the distribution in student achievement.</u></p>

**3.5.1 Domain 1: Planning and Preparation**

**3.5 A Framework for Specialists: School Psychologists**

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<p><b>1a</b> <u>Demonstrating knowledge of content related to best practice</u></p>	<p><u>Displays little knowledge of what constitutes best practice as a service delivery model.</u></p>	<p><u>Displays basic knowledge of what constitutes best practice as a service delivery model.</u></p>	<p><u>Displays solid knowledge concerning what constitutes best practice as a service delivery model.</u></p>	<p><u>Displays extensive knowledge concerning what constitutes best practice as a service delivery model, with evidence of continuing pursuit of such knowledge.</u></p>
<p><b>1b</b> <u>Demonstrating knowledge of pedagogical issues</u></p>	<p><u>Displays little understanding of pedagogical issues related to best practice.</u></p>	<p><u>Displays basic understanding of pedagogical issues related to best practice.</u></p>	<p><u>Displays solid understanding of pedagogical issues related to best practice, but without anticipating misconceptions relating to service delivery.</u></p>	<p><u>Displays extensive understanding of pedagogical issues related to best practice, and anticipates misconceptions related to service delivery.</u></p>
<p><b>1c</b> <u>Demonstrating knowledge of state and federal regulations</u></p>	<p><u>Displays little knowledge of state and federal regulations.</u></p>	<p><u>Displays basic knowledge of state and federal regulations.</u></p>	<p><u>Displays solid knowledge of state and federal regulations.</u></p>	<p><u>Displays accurate knowledge of state and federal regulations, and utilizes this knowledge to access services for students. Practice reflects compliance with the latest regulations.</u></p>

# PROPOSED REGULATIONS

1d Demonstrating knowledge of child and human development and psychopathology	Displays little knowledge of typical child and human development as well as psychopathology, including those internal and external influences that may affect human development.	Displays basic knowledge of typical child and human development as well as psychopathology, including those internal and external influences that may affect human development.	Displays solid knowledge of typical child and human development and psychopathology, including those internal and external influences that may affect human development.	Displays extensive knowledge of typical child and human development and psychopathology, can apply those tenets to practice, and displays extensive knowledge of internal and external influences that may affect human development.
<b>1e</b> <b>Demonstrating knowledge of learning theory, skill acquisition, and individual strengths and needs</b>	Displays little understanding of learning theory and its relationship to student acquisition of skills and knowledge.	Displays basic understanding of learning theory and its relationship to student acquisition of skills and knowledge.	Displays a solid understanding of learning theory and the acquisition of skills and knowledge, and can apply this understanding to the identification of strengths and needs for individual students.	Displays an extensive understanding of learning theory and the acquisition of skills and knowledge, can apply this understanding to the identification of strengths and needs for individual students, and can develop interventions to utilize strengths and address the needs of individual students.
<b>1f</b> <b>Demonstrating knowledge of student diversity</b>	Displays little understanding of individual diversity or cultural heritage and does not indicate that such knowledge is valuable.	Recognizes the value of understanding individual diversity or cultural heritage.	Displays an understanding of the diversity or cultural heritage of groups of students, and recognizes the value of this knowledge.	Displays an understanding of the diversity or cultural heritage of each individual, and incorporates this information into interactions and interventions.

<u>1g</u> <u>Demonstrating knowledge of information sources and technology</u>	<u>Makes no attempt to access, evaluate, or utilize various information sources and technologies.</u>	<u>Makes a limited attempt to access, evaluate and utilize various information sources and technologies.</u>	<u>Consistently accesses, evaluates, and utilizes various information sources and technologies.</u>	<u>Consistently accesses, evaluates, and utilizes various information sources and technologies, and uses this information to enhance service delivery.</u>
<b>1h</b> <b>Designing service delivery</b>	Fails to maintain a professional knowledge base of current information and research, and has no understanding of research design and statistics.	Maintains a limited professional knowledge base of current information and research, and understands research design and statistics.	Maintains a solid professional knowledge base of current information and research, and understands research design and statistics.	Maintains an extensive professional knowledge base of current information and research, understands research design and statistics, and consistently translates this information into practice.

### Delivery of Service

#### 3.5.2 Domain 2: Professional Practice and

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished

<u>2a</u> <u>Utilizing appropriate methods</u>	<u>Makes no attempt to utilize prevention, health promotion, and crisis intervention methods. Demonstrates little knowledge of appropriate programs to address issues of child development, psychopathology, diversity, social stressors, change and systems.</u>	<u>Makes inconsistent attempts to utilize effective prevention, health promotion, and crisis intervention methods based on knowledge of child development, psychopathology, diversity, social stressors, change and systems.</u>	<u>Consistently utilizes prevention, health promotion, and crisis intervention methods based on knowledge of child development, psychopathology, diversity, social stressors, change and systems.</u>	<u>Consistently utilizes prevention, health promotion, and crisis intervention methods based on knowledge of child development, psychopathology, diversity, social stressors, change and systems, and shares this knowledge with others.</u>
---	---	--	---	--

<b>2b</b> <b>Creating an environment of respect and rapport</b>	<u>Interactions with at least some students, staff or parents are negative or inappropriate and characterized by sarcasm, put-downs, or conflict.</u>	<u>Interactions are generally appropriate and free from conflict, but may be characterized by occasional displays of insensitivity.</u>	<u>Interactions reflect general warmth and caring, and are respectful of cultural and developmental differences.</u>	<u>Interactions are highly respectful, reflecting genuine warmth and caring toward individuals. Interactions model and encourage high levels of civility among students, staff, and parents.</u>
<b>2c</b> <b>Maintaining confidentiality</b>	<u>Is not alert to issues of confidentiality and shares privileged information inappropriately.</u>	<u>Understands the NASP standards regarding ethics and confidentiality and consistently adheres to those standards.</u>	<u>Understands the NASP standards regarding ethics and confidentiality, consistently adheres to those standards, and is proactive in maintaining confidentiality.</u>	<u>Understands the NASP standards regarding ethics and confidentiality, consistently adheres to those standards, and is highly proactive in promoting confidentiality by explaining the parameters to others.</u>
<b>2d</b> <b>Creating expectations for learning and achievement</b>	<u>Interactions, attitude, and service delivery model convey little or no expectations for student achievement.</u>	<u>Interactions, attitude, and service delivery model convey minimal expectations for student achievement.</u>	<u>Interactions, attitude, and service delivery model convey high expectations for student achievement.</u>	<u>Interactions, attitude, and service delivery model establishes and maintains high expectations for the learning of all students, and the School Psychologist works proactively to create a learning environment that supports the success of all students.</u>
<b>2e</b> <b>Organizing work</b>	<u>Makes inefficient use of the space, time and materials, resulting in a limited delivery of service.</u>	<u>Efforts at efficient use of space, time and materials are inconsistent, resulting in the delivery of a limited variety of services.</u>	<u>Use of space, time and materials are consistently efficient, resulting in the delivery of a variety of services.</u>	<u>Use of space, time and materials are consistently efficient, resulting in the delivery of a wide variety of services. Works cooperatively within the system to make appropriate changes with space, time and materials in an effort to enhance services.</u>
<b>2f</b> <b>Evaluating service delivery</b>	<u>Fails to understand the importance of conducting investigations and program evaluations for improvement of services.</u>	<u>Understands the importance of conducting investigations and program evaluations, but fails to engage in this activity for improvement of services.</u>	<u>Understands the importance of conducting investigations and program evaluations, and engages in this activity for improvement of services.</u>	<u>Understands the importance of conducting investigations and program evaluations, and engages in this activity for improvement of services. Seeks out feedback from others for the purpose of evaluating delivery of services.</u>

Consultation

3.5.3 Domain 3: Professional Collaboration and

<b>Component</b>	<b>Level of Performance</b>			
	<b>Unsatisfactory</b>	<b>Basic</b>	<b>Proficient</b>	<b>Distinguished</b>
<b>3a</b> <b>Communicating information clearly</b>	<u>Spoken or written language may be unclear and may contain many grammatical errors. Vocabulary may be inappropriate, vague, or used incorrectly, leaving listeners confused.</u>	<u>Spoken and written language is clear and correct. Vocabulary is limited, or is not appropriate to listeners' age, background, or level of understanding.</u>	<u>Spoken and written language is clear and correct. Vocabulary is appropriate to listeners' age, background, and level of understanding.</u>	<u>Spoken and written language is correct and expressive, with well-chosen vocabulary that enriches discussion and anticipates possible misunderstanding.</u>
<b>3b</b> <b>Providing quality feedback in a timely manner</b>	<u>No feedback is provided, or feedback is of uniformly poor quality and is not given in a timely manner.</u>	<u>Feedback is inconsistent in quality and timeliness.</u>	<u>Feedback is timely and of consistently high quality.</u> -	<u>Feedback is consistently accurate, substantive, constructive, specific, and timely.</u>

# PROPOSED REGULATIONS

<b>3c</b> <b>Promoting partnerships with educators, parents, and communities</b>	Does not communicate or partner with educators, families, or the community.	Makes a limited attempt to participate in partnerships with educators, families, and the community.	Creates solid partnerships with educators, families and the community.	Creates extensive partnerships with educators, families and the community. Uses an extensive repertoire of strategies and resources to respond to the various needs identified in the partnerships.
<b>3d</b> <b>Working within the school as a system</b>	Displays little understanding of the school as a system, and adheres rigidly to a service delivery model that is unresponsive to the changing needs within the system.	Displays some understanding of the school as a system, but maintains a rigid service delivery model that is unresponsive to the changing needs within the system.	Demonstrates understanding of the school as a system, and makes some adjustments to service delivery in response to changes within the system.	Demonstrates understanding of the school as a system, and the role of the School Psychologist within the system. Responds to the changing needs within the system and continually makes adjustments to service delivery in an effort to address those changes.
<b>3e</b> <b>Creating cognitive/academic, behavioral, affective, and/or adaptive goals</b>	Fails to address the need for collaborating with others to meet student cognitive/academic, behavioral, affective, and/or adaptive needs.	Collaborates with others to meet student needs, but is reactive to requests rather than proactive.	Is proactive in collaborating with others to develop challenging but achievable cognitive/academic, behavioral, affective, and/or adaptive goals for students.	Proactively collaborates with others to develop challenging but achievable cognitive/academic, behavioral, affective, and/or adaptive goals for students. Partners with others to design, implement, and evaluate direct and indirect interventions to achieve those goals.
<b>3f</b> <b>Sharing information regarding new developments in research and technologies</b>	Fails to inform others about new technologies or new developments in research to aid in collaborative decision-making.	Is inconsistent in communicating information about new technologies or new developments in research to aid in collaborative decision-making.	Consistently communicates information about new technologies or new developments in research to aid in collaborative decision-making.	Consistently communicates information about new technologies or new developments in research while collaborating with others. Seeks out additional resources to aid in collaborative decision-making.

## 3.5.4 Domain 4: Professional Responsibilities

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>4a</b> <b>Maintaining accurate records</b>	Has no system for maintaining information and records are in disarray, resulting in errors and confusion.	System for maintaining information is partially effective, and records are adequate but require frequent monitoring to avoid error.	System for maintaining information is complete and records are accurate and in order.	System for maintaining information is complete and records are accurate and in order. Information can be easily and effectively accessed.
<b>4b</b> <b>Growing and developing professionally</b>	Does not engage in professional development activities, and does not participate in in-service training to enhance knowledge or skill.	Participates in professional development activities to a limited extent when they are convenient.	Seeks out opportunities for professional development to enhance content knowledge and skill.	Seeks out opportunities for professional development and makes a systematic attempt to apply new knowledge and skills to enhance service delivery.
<b>4c</b> <b>Providing service to the profession</b>	Makes no effort to share knowledge with others or to assume professional responsibilities.	Contributes to the profession in limited ways.	Participates actively in assisting other professionals.	Initiates important activities to contribute to the profession, such as mentoring new professionals, writing articles for publication, and making presentations.

<p><b>4d</b> <u>Participating in school and district events and/or projects</u></p>	<p><u>Avoids becoming involved in school events and/or school or district projects.</u></p>	<p><u>Participates in school events and/or school or district projects when specifically asked.</u></p>	<p><u>Volunteers to participate in school events and/or school or district projects.</u></p>	<p><u>Volunteers to participate in school events and/or school or district projects, and assumes a leadership role in all events or projects.</u></p>
<p><b>4e</b> <u>Facilitating structural and policy changes</u></p>	<p><u>Demonstrates no understanding of the district-wide and building level structure and policies.</u></p>	<p><u>Demonstrates limited understanding of the district-wide and building level structure and policies.</u></p>	<p><u>Demonstrates thorough understanding of the district-wide and building level structure and policies.</u></p>	<p><u>Demonstrates thorough understanding of the district-wide and building level structure and policies, and facilitates changes to create positive learning environments to meet the needs of all students.</u></p>
<p><b>4f</b> <u>Serving as an advocate for students</u></p>	<p><u>Contributes to school practices that result in some students being ill served by the school.</u></p>	<p><u>Service to students is inconsistent, with the result that all students do not receive a fair opportunity to succeed.</u></p>	<p><u>Works to consistently serve students, and to ensure that all students receive a fair opportunity to succeed.</u></p>	<p><u>Makes a particular effort to challenge negative attitudes and helps ensure that all students, particularly those traditionally underserved, are honored in the school. Is highly proactive in serving students, seeking out resources when necessary.</u></p>
<p><b>4g</b> <u>Demonstrating professionalism in decision-making and evaluation of service delivery</u></p>	<p><u>Decisions are based on self-serving interests, and no attempt is made to evaluate outcomes of service delivery model.</u></p>	<p><u>Decisions are based on limited though genuinely professional considerations. Makes inconsistent attempts to evaluate outcomes of service delivery model.</u></p>	<p><u>Participates in team or departmental decision-making and maintains an open mind. Consistently engages in evaluating outcomes of service delivery model, and makes some changes to model to improve services.</u></p>	<p><u>Assumes a leadership role in team or departmental decision-making, and helps ensure that such decisions are based on the highest professional standards. Consistently engages in evaluating outcomes of service delivery model and makes changes to model to improve services; seeking feedback from others with regard to effectiveness of services.</u></p>

3.5.5 Domain 5: Student Improvement

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<p><u>5a</u> <u>Uses data from the DSTEP I School Accountability Performance Rating to help educators make instructional decisions</u></p>	<p><u>There is no evidence that DSTEP School Accountability Performance Rating data inform planning or impact on instructional decisions. There is no evidence of student improvement.</u></p>	<p><u>There is limited evidence that DSTEP School Accountability Performance Rating data inform planning or impact on instructional decisions. Limited evidence of student improvement is found.</u></p>	<p><u>There is clear evidence that DSTEP School Accountability Performance Rating data inform planning and impact on instructional decisions. Clear evidence of student improvement is found.</u></p>	<p><u>There is clear and convincing evidence that DSTEP School Accountability Performance Rating data are used to inform planning and impact on instructional decisions. Clear, consistent and convincing evidence of student improvement is found.</u></p>

# PROPOSED REGULATIONS

<p><b>5b</b> <u>Identifies multiple measures and a variety of assessments (e.g., DSTP I &amp; II on-line scores, pre &amp; post testing, performances, portfolios, oral presentations, projects) to document student improvement.</u></p>	<p>Does not provide evidence of student improvement toward meeting the standards, or evidence provided shows that students are not making improvement toward standards.</p>	<p>Provides limited evidence of some student improvement toward meeting the standards.</p>	<p>Provides clear evidence of student improvement toward meeting the standards using multiple evidence sources and demonstrating an understanding of the use of the data to address students' instructional needs.</p>	<p>Provides clear, consistent and convincing evidence of student improvement toward meeting the standards by providing evidence of student performance using a rich variety of multiple measures and assessments and documenting how the data were used to address students' instructional needs.</p>
<p><b>5c</b> <u>Provides evidence of student improvement toward standards through DSTP I &amp; II scores and other sources of data</u> -</p>	<p>Is unaware of the distribution in student achievement or makes no effort to close the gap by addressing the different needs of individual students or groups of students within the class. Measurable discrepancies in student learning persist.</p>	<p>Is aware of the distribution in student achievement and makes a limited effort to close the gap by addressing the different needs of individual students or groups of students within the class. The distribution in student achievement within the class is beginning to close.</p>	<p>Is very aware of the distribution in student achievement and makes a concerted effort to close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that the distribution in student achievement is being closed.</p>	<p>Is proactive in addressing the distribution in student achievement and uses research-based strategies to effectively close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that students are achieving at higher levels and that the distribution in student achievement is being closed. The teacher provides leadership to colleagues in the identification and use of effective strategies to address the distribution in student achievement.</p>

3.6.1 Domain 1: Planning and Preparation

3.6 A Framework for Specialists: Student Support Specialists

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<p><b>1a</b> <u>Demonstrating knowledge of standards</u></p>	<p>Displays little or no knowledge of local, state and/or national standards.</p>	<p>Displays generally accurate knowledge of local, state and/or national standards with professional and ethical practice.</p>	<p>Displays and integrates into practice solid content knowledge of local, state and/or national standards with professional and ethical practice.</p>	<p>Displays and integrates into practice extensive content knowledge of local, state and/or national standards and assumes an active role in disseminating knowledge and respecting confidentiality.</p>
<p><b>1b</b> <u>Demonstrating knowledge of students</u></p>	<p>Unfamiliar with characteristics of students, e.g. disability, diversity, development, and does not indicate that such knowledge is valuable or important.</p>	<p>Displays general understanding of characteristics of students, e.g. disability, diversity, development, and recognizes that such knowledge is valuable.</p>	<p>Displays solid understanding of characteristics of students, e.g. disability, diversity, development, and integrates that knowledge into the student's program.</p>	<p>Displays solid understanding of characteristics of students, e.g. disability, diversity, development, to help students identify and use their own strengths in planning for their learning.</p>
<p><b>1c</b> <u>Planning for student needs</u></p>	<p>Minimal understanding of student needs and plans regardless of needs.</p>	<p>General understanding of student needs and recognizes these needs when planning student program.</p>	<p>Thorough understanding of needs and incorporates the needs in planning student program.</p>	<p>Identifies student needs and aggressively plans program based on current practice or research.</p>

<b>1d</b> <b>Providing feedback to staff, parents, and students</b>	Provides no feedback, or feedback is of uniformly poor quality and not provided in a timely manner.	Feedback _____ is inconsistent in quality and inconsistent with respect to timeliness.	Feedback is of moderate quality. _____ usually consistent, and provided in a timely manner.	Feedback is consistently accurate. _____ substantive, constructive, specific and provided in a timely manner.
--	---	--	---	---

Delivery of Service

3.6.2 Domain 2: Professional Practice and

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>2a</b> <b>Demonstrating caseload management</b>	Unable to manage caseload and delivery of service to students.	Manages caseload with minimal proficiency and results. _____ Difficulty prioritizing caseload needs and delivery of service.	Effectively _____ manages caseload with ability to prioritize needs. Completes delivery of services on time.	Completes _____ caseload responsibilities and demonstrates initiative in extending and integrating services.
<b>2b</b> <b>Providing advocacy for students</b>	Provides no advocacy for the student and eliminates any opportunities to receive potential benefits.	Provides _____ sporadic advocacy to maintain students' educational program.	Advocates for services to enhance students' learning.	Aggressively advocates for services that directly affect students' learning and confronts challenges that may negatively affect learning.
<b>2c</b> <b>Communicating effectively</b>	Spoken language is inaudible and/or written language is illegible. Spoken and written language may contain many grammar and syntax errors. Vocabulary may be inappropriate, vague, or used incorrectly, leaving listeners confused.	Spoken language is audible and written language is legible. Both are used correctly. Vocabulary is correct but limited or is not appropriate to the listener's age, background or level of understanding.	Spoken and written language is clear and correct. Vocabulary is appropriate to listener's age, background and level of understanding.	Spoken and written language is correctly used to convey intended purpose and anticipates possible student misconceptions.
<b>2d</b> <b>Listening well to others</b>	Does not listen well to others, limiting appropriate interactions.	Makes attempts to listen well to others during a discussion, with limited success.	Listens well to others and adequately _____ facilitates appropriate interaction among all participants.	Listens well to others, effectively _____ facilitates appropriate interactions and successfully engages all participants in the discussion.

Consultation

3.6.3 Domain 3: Professional Collaboration and

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>3a</b> <b>Establishing partnerships with educational colleagues and outside agencies</b>	Does not create partnerships or creates partnerships that fragment and/or interrupt services that would otherwise enhance student learning.	Infrequent contacts create limited _____ partnerships resulting in a limited opportunity in type and quality of services to benefit student learning.	Frequent contacts create successful partnerships that enhance student learning. Maintains an open mind and participates in team or departmental student decision-making.	Initiates and reciprocates consistent contacts to ensure student learning. Includes and values student input. Takes a leadership role in team or departmental decision-making that is based on the highest professional and ethical standards.
<b>3b</b> <b>Sharing of information</b>	Fails to share or recognize the importance of how the information relates to the student's programming and learning.	Inconsistently shares selective information that limits students' access to programming and learning.	Consistently shares and exchanges information to promote student access to programming and learning.	Consistently shares in a variety of formats and determines information relevant to the student's program, enhancing the student's learning.

# PROPOSED REGULATIONS

<b>3c</b> <b>Communicating with students and families</b>	<u>Ignores or diminishes issues of students and families and takes no action to respond to these issues.</u>	<u>Attempts to address students' and families' concerns with minimal action and follow-up.</u>	<u>Consistently listens respectfully to students' and families' concerns, reacts accordingly, and provides appropriate follow-up.</u>	<u>Addresses students' and families' concerns with confidentiality and is proactive to elicit change.</u>
--	--	--	---	---

### 3.6.4 Domain 4: Professional Responsibilities

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>4a</b> <b>Reflecting on practice</b>	<u>Does not know if practice was effective in achieving the goals. Has no suggestions for improvement.</u>	<u>Has some knowledge of effectiveness of practice, the extent to which the goals were met and makes suggestions for improvement</u>	<u>Can consistently assess the effectiveness of practice, the extent and justification to which the goals are met. Can identify the specific areas for improvement.</u>	<u>Makes a thorough and accurate assessment of effectiveness of practice by citing the strengths and weaknesses as they relate to each goal. The practice has a positive impact on the student.</u>
<b>4b</b> <b>Maintaining accurate records</b>	<u>Records are in disarray, resulting in errors, confusion and hindering delivery of service.</u>	<u>Records are adequate but require frequent monitoring and supervision.</u>	<u>Records are complete in their content, comply with requirements and adhere to timely submission.</u>	<u>Record content is comprehensive and confidential; maintenance is meticulous and is in compliance with state and federal regulations.</u>
<b>4c</b> <b>Growing and developing professionally</b>	<u>Makes no effort to share knowledge with others or to assume professional responsibilities.</u>	<u>Finds limited ways to contribute to the profession.</u>	<u>Participates actively in assisting other educators.</u>	<u>Initiates important activities to contribute to the profession, such as mentoring and making presentations.</u>
<b>4d</b> <b>Showing professionalism</b>	<u>Not alert to students' needs. Invades confidentiality. Lacks respect.</u>	<u>Decisions are based on limited, though genuinely professional, consideration. Respect student needs and maintains confidentiality.</u>	<u>Works within the context of a particular team or department to ensure that all students receive a fair opportunity to succeed.</u>	<u>Highly proactive in serving students, making an effort to challenge negative attitudes. Seeks out resources for students when necessary.</u>

### 3.6.5 Domain 5: Student Improvement

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>5a</b> <u>Uses data from the DSTP I School Accountability Performance Rating to help educators make instructional decisions</u>	<u>There is no evidence that DSTP School Accountability Performance Rating data inform planning or impact on instructional decisions. There is no evidence of student improvement.</u>	<u>There is limited evidence that DSTP School Accountability Performance Rating data inform planning or impact on instructional decisions. Limited evidence of student improvement is found.</u>	<u>There is clear evidence that DSTP School Accountability Performance Rating data inform planning and impact on instructional decisions. Clear evidence of student improvement is found.</u>	<u>There is clear and convincing evidence that DSTP School Accountability Performance Rating data are used to inform planning and impact on instructional decisions. Clear, consistent and convincing evidence of student improvement is found.</u>



<p><b>5b</b> <u>Identifies multiple measures and a variety of assessments (e.g., DSTP I &amp; II on-line scores, pre &amp; post-testing, performances, portfolios, oral presentations, projects) to document student improvement</u></p>	<p>Does not provide evidence of student improvement toward meeting the standards, or evidence provided shows that students are not making improvement toward standards.</p>	<p>Provides limited evidence of some student improvement toward meeting the standards.</p>	<p>Provides clear evidence of student improvement toward meeting the standards using multiple evidence sources and demonstrating an understanding of the use of the data to address students' instructional needs.</p>	<p>Provides clear, consistent and convincing evidence of student improvement toward meeting the standards by providing evidence of student performance using a rich variety of multiple measures and assessments and documenting how the data were used to address students' instructional needs.</p>
<p><b>5c</b> <u>Provides evidence of student improvement toward standards through DSTP I &amp; II scores and other sources of data</u></p>	<p>Is unaware of the distribution in student achievement or makes no effort to close the gap by addressing the different needs of individual students or groups of students within the class. Measurable discrepancies in student learning persist.</p>	<p>Is aware of the distribution in student achievement and makes a limited effort to close the gap by addressing the different needs of individual students or groups of students within the class. The distribution in student achievement within the class is beginning to close.</p>	<p>Is very aware of the distribution in student achievement and makes a concerted effort to close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that the distribution in student achievement is being closed.</p>	<p>Is proactive in addressing the distribution in student achievement and uses research-based strategies to effectively close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that students are achieving at higher levels and that the distribution in student achievement is being closed. The specialist provides leadership to colleagues in the identification and use of effective strategies to address the distribution in student achievement.</p>

3.7.1 Domain 1: Planning and Preparation

3.7 A Framework for Specialists: Therapeutic Services

Specialists

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<p><b>1a</b> <u>Demonstrating knowledge of current and best practice</u></p>	<p>Demonstrates minimal knowledge of current research, professional literature, and best practices.</p>	<p>Demonstrates limited knowledge of current research, professional literature, and best practices</p>	<p>Demonstrates thorough knowledge of current research, professional literature, and best practices.</p>	<p>Takes a leadership role in disseminating and sharing knowledge of current research, best practice, and professional literature with colleagues and the community.</p>
<p><b>1b</b> <u>Demonstrating knowledge of students</u></p>	<p>Demonstrates minimal knowledge of developmental characteristics, student/individual skills and knowledge, and cultural factors (when applicable).</p>	<p>Demonstrates limited knowledge of developmental characteristics, student/individual skills and knowledge, and cultural factors (when applicable).</p>	<p>Demonstrates thorough knowledge of developmental characteristics, student/individual skills and knowledge, and cultural factors (when applicable).</p>	<p>Demonstrates extensive knowledge of developmental characteristics, student/individual skills and knowledge, and cultural factors (when applicable) and shares that knowledge with colleagues and the community.</p>
<p><b>1c</b> <u>Designing treatment plans</u></p>	<p>Demonstrates little understanding of appropriate goals and setting.</p>	<p>Inconsistently chooses appropriate goals and setting.</p>	<p>Consistently chooses appropriate goals and setting.</p>	<p>Consistently chooses appropriate goals and setting. In addition, develops creative and flexible models of treatment plans to met the needs of individual students.</p>

# PROPOSED REGULATIONS

<b>1d</b> <b>Demonstrating knowledge of student needs</b>	Demonstrates little knowledge of individual students' needs.	Demonstrates some knowledge of individual students' needs.	Demonstrates thorough knowledge of students' needs and effectively addresses these needs.	Demonstrates thorough knowledge of students' needs and seeks specific resources to effectively address those needs.
--	--	--	---	---

## Delivery of Service

### 3.7.2 Domain 2: Professional Practice and

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>2a</b> <b>Selecting/utilizing appropriate assessment techniques</b>	Chooses assessment techniques that are inappropriate to the students' needs.	Demonstrates a limited range of assessment techniques.	Uses individualized assessment techniques based on student age, culture, and present concern.	Highly skilled at incorporating standardized and informal assessment techniques based on a thorough knowledge of student's background and needs.
<b>2b</b> <b>Selecting/utilizing appropriate treatment techniques</b>	Chooses treatment techniques that are inappropriate to student's needs.	Provides a limited repertoire of treatment techniques.	Provides individualized treatment techniques based on student age, culture, and present concern.	Provides individualized treatment techniques based on student age, culture, and present concern. Ensures carry-over of treatment to other environments. Assumes considerable responsibility for the operation.
<b>2c</b> <b>Engaging students in learning</b>	Students are bored, inattentive, and not engaged in the learning process.	Students are inconsistently engaged in the learning process.	Students are consistently engaged in the learning process and appear highly motivated to learn.	Students are consistently engaged in the learning process and appear highly motivated to learn. Students take obvious pride in their work through initiating, adapting, or contributing to improvements in their learning process.
<b>2d</b> <b>Creating an environment conducive to learning</b>	Students are not treated with respect. Little effort is made to create a safe and caring learning environment.	Students may be treated with respect. Inconsistent efforts are made to create a safe and caring learning environment.	Students are treated with respect. The learning environment is consistently safe and caring.	Students are treated with respect. The learning environment is consistently safe and caring. In addition, the specialist uses feedback from others and offers suggestions to ensure a safe and caring learning environment across settings.

### 3.7.3 Domain 3: Professional Collaboration and

#### Consultation

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>3a</b> <b>Consulting and collaborating with professionals</b>	Does not consult or collaborate with other professionals.	Consults and collaborates with other professionals on a limited basis.	Consults and collaborates with other professionals on a consistent basis.	Creates effective partnerships with professionals to address individual student needs.

# PROPOSED REGULATIONS

<b>3b</b> <u>Communicating with families</u>	<u>Does not communicate effectively with families.</u>	<u>Demonstrates limited ability to communicate effectively with families.</u>	<u>Communicates with families on a regular basis and is available to parent and student concerns.</u>	<u>Creates an effective partnership with families to address students' needs by providing information frequently on student progress. Handles response to parent or student with sensitivity.</u>
<b>3c</b> <u>Maintaining professional relationships with colleagues</u>	<u>Maintains a negative or self-serving relationship with colleagues.</u>	<u>Maintains cordial relationships with colleagues.</u>	<u>Maintains supportive and cooperative relationships with colleagues.</u>	<u>Takes initiative in assuming leadership roles with colleagues.</u>

## Responsibilities

### 3.7.4 Domain 4: Professional

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>4a</b> <u>Maintaining accurate records</u>	<u>Records are in disarray, resulting in errors and confusion.</u>	<u>Records may be partially completed or inaccurate.</u>	<u>Records are complete, accurate, and in order.</u>	<u>Records are complete, accurate, and in order. Information can be easily and effectively accessed. Participates in the development or revision of methods and forms for maintaining accurate records.</u>
<b>4b</b> <u>Participating effectively on a team</u>	<u>Contributes to practices resulting in students being ill served. Does not share knowledge or skills with others.</u>	<u>Participates to some extent within teams. Limited in sharing knowledge and skills with others.</u>	<u>Participates within teams or departments to ensure students being served appropriately. Works to assist others in decision-making.</u>	<u>Takes a leadership role in decision-making with teams or departments to ensure decisions are made on the highest professional standards. Contributes information to assist others in the profession, such as making presentation, mentoring, and writing articles.</u>
<b>4c</b> <u>Demonstrating professional development/ licensure</u>	<u>Does not engage in activities to enhance knowledge or skill for professional development. Does not meet requirements for licensure.</u>	<u>Participates in professional activities on a limited extent. Maintains licensure requirements. Limited ways to contribute to the profession.</u>	<u>Seeks out opportunities for professional development activities to enhance knowledge and skill. Actively participates in assisting colleagues. Maintains licensure requirements.</u>	<u>Initiates important activities to contribute to the profession. Seeks out opportunities for professional development and make systematic attempt to conduct action research in program. Pursues professional development in knowledge and skill above the required licensure hours.</u>
<b>4d</b> <u>Reflecting on professional practice</u>	<u>Does not attempt to assess effectiveness of program.</u>	<u>Makes limited attempts at assessing effectiveness of program.</u>	<u>Consistently reflects on program success; makes suggestions or adjustments to allow improvement.</u>	<u>Makes an extensive and accurate measurement of program success. Ability to adjust, by drawing on skills and knowledge and seeking out opportunities for professional development, to ensure success in programs.</u>

## 3.7.5 Domain 5: Student Improvement

Component	Level of Performance			
	Unsatisfactory	Basic	Proficient	Distinguished
<b>5a</b> <u>Uses data from the DSTP I School Accountability Performance Rating to help educators make instructional decisions</u>	<u>There is no evidence that DSTP School Accountability Performance Rating data inform planning or impact on instructional decisions. There is no evidence of student improvement.</u>	<u>There is limited evidence that DSTP School Accountability Performance Rating data inform planning or impact on instructional decisions. Limited evidence of student improvement is found.</u>	<u>There is clear evidence that DSTP School Accountability Performance Rating data inform planning and impact on instructional decisions. Clear evidence of student improvement is found.</u>	<u>There is clear and convincing evidence that DSTP School Accountability Performance Rating data are used to inform planning and impact on instructional decisions. Clear, consistent and convincing evidence of student improvement is found.</u>
<b>5b</b> <u>Identifies multiple measures and variety of assessments (e.g., DSTP I &amp; II on-line scores, pre &amp; post-testing, performances, portfolios, oral presentations, projects) to document student improvement</u>	<u>Does not provide evidence of student improvement toward meeting the standards, or evidence provided shows that students are not making improvement toward standards.</u>	<u>Provides limited evidence of some student improvement toward meeting the standards.</u>	<u>Provides clear evidence of student improvement toward meeting the standards using multiple evidence sources and demonstrating an understanding of the use of the data to address students' instructional needs.</u>	<u>Provides clear, consistent and convincing evidence of student improvement toward meeting the standards by providing evidence of student performance using a rich variety of multiple measures and assessments and documenting how the data were used to address students' instructional needs.</u>
<b>5c</b> <u>Provides evidence of student improvement toward standards through DSTP I &amp; II scores and other sources of data</u>	<u>Is unaware of the distribution in student achievement or makes no effort to close the gap by addressing the different needs of individual students or groups of students within the class. Measurable discrepancies in student learning persist.</u>	<u>Is aware of the distribution in student achievement and makes a limited effort to close the gap by addressing the different needs of individual students or groups of students within the class. The distribution in student achievement within the class is beginning to close.</u>	<u>Is very aware of the distribution in student achievement and makes a concerted effort to close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that the distribution in student achievement is being closed.</u>	<u>Is proactive in addressing the distribution in student achievement and uses research-based strategies to effectively close the gap by addressing the different needs of individual students or groups of students within the class. There is clear evidence that students are achieving at higher levels and that the distribution in student achievement is being closed. The specialist provides leadership to colleagues in the identification and use of effective strategies to address the distribution in student achievement.</u>

3.7.5.1 Pursuant to 14 Del. C. § 1270(c), mitigating factors, including student absence, student mobility, student chronic noncompliance with school rules, chronic failure by parents to abide by the Parents' Declaration of Responsibilities, and other factors which include, but are not limited to, environmental disruptions over which the specialist has no control, an external event, such as the death or serious injury of a student, which impacts the school or district, as may be jointly agreed upon by the specialist and the evaluator, that may adversely affect a specialist's evaluation must be taken into consideration in rating Domain 5, and must be included in any discussion between the evaluator and the specialist. Scores of students

who are impacted by any of the above mitigating factors are eliminated from consideration of a specialist's performance on Domain 5.

3.8 Each domain shall be weighted equally in determining an overall rating for a specialist. Using a set of rubrics, each domain shall be rated "unsatisfactory", "basic", "proficient", or "distinguished". An annual summative evaluation shall be completed for each specialist, and shall result in a rating for each domain and an overall rating of performance.

3.8.1 A rubric shall be used to rate each domain, as well as to derive the overall rating of the DPAS II evaluation. The ratings are as follows:

3.8.1.1 Distinguished Performance in a

Domain -- Specialists at this level are master specialists and make a contribution to the field, both in and outside of their school.

3.8.1.2 Proficient Performance in a Domain -- The specialist clearly understands the concepts underlying the domain and implements them well.

3.8.1.3 Basic Performance in a Domain -- The specialist appears to understand the concepts underlying the component and attempts to implement its elements, but implementation is sporadic, intermittent, or otherwise not entirely successful.

3.8.1.4 Unsatisfactory Performance in a Domain -- The specialist does not yet appear to understand the concepts underlying the domain. The specialist's performance in that domain is unacceptable, and an assistance plan shall be developed to focus the specialist on strategies to improve performance in the identified domain.

3.8.2 Specialists shall receive an overall rating, annually, of "distinguished", "proficient", "basic", or "unsatisfactory". Such rating shall be a cumulative rating, arrived at in accordance with the procedures for Overall Performance on a Summative Evaluation and scoring guide, based on ratings on all five domains over the school year.

3.9 Domain Ratings on a Summative Evaluation.

3.9.1 Distinguished Performance in a Domain on a Summative Evaluation-- The specialist receives no unsatisfactory or basic ratings within that same domain for all formative materials being considered for the domain, and an overall score for that domain greater than 2.5 when averaging the score for that domain on all formative materials being considered for the summative evaluation (with each distinguished domain being assigned a score of 3, each proficient domain a score of 2, each basic domain a score of 1 and each unsatisfactory domain a score of zero).

3.9.2 Proficient Performance in a Domain on a Summative Evaluation-- The specialist receives no unsatisfactory ratings within that same domain for all formative materials being considered for the domain, and an overall score for that domain greater than 1.5 when averaging the score for that domain on all formative materials being considered for the summative evaluation (with each distinguished domain being assigned a score of 3, each proficient domain a score of 2, each basic domain a score of 1 and each unsatisfactory domain a score of zero).

3.9.3 Basic Performance in a Domain on a Summative Evaluation-- The specialist receives an overall score for that domain greater than .5 when averaging the score for that domain on all formative materials being considered for the summative evaluation (with each distinguished domain being assigned a score of 3, each proficient domain a score of 2, each basic domain a score of 1 and each unsatisfactory domain a score of zero).

3.9.4 Unsatisfactory Performance in a Domain on a Summative Evaluation -- The specialist receives an

overall score for that domain less than or equal to .5 when averaging the score for that domain on all formative materials being considered for the summative evaluation (with each distinguished domain being assigned a score of 3, each proficient domain a score of 2, each basic domain a score of 1 and each unsatisfactory domain a score of zero).

3.10 Overall performance on a Summative Evaluation

3.10.1 Distinguished Performance on a Summative Evaluation -- The specialist receives at least three distinguished ratings, and no unsatisfactory or basic ratings among the five domains of the summative evaluation.

3.10.2 Proficient Performance on a Summative Evaluation -- The specialist receives at least three proficient or higher ratings, or a combination of proficient and distinguished ratings in three domains, no more than two basic ratings, and no unsatisfactory ratings among the five domains of the summative evaluation, and does not meet the criteria for a distinguished rating.

3.10.3 Basic Performance on a Summative Evaluation -- The specialist receives at least four ratings of basic or higher and no more than one unsatisfactory rating among the five domains of the summative evaluation, and does not meet the criteria for a proficient or a distinguished rating.

3.10.4 Unsatisfactory Performance on a Summative Evaluation -- The specialist receives two or more unsatisfactory ratings in the five domains of the summative evaluation.

3.10.5 Summative Evaluation Scoring Guide

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

<u>Number of Distinguished Domains</u>	<u>Number of Proficient Domains</u>	<u>Number of Basic Domains</u>	<u>Number of Unsatisfactory Domains</u>	<u>Overall Summative Rating</u>
5	0	0	0	Distinguished
4	1	0	0	Distinguished
3	2	0	0	Distinguished
4	0	1	0	Proficient
3	1	1	0	Proficient
3	0	2	0	Proficient
2	3	0	0	Proficient
2	2	1	0	Proficient
2	1	2	0	Proficient
1	4	0	0	Proficient

# PROPOSED REGULATIONS

1	3	1	0	Proficient
1	2	2	0	Proficient
0	5	0	0	Proficient
0	4	1	0	Proficient
0	3	2	0	Proficient
4	0	0	1	Basic
3	1	0	1	Basic
3	0	1	1	Basic
2	2	0	1	Basic
2	1	1	1	Basic
2	0	3	0	Basic
2	0	2	1	Basic
1	3	0	1	Basic
1	2	1	0	Basic
1	1	3	0	Basic
1	1	2	1	Basic
1	0	3	1	Basic
0	3	1	1	Basic
0	2	3	0	Basic
0	2	2	1	Basic
0	1	4	0	Basic
0	1	3	1	Basic
0	0	4	1	Basic
0	0	5	0	Basic
3	0	0	2	Unsatisfactor y
2	1	0	2	Unsatisfactor y
2	0	1	2	Unsatisfactor y
2	0	0	3	Unsatisfactor y
1	2	0	2	Unsatisfactor y
1	1	1	2	Unsatisfactor y
1	0	2	2	Unsatisfactor y

1	0	1	3	Unsatisfactor y
1	0	0	4	Unsatisfactor y
0	2	1	2	Unsatisfactor y
0	3	0	2	Unsatisfactor y
0	2	1	2	Unsatisfactor y
0	2	0	3	Unsatisfactor y
0	1	1	3	Unsatisfactor y
0	1	0	4	Unsatisfactor y
0	2	0	3	Unsatisfactor y
0	0	3	2	Unsatisfactor y
0	0	2	3	Unsatisfactor y
0	0	1	4	Unsatisfactor y
0	0	0	5	Unsatisfactor y

### 3.11 Pattern of ineffective practice.

3.11.1 A novice specialist receives a summative evaluation with an overall rating of unsatisfactory performance for a period of two consecutive years.

3.11.2 An experienced specialist receives a summative evaluation with an overall rating of unsatisfactory performance on a summative evaluation for two consecutive years.

3.11.3 An experienced specialist receives a summative evaluation with an overall rating of basic or any combination of basic and unsatisfactory on a summative evaluation for three consecutive years.

3.11.4 The provision in 3.11.3 does not apply to an experienced specialist who changes grade level for the first year in a new position.

3.11.5 When a pattern of ineffective practice is established, a local school district may move to terminate a specialist, as defined by 14 Del. C., § 1401, for incompetency pursuant to 14 Del. C., § 1411 or § 1420.

### 4.0 Procedures for Novice Specialists.

4.1 Novice specialists shall be observed a

minimum of two (2) times each year during the three-year term of the Initial License. An observation for specialists is a means of collecting some of the data required to analyze a lesson and to assess performance, and generally lasts for the entire class period or an equivalent period of professional activity. The observation will assess Domain One, Planning and Preparation; Domain Two, Professional Practice and Delivery of Service; and Domain Three, Professional Collaboration and Consultation. The evaluator is not required to assess every component of a domain in the course of an observation. The two required observations shall be announced and shall be preceded by a pre-observation planning conference between the evaluator and the specialist. Additional observations may be initiated at the discretion of the evaluator, and may be announced or unannounced. Unannounced observations shall follow the same procedures set forth for announced observations, with the exception of completion of the pre-observation form by the specialist and the pre-observation conference. The report of each observation shall rate each component "distinguished", "proficient", "basic", or "unsatisfactory".

4.1.1 The pre-observation conference form shall be completed by the specialist prior to the pre-observation conference. Two copies shall be brought to the conference. The pre-observation conference form shall form the basis for the pre-observation conference. The pre-observation conference shall be held at a mutually agreed upon time prior to the date of the scheduled observation.

4.1.2 Within two (2) working days following each observation, the evaluator shall meet with the specialist to discuss the observation and to provide feedback regarding strengths and identified areas for growth. The evaluator may seek clarification or request that additional information or data be shared to address any questions raised during the observation.

4.1.3 Within two (2) working days of the post-observation conference, the evaluator shall provide the specialist with a concise written narrative, using the approved DPAS II lesson analysis report form, which describes performance for each domain, and which focuses on the behaviors in that domain, as described in the accompanying rubric. The report of each observation shall rate each domain "distinguished", "proficient", "basic", or "unsatisfactory". The specialist may submit a lesson analysis report response form within ten (10) days of receipt of the report, which shall be appended to the lesson analysis report.

4.1.4 Although it is anticipated that the written narrative report will closely mirror the information shared at the post-observation conference, an additional conference may be requested by either the specialist or the evaluator following receipt of the written narrative. Such request must be honored.

4.1.5 If any domain is rated unsatisfactory, an

Assistance Plan shall be developed in accordance with the procedures set forth in this regulation.

4.2 In addition to the observations and the pre- and post-conferences associated with them, a professional responsibilities conference shall be held annually with the novice specialist. The professional responsibilities conference will generate data for assessing Domain Four, Professional Responsibilities, and Domain Five, Student Improvement. That conference shall focus on evidence of directed professional growth generated through the induction program, DSTP School Accountability Performance Rating, artifacts of student learning provided by the specialist, and artifacts as specified for novice specialists. Within two (2) days following the conference, the evaluator shall provide the specialist with a concise written narrative using the approved DPAS II professional responsibilities and student improvement report form, which shall rate each domain as "distinguished", "proficient", "basic", or "unsatisfactory". The specialist may submit a professional responsibilities and student improvement response form within ten (10) days of receipt of the report, which shall be appended to the professional responsibilities and student improvement report. An additional conference may be requested by either the specialist or the evaluator following receipt of the written narrative. Such request must be honored.

4.3 The evaluator shall complete an annual summative evaluation report, using the approved DPAS II summative evaluation report form, which draws upon all of the information gathered through observations and conferences, and which includes external measures of student learning. The summative evaluation shall result in an overall rating of "distinguished", "proficient", "basic", or "unsatisfactory". This evaluation report shall be provided to the specialist. The specialist may submit a summative evaluation response form within ten (10) days of receipt of the report, which shall be appended to the summative evaluation report. A conference may be requested by either the evaluator or the specialist to discuss the summative evaluation report. Such request must be honored.

4.4 An annual summative evaluation report which results in an overall rating of unsatisfactory shall require the development of an assistance plan, if one has not already been developed as a result of a previous observation report. In the event an assistance plan already exists, it shall be thoroughly reviewed and revised, as necessary, to address the unsatisfactory nature of the specialist's performance.

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

4.6 Nothing in the foregoing restricts the evaluator from conducting more than the minimum prescribed observations. Additional observations conducted at the discretion of the evaluator may be announced or unannounced.

**5.0 Procedures for Experienced Specialists.**

5.1 Experienced specialists shall receive a minimum of one (1) announced observation, unless waived pursuant to 14 Del. C. §1270, one professional responsibilities conference, and a summative evaluation report annually. Additional observations, announced or unannounced, may be conducted as deemed appropriate by the evaluator. Unannounced observations shall follow the same procedures set forth for announced observations, with the exception of completion of the pre-observation form by the specialist and the pre-observation conference. An observation for specialists is a means of collecting some of the data required to analyze a lesson and/or to assess performance, and generally lasts for the entire class period or an equivalent period of professional activity. The observation will assess Domain One, Planning and Preparation; Domain Two, Professional Practice and Delivery of Service; and Domain Three, Professional Collaboration and Consultation. The evaluator is not required to assess every component of a domain in the course of an observation. The report of each observation shall rate each component “distinguished”, “proficient”, “basic”, or “unsatisfactory”.

5.1.1 The pre-observation conference form shall be completed by the specialist prior to the pre-observation conference. Two copies shall be brought to the conference. The pre-observation conference form shall form the basis for the pre-observation conference. The pre-observation conference shall be held at a mutually agreed upon time prior to the date of the scheduled observation.

5.1.2 Within two (2) working days following each observation, the evaluator shall meet with the specialist to discuss the observation and to provide feedback regarding strengths and identified areas for growth. The evaluator may seek clarification or request that additional information or data be shared to address any questions raised during the observation.

5.1.3 Within two (2) working days of the post-observation conference, the evaluator shall provide the specialist with a concise written narrative, using the approved DPAS II lesson analysis report form, which describes performance for each domain, and which focuses on the behaviors in that domain, as described in the accompanying scoring guide. The report of each observation shall rate each domain “distinguished”, “proficient”, “basic”, or “unsatisfactory”. The specialist may submit a lesson analysis report response form within ten (10) days of receipt of the report, which shall be appended to the lesson analysis report.

5.1.4 Although it is anticipated that the written narrative report will closely mirror the information shared at the post-observation conference, an additional conference may be requested by either the specialist or the evaluator following receipt of the written narrative. Such request must be honored.

5.1.5 In addition to the observations and the pre- and post-conferences associated with them, a professional responsibilities conference shall be held annually with the experienced specialist. The professional responsibilities conference will generate data for assessing Domain Four, Professional Responsibilities, and Domain Five, Student Improvement. That conference shall focus on evidence of professional development, DSTP School Accountability Performance Rating, artifacts of student learning provided by the specialist/, and sharing of professional development artifacts. The evaluator shall provide the specialist with a concise written narrative, using the approved DPAS II professional responsibilities and student improvement report form, which shall rate each domain as “distinguished”, “proficient”, “basic”, or “unsatisfactory”. The specialist may submit a professional responsibilities and student improvement report response form within ten (10) days of receipt of the report, which shall be appended to the professional responsibilities and student improvement report. An optional conference following the completion of the scoring guides for Domains 4 and 5 may be requested by either the specialist or the evaluator. Such request must be honored.

5.2 The evaluator shall complete an annual summative evaluation report, using the approved DPAS II summative evaluation form, which draws upon information gathered through observation(s) and conferences, which includes external measures of student learning, and which includes evidence gathered from the artifact review. The summative evaluation report shall result in an overall rating of “distinguished”, “proficient”, “basic”, or “unsatisfactory”. The specialist may submit a summative evaluation report response form, which shall be appended to the summative evaluation report.

5.3 If any domain is rated unsatisfactory, an assistance plan shall be developed in accordance with the procedures set forth in 6.0 of this regulation.

5.4 An annual summative evaluation report which results in an overall rating of unsatisfactory or basic shall require the development of an assistance plan, if one has not already been developed as a result of a previous observation report. In the event an assistance plan already exists, it shall be thoroughly reviewed and revised, as necessary, to address the unsatisfactory nature of the specialist’s performance. The criteria set forth in an assistance plan must be designed to result in an overall summative rating of “proficient” at the satisfactory conclusion of the assistance plan.

5.5 Experienced specialists who receive a rating of “proficient” or “distinguished” may be granted a waiver from the required observation for one year. During the year in which the waiver is in effect, the experienced specialist shall engage in self-directed professional development related to the specialist’s assignment, the Delaware Professional Teaching Standards, and/or relevant national



professional standards. The professional development plan shall be in writing and shall focus around the five domains. During the waiver year, a professional responsibilities conference shall take place to review progress on the professional development plan. In the event that a situation or concern, which shall include, but is not limited to, classroom management problems, inadequate planning, an inappropriate classroom environment, or failure to engage in professional responsibilities, arises during the year for which the waiver is granted, the evaluator may conduct observations, announced or unannounced.

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

5.7 Nothing in the foregoing restricts the evaluator from conducting more than the minimum prescribed observations. Additional observations conducted at the discretion of the evaluator may be announced or unannounced.

5.8 Experienced specialists with previous satisfactory evaluations on DPAS II shall be deemed to have been rated "proficient" and shall be eligible for a one year waiver in the year following the designation of the rating of "proficient". For the purposes of implementation of DPAS II, specialists so rated may be assigned by the building administrator to a waiver year or to a summative evaluation year.

6.0 The goal of an assistance plan is to provide a structured vehicle to assist a novice specialist whose performance is unsatisfactory to improve performance to at least a basic level and to assist an experienced specialist whose performance is unsatisfactory or basic to improve performance to a proficient level. An assistance plan shall be developed for a novice specialist whose performance overall or in any domain on the annual DPAS II summative evaluation is rated as unsatisfactory. An assistance plan shall be developed as a result of an unsatisfactory rating on any domain during the gathering of evidence for a summative evaluation. An assistance plan shall be developed for an experienced specialist who receives an overall rating of "unsatisfactory" or "basic" for one year. If an assistance plan already exists in any of the above instances, it shall be thoroughly reviewed and revised, as necessary, to address the basic or unsatisfactory nature of the specialist's performance. Recommendations for assistance may be written as a result of an unsatisfactory rating on any component of any domain in the evaluation process.

6.1 Assistance plans must include the following:

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

6.1.2 Measurable goals for improving the deficiencies to satisfactory levels. All goals must be directly linked to the Delaware Professional Teaching Standards and

DPAS II scoring guides for evaluating the identified domain(s) and component(s) or element(s).

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

6.1.4 Resources for each professional development activity must be identified and made accessible to the specialist. Such resources may include, but are not limited to, opportunities for the specialist to work with mentors, curriculum specialists, and veteran specialists to implement the assistance plan.

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

6.1.6 Procedures for evaluating and documenting improvement.

6.1.7 Timelines, including intermediate progress check-points and a final completion date, must be specified. These dates may be adjusted by mutual agreement of the specialist and the evaluator during the assistance plan process.

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

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

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

8.0 Challenge Process: A specialist may challenge the fairness of the evaluation process and the conclusions reached in the DPAS II evaluation.

8.1 A Level I challenge applies to all challenges brought by novice specialists, and to all challenges brought by experienced specialists, except those involving an unsatisfactory or basic overall rating on a Summative Evaluation.

8.1.1 A specialist may initiate a Level I challenge by filing a DPAS II Level I challenge form with the evaluator within 10 calendar days of receiving the written evaluation. The challenge shall set forth the grounds

for the challenge in reasonable detail and shall identify the remedy sought.

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

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

8.1.4 Within 10 calendar days of receipt of the challenge form and supporting documentation, the district superintendent or charter school administrator or his/her designee shall provide a written response either supporting or not supporting the challenge. If the remedy sought is granted, the revised evaluation document replaces the challenged document.

8.1.5 The decision of the district superintendent or charter School administrator or his/her designee shall be final.

8.2 A Level II challenge applies only to challenges brought by experienced specialists involving an unsatisfactory or basic overall rating on a summative evaluation.

8.2.1 A specialist may initiate a Level II challenge by filing a DPAS II Level II challenge form with his/her district superintendent or charter school administrator or his/her designee within 10 calendar days of the summative evaluation post conference. The challenge shall set forth the grounds for the challenge in reasonable detail and shall identify the remedy sought. The district superintendent or charter school administrator or his/her designee shall be a trained, certified evaluator and shall not be a building level administrator in the same building as the specialist who filed the challenge.

8.2.2 Within 10 calendar days of receipt of the challenge, the district superintendent or charter school administrator or his/her designee shall hold an informal hearing on the merits of the challenge, unless extensions are mutually agreed upon. At the hearing, the parties may be represented by an individual of their choice, may present evidence, and may call witnesses. The district superintendent or charter school administrator shall provide a written decision to both parties within 10 days of the hearing.

8.2.3 The decision of the district superintendent or charter school administrator or his/her designee shall be final.

9.0 Evaluators must be certified in accordance with regulations for credentialing for evaluators promulgated by the Standards Board and administered by the Department. Prior to conducting evaluations, evaluators must provide evidence of satisfactory completion of the specified training program and shall demonstrate competency as evaluators. Credentialing as an evaluator is renewable every five years. Members of local school boards who engage in the evaluation of the superintendent shall participate in the appropriate training program and shall be credentialed in order to conduct the evaluation of the superintendent.

10.0 Pilot of the Delaware Performance Appraisal System II.

10.1 The Delaware Performance Appraisal System II is a comprehensive system of evaluation and quality assurance for educators. It represents current research and best practice. A pilot will be conducted during the 2003-04 school year to determine:

10.1.1 The effectiveness and adequacy of the training.

10.1.2 The application of the evaluation process.

10.2 The pilot will take place in a minimum of three school districts, one in each county. In order to gather sufficient data from the pilot, a pilot district must agree to participate with all schools and all educators.

10.3 The Department will provide training prior to the implementation of the pilot to three educators, one of whom shall be an administrator and two of whom shall be teachers or specialists from each school within each pilot district. For schools with more than 40 teachers and specialists, one additional teacher or specialist for each 25 teachers beyond 40 shall be included in the training. In addition, one district administrator for each 15 administrators employed by each pilot district shall be included in the training.

10.4 The educators trained in each pilot district shall train all educators in the district in *Enhancing Professional Practice: A Framework for Teaching*, the expectations of the system, and the DPAS II process.

10.5 All teachers in each pilot district shall participate in the DPAS II pilot, except those teachers who have been placed on an improvement plan pursuant to the provisions of DPAS I (14 DE Admin. Code 110).

10.5.1 Teachers on an improvement plan pursuant to DPAS I shall be evaluated using DPAS I during the pilot period.

10.6 Evaluations conducted as part of the DPAS II pilot shall be considered official evaluations, except that, in the event a teacher evaluated as part of the DPAS II pilot receives an unsatisfactory rating on any domain of DPAS II or on an annual summative evaluation which results in the development of an assistance plan, the teacher will be placed

on an improvement plan under DPAS I and any subsequent evaluations conducted during the pilot period shall be conducted in accordance with the provisions of DPAS I. An experienced teacher who receives an overall summative rating of basic during the pilot year shall have an assistance plan developed in accordance with the procedures set forth in 6.0 of this regulation. An overall rating of unsatisfactory or basic performance during the pilot year cannot be used in establishing a pattern of ineffective teaching.

10.7 The Department shall collect data from the participating school districts on the effectiveness of the training and of the efficiency and effectiveness of the evaluation process, including the demands of time on both the evaluators and the teachers. Data will be collected from the pilot districts at least twice during the pilot period. No later than June 1, 2004, data collected will be analyzed by the Department to determine modifications and/or revisions to the system to be recommended to the Standards Board prior to statewide implementation.

11.0 DPAS II will be implemented in all school districts and charter schools in September, 2004.

11.1 Prior to implementation, the Department shall provide training using the formula set forth in 10.3 above, or such alternative as may be developed as the result of the DPAS II pilot.

11.2 The Department shall implement a monitoring system for DPAS II to ensure that on-going training is provided to new teachers and evaluators, that all evaluators are properly trained and credentialed, and to ensure that all districts and charter schools are employing DPAS II in accordance with this regulation.

#### **1504 Delaware Performance Appraisal System For Administrators**

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

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

**“Accomplished”** means clear, convincing and consistent evidence, which is very specific and credible, presenting an integrated, highly effective approach to the behaviors specified in the component. For the purposes of the DPAS II system, a rating of accomplished on Domain 1

of the Administrator DPAS is equivalent to a rating of distinguished in Domain 1.

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

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

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

**“Basic performance in a domain”** means the administrator appears to understand the concepts underlying the standards, and attempts to implement their elements, but implementation is sporadic, intermittent, or otherwise not entirely successful.

**“Basic performance on a summative evaluation”** means the administrator receives at least four basic or higher ratings and no unsatisfactory rating among the four domains under the summative evaluation and does not meet the criteria for a rating of proficient or distinguished.

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

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

**“Delaware Administrator Standards”** means standards for education administrators approved by the State Board, as per 14 Del. Admin. Code 394, Delaware Administrator Standards.

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

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

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

**“Developing”** means limited evidence, which may not address the component in its complexity, may be lacking in breadth or depth, or may be less effective than expected. For the purposes of the DPAS II system, a rating of developing on Domain 1 of the Administrator DPAS is equivalent to a rating of basic in Domain 1.

**“Distinguished”** means performance characteristic of master administrators.

**“Distinguished performance in a domain”** means that

the administrator is a master administrator and makes a contribution to the field, both in and outside of their school or district.

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

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

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

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

**“DPAS II”** means the Delaware Performance Appraisal System II.

**“Educator”** means a public school employee who holds a license issued under the provisions of 14 Del. C., Chapter 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and State Board but does not include substitute teachers.

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

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

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

**“ISLLC”** means Interstate School Leaders Licensure Consortium.

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

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

student work that demonstrates a student’s performance.

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

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

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

**“Pattern of ineffective administration”** means a summative evaluation rating of unsatisfactory performance for a period of two consecutive years.

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

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

**“Proficient performance in a domain”** means the administrator clearly understands the concepts underlying the domain and implements them well.

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

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

**“Rudimentary”** means that little or no evidence exists for the set of behaviors called for by the specific component. For the purposes of the DPAS II system, a rating of rudimentary on Domain 1 of the Administrator DPAS is equivalent to a rating of unsatisfactory in Domain 1.

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

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

**“School or district improvement plan”** means a comprehensive plan, pursuant to 14 Del. C., § 805, developed by the school community which sets forth goals tied to state and local academic performance standards.

strategies to achieve those goals, and resources needed to implement strategies. As used herein, it also means the strategic plan maintained by each school district, pursuant to 14 Del. Admin. Code 215.

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

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

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

**“Student absence”** means a student misses more than 15% of class time in a school year. **“Student chronic noncompliance with school rules”** means two or more documented violations of district or charter school code of conduct.

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

**“Student mobility”** means a student attends one school for less than 91 days in a school year.

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

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

**“Unsatisfactory performance in a domain”** means the administrator does not yet appear to understand the concepts underlying the domain. The administrator’s performance in that domain is unacceptable.

**“Unsatisfactory performance on a summative**

**evaluation”** means an administrator receives one or more unsatisfactory ratings in the four domains of the summative evaluation.

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

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

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

3.1.1 Domain 1: Assessment of Leader Standards provides a direct assessment of the school leader’s proficiency on 24 dimensions of professional practice directly connected to the Delaware Administrator Standards, also known as the ISLLC Standards, as described in *A Frameworks for School Leaders: Linking the Interstate School Leaders Licensure Consortium “Standards for School Leaders” to Practice*. (ETS, 2001). The rubrics are to be used as a guide to inform dialogue for both the administrator and the evaluator. The evaluator is not required to assess every component of the standards in the course of an evaluation.

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

3.1.1.1.1 Component 1a: Developing the Vision – Component Performance Table

<b>LEVEL OF PERFORMANCE</b>				
Central Themes*	Rudimentary	Developing	Proficient	Accomplished
<b><u>A Vision for Success</u></b>	There is little or no evidence that the school leader has created a vision for the school.	There is limited evidence that the school leader has created a vision that will ensure the success of all students, and there is limited evidence that it is integrated into the school program.	There is clear evidence that the school leader has created a vision that attempts to ensure the success of all students, and/or creates one that is applied consistently in most cases throughout the school program.	There is clear, convincing, and consistent evidence that the school leader has created a vision of success that includes all students and that is consistently integrated throughout
<b><u>A Focus on Teaching and Learning</u></b>	There is little or no evidence that the school leader includes any reference to teaching and learning in the vision.	There is limited evidence that the school leader has considered some aspects of teaching and learning in the development of the vision.	There is clear evidence that the school leader uses the vision to shape most educational programs, plans, and actions.	There is clear, convincing, and consistent evidence that the school leader has developed the vision based on a focus on the success of all students and the vision is embedded in all educational programs, plans, activities, and actions.
<b><u>An Involvement of all Stakeholders</u></b>	There is little or no evidence that any members of the school community were involved in the creation of the vision.	There is limited evidence that the school leader has involved appropriate stakeholders in developing the vision, and/or that these individuals were involved appropriately.	There is clear evidence that appropriate stakeholders participated in the development of the vision, and/or consistently throughout the process.	There is clear, convincing, and consistent evidence that the school leader has included representatives of all appropriate members of the community in the development of the vision and that they shared in all the decision-making processes.

# PROPOSED REGULATIONS

<b><u>A Demonstration of Ethical Behavior</u></b>	<u>There is little or no evidence that the school leader considered the needs of all students in an equitable manner in the development of the school vision.</u>	<u>There is limited evidence that the school leader has used student data from all students in an equitable manner to inform the development of the school vision.</u>	<u>There is clear evidence that the school leader used some data about all students in the development of the vision in an equitable manner.</u>	<u>There is clear, convincing, and consistent evidence that the school leader used a variety of sources of data for all students, obtained both in and outside the school, in the development of a vision that is fair and equitable to all.</u>
---	---	--	--	--

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner) Vision – Component Performance Table

### 3.1.1.1.2 Component 1b: Communicating the

<b>LEVEL OF PERFORMANCE</b>				
<b>Central Themes*</b>	<b>Rudimentary</b>	<b>Developing</b>	<b>Proficient</b>	<b>Accomplished</b>
<b><u>A Vision for Success</u></b>	<u>There is little or no evidence that the school leader communicates the vision to the school community.</u>	<u>There is limited evidence that the school leader communicates the vision appropriately; evidence may be of limited scope or depth.</u>	<u>There is clear evidence that the school leader periodically communicates the vision to the school community.</u>	<u>There is clear, convincing, and consistent evidence that the vision is effectively communicated by the school leader throughout the school year and in a variety of ways, and that the communication supports the success of all students.</u>
<b><u>A Focus on Teaching and Learning</u></b>	<u>There is little or no evidence that the communication of the vision by the school leader focuses on issues of teaching and learning.</u>	<u>There is limited evidence that the communication of the vision by the school leader focuses on teaching or learning, but not both, and does not link them in any meaningful way.</u>	<u>There is clear evidence that the communication of the vision by the school leader reveals a clear link between teaching and learning.</u>	<u>There is clear, convincing, and consistent evidence that communication of the vision by the school leader clearly focuses on teaching and its impact on learning and student success, and that this recognition occurs throughout the year and in a variety of venues, both in the school and in the community.</u>
<b><u>An Involvement of all Stakeholders</u></b>	<u>There is little or no evidence that the school leader has communicated the vision to stakeholders or that stakeholders have an opportunity to communicate that vision among themselves.</u>	<u>There is limited evidence to show that stakeholders are aware of the vision and were engaged in discussion of the vision.</u>	<u>There is clear evidence that the school leader provides a forum for stakeholders to annually engage in a dialogue about the vision.</u>	<u>There is clear, convincing, and consistent evidence that the school leader has provided an opportunity for all stakeholders to engage in a discussion about the vision throughout the school year, both in and out of the school.</u>
<b><u>A Demonstration of Ethical Behavior</u></b>	<u>There is little or no evidence that the school leader has communicated the vision openly, honestly, and sensitively to all stakeholders.</u>	<u>There is limited evidence that the school leader has made an attempt to communicate the vision in a way that is sensitive to the diversity and needs of all stakeholders.</u>	<u>There is clear evidence that the school leader communicates the vision in a way that is sensitive to the needs and diversity of the community, but might not provide for a complete, critical, public debate.</u>	<u>There is clear, convincing, and consistent evidence that the school leader openly, honestly, and sensitively communicates the vision to all stakeholders and provides for a complete, critical, public debate.</u>

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner) 3.1.1.1.3 Component 1c: Implementing the Vision – Component Performance Table

<b>LEVEL OF PERFORMANCE</b>				
<b>Central Themes*</b>	<b>Rudimentary</b>	<b>Developing</b>	<b>Proficient</b>	<b>Accomplished</b>
<b><u>A Vision for Success</u></b>	<u>There is little or no evidence that the school leader linked the school program, policy, or procedures to the vision of the school.</u>	<u>There is limited evidence that the school leader has linked the school program to the vision of the school, and where that linkage does occur, it is only done superficially.</u>	<u>There is clear evidence that the school leader has embedded the vision throughout most school programs, policies, and procedures.</u>	<u>There is clear, convincing, and consistent evidence that the school leader has thoughtfully aligned and linked all school programs, policies, and procedures to the vision of the school.</u>

<b><u>A Focus on Teaching and Learning</u></b>	There is little or no evidence that the school leader has linked any instructional planning, strategies, or student assessment to the vision of the school.	There is limited evidence that the school leader has linked some instructional plans and strategies to the vision of the school and that the school leader interprets or analyzes available data.	There is clear evidence that the school leader has linked most instructional plans and strategies to the vision of the school, and that the school leader uses some student assessment data to inform teaching and learning decisions.	Clear, convincing, and consistent evidence exists that the school leader has embedded the vision in all teaching practices and uses student achievement data to ensure that the vision is firmly focused on the success of all students.
<b><u>An Involvement of all Stakeholders</u></b>	There is little or no evidence that the school leader has given members of the school community responsibility for implementing the vision or for allocating resources that support the vision.	There is limited evidence that the school leader has encouraged one or more groups of stakeholders to consider strategies for implementing the vision or for allocating resources that support the vision.	There is clear evidence that the school leader has distributed responsibility for implementing the vision to some members of the school or community and has sought assistance from these individuals in the allocation of resources to support the vision.	There is clear, convincing, and consistent evidence that the school leader has shared responsibility with appropriate stakeholders, in the school and in the community, for implementing the vision and for obtaining and allocating resources to support the vision.
<b><u>A Demonstration of Ethical Behavior</u></b>	There is little or no evidence that the school leader has implemented the vision in a way that is sensitive to the diversity within the community or that the vision is focused on the success of all students in a fair and equitable way.	There is limited evidence that the school leader has considered the diversity of the community, or has implemented the vision in a way that addresses the needs of all students and staff in a fair and equitable way.	There is clear evidence that the school leader recognizes the diversity of the community and the needs of the students and staff, and uses some of this information to implement the vision in a fair and equitable way.	There is clear, convincing, and consistent evidence that the school leader recognizes the diversity of the community and the needs and abilities of all students and staff, and uses this information to implement the vision in a way that is fair and equitable to all.

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner)

3.1.1.1.4 Component 1d: Monitoring and Evaluating the Vision –Component Performance Table

<b>LEVEL OF PERFORMANCE</b>				
<b><u>Central Themes*</u></b>	<b><u>Rudimentary</u></b>	<b><u>Developing</u></b>	<b><u>Proficient</u></b>	<b><u>Accomplished</u></b>
<b><u>A Vision for Success</u></b>	There is little or no evidence that the school leader either collects or analyzes data about the school's progress toward realizing the vision.	There is limited evidence that the school leader collects data on the school's progress toward the vision or uses this information to promote student success in any meaningful way.	There is clear evidence that the school leader collects data periodically on the school's progress toward the vision and uses this information to make decisions that promote the success of students.	There is clear, convincing, and consistent evidence that the school leader collects and analyzes data on the school's progress toward realizing the vision throughout the school year and continually uses this information to make decisions that promote the success of all students.
<b><u>A Focus on Teaching and Learning</u></b>	There is little or not evidence that the school leader monitors teacher performance or uses data to assess student learning and progress toward the vision.	There is limited evidence that the school leader monitors either teaching performance or student learning, or that the leader links instruction to student achievement and how this information impacts the school's progress toward realizing the vision.	There is clear evidence that the school leader has created a system to monitor teacher performance and student learning throughout the school year, and demonstrates some understanding of what teaching strategies support increased student learning and progress toward the vision.	There is clear, convincing, and consistent evidence that the school leader collects data on teacher performance and pupil achievement from a variety of sources and demonstrates a clear understanding of how teaching is linked to student learning and what adjustments or modifications must be made to ensure the success of all students and progress toward the vision.
<b><u>An Involvement of all Stakeholders</u></b>	There is little or no evidence that the school leader uses data from any stakeholders in assessing progress toward achieving the vision.	There is limited evidence that the school leader gathers information from stakeholders about the school's progress toward the vision, or provides any opportunity for them to analyze or review the data.	There is clear evidence that the school leader collects data the school's progress toward the vision from a variety of stakeholders and shares this information with the school community. The leader may occasionally provide opportunities for appropriate stakeholders to analyze or review this information.	There is clear, convincing, and consistent evidence that the school leader collects data about progress toward achieving the vision from sources both in and outside the school, and that the leader provides opportunities for appropriate stakeholders to analyze and review this information throughout the school year to ensure that school programs promote the success of all students.
<b><u>A Demonstration of Ethical Behavior</u></b>	There is little or no evidence that the school leader uses data on the school's progress toward the vision to report that progress accurately, completely, or frequently.	There is limited evidence that the school leader releases accurate data to the public on the school's progress toward the vision.	There is clear evidence that the school leader provides the community an accurate annual report on the school's progress toward the vision.	There is clear, convincing, and consistent evidence that the school leader uses data on the school's progress toward the vision to provide the school community with accurate, complete, and frequent reports on the status of the vision.

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner)

# PROPOSED REGULATIONS

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

conducive to student learning and staff professional growth.  
3.1.1.2.1 Component 2a: Valuing Students and Staff –  
Component Performance Table

LEVEL OF PERFORMANCE				
Central Themes*	Rudimentary	Developing	Proficient	Accomplished
<b><u>A Vision for Success</u></b>	There is little or no evidence that the school leader recognizes the efforts or accomplishments of students or staff in their support of the school vision.	There is limited evidence that the school leader recognizes the efforts and accomplishments of students or staff in the support of the school vision.	There is clear evidence that the school leader values and recognizes the efforts and accomplishments of students and staff, and reports these periodically during the school year.	There is clear, convincing, and consistent evidence that the school leader values the efforts and accomplishments of all members of the school community and celebrates these successes in a variety of ways, both in and outside the school, throughout the school year.
<b><u>A Focus on Teaching and Learning</u></b>	There is little or no evidence that the school leader recognizes the contributions of the teachers or the efforts of the students in the teaching and learning process.	There is limited evidence that the school leader demonstrates appreciation for the contributions of teachers or the achievement of students in the teaching and learning process.	There is clear evidence that the leader values the contributions of the staff and/or the achievements of the students in the teaching and learning process and successes are celebrated on occasion.	There is clear, convincing, and consistent evidence that the school leader understands how the efforts of the staff support the achievement of students and promotes, recognizes, and celebrates these efforts and the achievement of the students in the teaching and learning process throughout the school year.
<b><u>An Involvement of all Stakeholders</u></b>	There is little or no evidence to show that the school leader involves the community in recognizing the contributions of teachers or students.	There is limited evidence that the school leader involves stakeholders in the recognition of the success of the teachers and students beyond infrequent routine announcements.	There is clear evidence that the school leader involves all members of the community in celebrating the success of students or teachers, although this recognition may occur only periodically and may be limited to activities held within the school.	There is clear, convincing, and consistent evidence that the school leader involves all members of the community in celebrating the success of students and teachers throughout the school year, and that these celebrations occur within the school and in the community.
<b><u>A Demonstration of Ethical Behavior</u></b>	There is little or no evidence to show that the school leader rewards the teaching and learning successes or contributions of students or staff in a fair and equitable way.	There is limited evidence that the school leader rewards the teaching and learning successes of students and teachers in a fair and equitable way.	There is clear evidence that the school leader rewards teaching and learning successes of all groups, although the public recognition may not be uniformly applied over all groups.	There is clear, convincing, and consistent evidence that the school leader treats the teaching and learning contributions and successes of all staff members and students in an equitable and fair way.

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner)

3.1.1.2.2 Component 2b: Developing and Sustaining the Culture –Component Performance Table

LEVEL OF PERFORMANCE				
Central Themes*	Rudimentary	Developing	Proficient	Accomplished
<b><u>A Vision for Success</u></b>	There is little or not evidence that the school leader is aware of the role of school environment and how it impacts the school's vision.	There is limited evidence that the school leader understands the kind of environment that contributes to the achievement of the school's vision.	There is clear evidence that the school leader has supported an environment that contributed to the achievement of the school's vision.	There is clear, convincing, and consistent evidence that the school leader has fostered the creation of an environment that directly and positively enhances the school's vision.
<b><u>A Focus on Teaching and Learning</u></b>	There is little or no evidence that the school leader has engaged teachers in activities to improve instruction or has established student achievement goals.	There is limited evidence that the school leader has provided teachers opportunities to engage in appropriate professional development activities that support the school vision or has established clearly defined achievement goals for all.	There is clear evidence that the school leader has provided teachers a variety of opportunities for professional growth that support the school vision and/or has established clear expectations for all.	There is clear, convincing, and consistent evidence that the school leader has created a learning community in which teachers are provided opportunities for appropriate professional growth and reflection that support the vision of the school and in which high exceptions are established for all.



<b>An Involvement of all Stakeholders</b>	There is little or no evidence that the school leader has involved stakeholders in any activity designed to support an effective instructional program and culture for teaching and learning.	There is limited evidence that the school leader has involved stakeholders in any activities that build an effective instructional program or culture for teaching and learning.	There is clear evidence that the school leader has created opportunities for various stakeholders to engage in and support an effective instructional program and culture for teaching and learning.	There is clear, convincing, and consistent evidence that the school leader has ensured that all appropriate stakeholders have a responsibility for and share in the planning, shaping, and implementation of an effective instructional program and culture for teaching and learning.
<b>A Demonstration of Ethical Behavior</b>	There is little or no evidence that the school leader has demonstrated integrity in the development of the instructional program and school culture that includes and ensures success for all students and staff in a fair and equitable way.	There is limited evidence that the school leader has demonstrated integrity and sensitivity to the needs of the diverse student population in the development of the instructional program and a school culture that is fair and equitable for all.	There is clear evidence that the school leader has demonstrated integrity in the creation of an effective instructional program and school culture that provides equitable opportunities for most students.	There is clear, convincing, and consistent evidence that the school leader has demonstrated integrity in ensuring that all aspects of the instructional program and school culture are sensitive to, and inclusive of, the diversity among the school population, and ensures that all students are actively represented in a fair and equitable way.

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner) **Culture – Component Performance Table**

**3.1.1.2.3 Component 2c: Ensuring an Inclusive**

<b>LEVEL OF PERFORMANCE</b>				
<b>Central Themes*</b>	<b>Rudimentary</b>	<b>Developing</b>	<b>Proficient</b>	<b>Accomplished</b>
<b>A Vision for Success</b>	There is little or no evidence that the school leader demonstrates any awareness of the diversity within the school community or provides any opportunities for students from diverse backgrounds to work toward a realization of the school's vision.	There is limited evidence that the school leader demonstrates an awareness of the diversity within the school community, or supports opportunities for students from diverse backgrounds to work toward a realization of the school's vision.	There is clear evidence that the school leader builds on the diversity within the school community and provides appropriate opportunities for students from diverse backgrounds to work toward a realization of the school's vision.	There is clear, convincing, and consistent evidence that the school leader is sensitive to the needs of all students, has created opportunities for students from diverse backgrounds to work toward the vision of the school, and has ensured that all students have access to these opportunities.
<b>A Focus on Teaching and Learning</b>	There is little or no evidence that the school leader is aware of any barriers to student learning or is sensitive to the individual needs of the diverse community.	There is limited evidence that the school leader has identified any barriers to learning, or has linked the barriers to the diversity within the community.	There is clear evidence that the school leader has identified barriers to learning, is sensitive to the needs of the diverse student population, and has had some success in removing each of these barriers.	There is clear, convincing, and consistent evidence that the school leader has identified barriers to learning that are insensitive to the needs of the diverse student population, has removed these barriers, and has facilitated the creation of a comprehensive instructional program for all students.
<b>An Involvement of all Stakeholders</b>	There is little or no evidence that stakeholders were involved in the process of creating an inclusive instructional program.	There is limited evidence that stakeholders were involved in the process of ensuring an inclusive instructional program and school culture.	There is clear evidence that the stakeholders assist the school leader in identifying most of the diversity within the community and help to include representatives in the decision-making process for some of the school's instructional programs.	There is clear, convincing and consistent evidence that the stakeholders assist the school leader in identifying the diversity within the community and help to include representatives from these groups in the decision-making process for the school's instructional programs to ensure the school is sensitive to the needs of the community.
<b>A Demonstration of Ethical Behavior</b>	There is little or no evidence that the school leader provides equal teaching and learning opportunities for all members of the diverse school community.	There is limited evidence that the school leader provides equal teaching and learning opportunities for most members of the diverse school community.	There is clear evidence that the school leader has provided equal teaching and learning opportunities for all members of the diverse school community and has established clear expectations for all.	There is clear, convincing, and consistent evidence that the school leader has actively ensured equal teaching and learning opportunities for all member of the diverse school community. Further, the leader has established clear expectations for all.

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner) **3.1.1.2.4 Component 2d: Monitoring and Evaluating the Culture –Component Performance Table**

# PROPOSED REGULATIONS

<b>LEVEL OF PERFORMANCE</b>				
<b>Central Themes*</b>	<b>Rudimentary</b>	<b>Developing</b>	<b>Proficient</b>	<b>Accomplished</b>
<b><u>A Vision for Success</u></b>	There is little or no evidence that the school leader assesses the instructional program or school culture or the impact the instructional program or culture has on attaining the vision of the school.	There is limited evidence that the school leader has assessed the instructional program or school culture or links the instructional program or the school culture to the fulfillment of the school's vision; the evidence may be of an assessment limited in scope, depth, or accuracy.	There is clear evidence that the school leader has established a reliable system to assess the instructional program and the school culture and uses the information produced to promote the vision of the school.	There is clear, convincing, and consistent evidence that the school leader has established a thorough and ongoing assessment of the instructional program and the school culture and uses the information produced to promote the school vision.
<b><u>A Focus on Teaching and Learning</u></b>	There is little or no evidence that the school leader assesses teacher or student performance as a part of monitoring and evaluating the instructional program.	There is limited evidence that the school leader assesses teacher or student performance, or has made any link between instruction and student achievement.	There is clear evidence that the school leader has created a system of periodically appraising teacher and student performance and that this information is usually used to inform instructional decisions.	There is clear, convincing, and consistent evidence that the school leader has created an ongoing system of appraising teacher and student performance and that this information is systematically used to inform instructional decisions throughout the school year.
<b><u>An Involvement of all Stakeholders</u></b>	There is little or no evidence that the school leader involves stakeholders in providing or analyzing data related to the instructional program or culture of learning.	There is limited evidence that the school leader involves some stakeholders with an opportunity to provide or analyze data about the instructional program or culture of learning.	There is clear evidence that the school leader involves stakeholders in a variety of ways to provide and analyze data about the instructional program and culture of learning on a regular basis.	There is clear, convincing, and consistent evidence that the school leader gives stakeholders responsibility for gathering and analyzing information related to the instructional program and culture of learning throughout the school year, and gives them an active role in using this information to share in decisions about school improvement.
<b><u>A Demonstration of Ethical Behavior</u></b>	There is little or no evidence that the school leader demonstrates any integrity in providing the school community information about the evaluation of the school's instructional program and culture.	There is limited evidence that the school leader demonstrates integrity in providing the community information about the evaluation of the school's instructional program and culture.	There is clear evidence that the school leader has created a system for monitoring and evaluating the instructional program and culture that is open and honest. Further, the leader provides information about the evaluation of the instructional program and culture periodically.	There is clear, convincing, and consistent evidence that the school leader has created a system for monitoring and evaluating the instructional program and culture that is thorough, open and honest. Further, the leader ensures that information about the instructional program and culture is provided on an ongoing basis, in a variety of formats, to ensure understanding by all members of the diverse community.

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner)

for a safe, efficient, and effective learning environment.

### 3.1.1.3.1 Component 3a: Making Management Decisions to Ensure Successful Teaching and Learning – Component Performance Table

3.1.1.3 Standard 3: The Management of Learning A school administrator is an educational leader who promotes the success of all students by ensuring management of the organization, operations, and resources

<b>LEVEL OF PERFORMANCE</b>				
<b>Central Themes*</b>	<b>Rudimentary</b>	<b>Developing</b>	<b>Proficient</b>	<b>Accomplished</b>
<b><u>A Vision for Success</u></b>	There is little or no evidence that the school leader makes management decisions that are linked to the school's vision.	There is limited evidence that the school leader considers the school's vision when making management decisions.	There is clear evidence that the school leader makes most management decisions in a way that supports the school's vision.	There is clear, convincing, and consistent evidence that, on an ongoing basis, the school leader makes all management decisions in a way that promotes the school's vision.

<b><u>A Focus on Teaching and Learning</u></b>	There is little or no evidence that the school leader demonstrates any awareness of <u>learning, teaching, and student development to inform management decisions.</u>	There is limited evidence that the school leader demonstrates any understanding of <u>learning, teaching, and student development to inform management decisions or rarely uses this information to enhance teaching and learning.</u>	There is clear evidence that the school leader demonstrates an understanding of <u>learning, teaching, and student development to inform most management decisions and frequently uses this information to enhance teaching and learning.</u>	There is clear, convincing, and consistent evidence that the school leader demonstrates an understanding of <u>learning, teaching, and student development to inform all management decisions and continuously uses this information to enhance teaching and learning.</u>
<b><u>An Involvement of all Stakeholders</u></b>	There is little or no evidence that the school leader involves stakeholders in the <u>management decision-making process.</u>	There is limited evidence that the school leader makes <u>appropriate use of stakeholders in the management decision-making process.</u>	There is clear evidence that the school leader at times involves <u>appropriate stakeholders in the management decision-making process.</u>	There is clear, convincing, and consistent evidence that the school leader <u>actively recruits and involves appropriate stakeholders in the management decision-making process on an ongoing basis.</u>
<b><u>A Demonstration of Ethical Behavior</u></b>	There is little or no evidence that the school leader has <u>every employed ethical principles in the decision-making process that ensure fairness and equity for all.</u>	There is limited evidence that the school leader has <u>employed ethical principles in the decision-making process that ensure fairness and equity for all.</u>	There is clear evidence that the school leader <u>employs ethical principles in the decision-making process and attempts to ensure fairness and equity for all.</u>	There is clear, convincing, and consistent evidence that the school leader <u>employs ethical principles in the decision-making process and ensures fairness and equity for all.</u>

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner) Procedures to Ensure Successful Teaching and Learning – Component Performance Table

3.1.1.3.2 Component 3b: Developing

<b>LEVEL OF PERFORMANCE</b>				
<b><u>Central Themes*</u></b>	<b><u>Rudimentary</u></b>	<b><u>Developing</u></b>	<b><u>Proficient</u></b>	<b><u>Accomplished</u></b>
<b><u>A Vision for Success</u></b>	There is little or no evidence that the school leader facilitates the <u>development of any procedures for successful teaching and learning linked to the school's vision.</u>	There is limited evidence that the school leader considers the <u>school's vision when facilitating the development of procedures for successful teaching and learning.</u>	There is clear evidence that the school leader facilitates the <u>development of most procedures for successful teaching and learning to support the school's vision.</u>	There is clear, convincing, and consistent evidence that the school leader <u>collaborates with stakeholders to develop, assess, and improve procedures for successful teaching and learning to ensure the support of the school's vision.</u>
<b><u>A Focus on Teaching and Learning</u></b>	There is little or no evidence that the school leader is aware of any emerging trends or has <u>facilitated the development of any procedures or policies to support teaching and learning.</u>	There is limited evidence that the school leader recognizes <u>any emerging trends to facilitate the development of school procedures and policies that are connected to the teaching and learning process.</u>	There is clear evidence that the school leader recognizes, studies, and applies some emerging trends <u>to facilitate the development of school procedures and policies that support and enhance the teaching and learning process.</u>	There is clear, convincing, and consistent evidence that the school leader <u>recognizes, studies, and applies emerging trends to facilitate the development of school procedures and policies that effectively support and enhance the teaching and learning process on an ongoing basis.</u>
<b><u>An Involvement of all Stakeholders</u></b>	There is little or no evidence that the school leader involves <u>any stakeholders in the development of procedures to ensure successful teaching and learning.</u>	There is limited evidence that the school leader involves <u>appropriate stakeholders in the development of school procedures to ensure successful teaching and learning.</u>	There is clear evidence that the school leader involves <u>stakeholders in developing many of the school procedures to ensure successful teaching and learning.</u>	There is clear, convincing, and consistent evidence that the school leader <u>actively engages appropriate stakeholders in developing all school procedures that ensure successful teaching and learning.</u>
<b><u>A Demonstration of Ethical Behavior</u></b>	There is little or no evidence that the school leader demonstrates integrity in <u>facilitating the development of any procedures that support teaching and learning which are fair and equitable to all.</u>	There is limited evidence that the school leader demonstrates integrity in <u>facilitating the development of some procedures that support teaching and learning which are fair and equitable to all.</u>	There is clear evidence that the school leader demonstrates integrity in <u>facilitating the development of most procedures that support teaching and learning which are fair and equitable to all.</u>	There is clear, convincing, and consistent evidence that the school leader demonstrates integrity in <u>facilitating the development of all procedures that support teaching and learning which are fair and equitable to all.</u>

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner) Resources to Ensure Successful Teaching and Learning – Component Performance Table

3.1.1.3.3 Component 3c: Allocating

<b>LEVEL OF PERFORMANCE</b>				
<b><u>Central Themes*</u></b>	<b><u>Rudimentary</u></b>	<b><u>Developing</u></b>	<b><u>Proficient</u></b>	<b><u>Accomplished</u></b>

# PROPOSED REGULATIONS

<b><u>A Vision for Success</u></b>	<u>There is little or no evidence that the school leader effectively uses resources to promote the vision of the school.</u>	<u>There is limited evidence that the school leader makes all decisions regarding the allocation of resources with appropriate consideration of the school's vision.</u>	<u>There is clear evidence that the school leader effectively and fairly allocates most school resources in a way that supports the school's vision.</u>	<u>There is clear, convincing, and consistent evidence that the school leader ensures that all available resources are allocated effectively and fairly in a way that supports the school's vision.</u>
<b><u>A Focus on Teaching and Learning</u></b>	<u>There is little or no evidence that the school leader uses resources effectively or efficiently, and/or considers the relationship of these resources to successful teaching and learning.</u>	<u>There is limited evidence that the school leader makes decisions regarding the allocation of resources bases on a consideration of the link between the allocation of these resources and how they support successful teaching and learning.</u>	<u>There is clear evidence that the school leader makes routine decisions related to the effective allocation and use of resources in support of successful teaching and learning.</u>	<u>There is clear, convincing, and consistent evidence that the school leader has developed creative ways to obtain, allocate, and conserve resources to support successful teaching and learning.</u>
<b><u>An Involvement of all Stakeholders</u></b>	<u>There is little or no evidence that the school leader is aware of the stakeholders' interests or provides them any forum to express their opinion on how resources are to be allocated.</u>	<u>There is limited evidence that the school leader provides stakeholders an opportunity to express their opinion about the allocation of resources, or uses this information to support allocation decisions.</u>	<u>There is clear evidence that the school leader is sensitive to the competing interests of the various school groups and includes some stakeholders in most of the decision-making related to resource allocation.</u>	<u>There is clear, convincing, and consistent evidence that the school leader is sensitive to the competing interests of various school groups and collaboratively engages appropriate stakeholders in all decisions related to resource allocation.</u>
<b><u>A Demonstration of Ethical Behavior</u></b>	<u>There is little or no evidence to suggest that the school leader demonstrates integrity in allocating resources to support teaching and learning in a fair and equitable way.</u>	<u>There is limited evidence that the school leader demonstrates integrity in allocating resources to support teaching and learning in a fair and equitable way.</u>	<u>There is clear evidence that the school leader demonstrates integrity in allocating most resources to support teaching and learning in a fair and equitable manner.</u>	<u>There is clear, convincing, and consistent evidence that the school leader always demonstrates integrity in allocating all resources to support teaching and learning in a fair and equitable way.</u>

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner)

Healthy Environment to Ensure Successful Teaching and Learning – Component Performance Table

### 3.1.1.3.4 Component 3d: Creating a Safe,

LEVEL OF PERFORMANCE				
Central Themes*	Rudimentary	Developing	Proficient	Accomplished
<b><u>A Vision for Success</u></b>	<u>There is little or no evidence that the school leader is aware of unsafe or unhealthy conditions in the school or has attempted to ensure a safe and healthy environment that can support the school's vision.</u>	<u>There is limited evidence that the school leader is aware of health and safety-related issues existing in the school, or works to create a school environment to support the school's vision.</u>	<u>There is clear evidence that the school leader creates a school environment that supports the school's vision, and periodically identifies and addresses most unsafe and unhealthy conditions in the school.</u>	<u>There is clear, convincing, and consistent evidence that the school leader continuously creates a social, physical, and emotional environment that promotes the school's vision and identifies and addresses unsafe and unhealthy conditions in the school.</u>
<b><u>A Focus on Teaching and Learning</u></b>	<u>There is little or no evidence that the school leader makes plans for a safe and healthy environment to ensure successful teaching and learning or addresses safety concerns as they arise.</u>	<u>There is limited evidence that the school leader creates a safe school either in planning or in actions.</u>	<u>There is clear evidence that the school leader creates an environment that is generally conducive to ensure effective teaching and learning, although there may be areas that are exceptions.</u>	<u>Clear, convincing, and consistent evidence exists that the school leader ensures the creation of an environment conducive to successful teaching and learning for all.</u>
<b><u>An Involvement of all Stakeholders</u></b>	<u>There is little or no evidence that the school leader has made an attempt to address the issue of safe schools with any stakeholders or to enlist their support in creating an environment conducive to teaching and learning.</u>	<u>There is limited evidence that the school leader attempts to address the issue of safe schools with some stakeholders, and/or that the leader is aware of local community agencies that could assist the school to create an effective, safe learning environment.</u>	<u>There is clear evidence that the school leader addresses the issue of safe schools with appropriate stakeholders and involves some community agencies to provide the school services to create an effective, safe learning environment.</u>	<u>There is clear, convincing, and consistent evidence that the school leader addresses the issue of safe schools with appropriate stakeholders and fosters and develops partnerships with community agencies to create an effective, safe learning environment.</u>

<p><b><u>A Demonstration of Ethical Behavior</u></b></p>	<p>There is little or no evidence that the school leader treats people fairly and equitably in the application of the laws and procedures designed to protect the health and safety of all.</p>	<p>There is limited evidence that the school leader treats people fairly and equitably in the application of some of the laws and procedures designed to protect the health and safety of all.</p>	<p>There is clear evidence that the school leader treats people fairly and equitably in the application of the laws and procedures designed to protect the health and safety of all.</p>	<p>There is clear, convincing, and consistent evidence that the school leader treats people fairly and equitably in the application of all laws and procedures designed to protect the health and safety of all and is an advocate for the physical, social, and emotional well-being of all members of the school community.</p>
--	---	--	--	---

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner)

community members, responding to diverse community interests and needs, and mobilizing community resources.

3.1.1.4.1 Component 4a:

3.1.1.4 Standard 4: Relationships with the broader community to foster learning -- A school administrator is an educational leader who promotes the success of all students by collaborating with families and

Understanding Community Needs –Component Performance Table

LEVEL OF PERFORMANCE				
Central Themes*	Rudimentary	Developing	Proficient	Accomplished
<p><b><u>A Vision for Success</u></b></p>	<p>There is little or no evidence that the school leader understands the needs of the community and how these needs could be reflected in the vision of the school.</p>	<p>There is limited evidence that the school leader attempts to understand the needs of the community, or that these needs are reflected in the vision of the school.</p>	<p>There is clear evidence that the school leader assesses the needs of the community and that patterns that emerge from these data are used to inform the vision of the school.</p>	<p>There is clear, convincing, and consistent evidence that the school leader assesses the needs of the community on an ongoing basis, has had the ability to identify and predict patterns that are supported by these data, and uses this information to modify, inform, and validate the vision of the school.</p>
<p><b><u>A Focus on Teaching and Learning</u></b></p>	<p>There is little or no evidence that the school leader assesses the needs of the community to provide data to inform effective teaching strategies that would foster learning.</p>	<p>There is limited evidence that the school leader assesses the needs of the community, or that resulting data were used by the leader to inform teaching strategies that would foster learning.</p>	<p>There is clear evidence that the school leader assesses the needs of the community and usually uses resulting data to modify teaching strategies that foster learning.</p>	<p>There is clear, convincing, and consistent evidence that the school leader assesses the needs of the community on an ongoing basis and continually uses resulting data to inform teaching strategies that clearly foster learning and improve student achievement.</p>
<p><b><u>An Involvement of all Stakeholders</u></b></p>	<p>There is little or no evidence that the school leader engages the assistance or support of stakeholders in assessing the needs of the community to foster learning in the school.</p>	<p>There is limited evidence that the school leader engages the assistance of some stakeholders in assessing the needs of the community with a goal of fostering learning in the school.</p>	<p>There is clear evidence that the school leader collaborates from time to time with some stakeholders in collecting and analyzing data concerning the needs of the community with a goal of fostering learning in the school.</p>	<p>There is clear, convincing, and consistent evidence that the school leader collaborates with appropriate stakeholders on an ongoing basis to collect and analyze data on the needs of the community with a goal of fostering learning in the school.</p>
<p><b><u>A Demonstration of Ethical Behavior</u></b></p>	<p>There is little or no evidence that the school leader demonstrates appreciation for and sensitivity to the needs and prevailing values of the diverse school community.</p>	<p>There is limited evidence that the school leader demonstrates appreciation for and/or sensitivity to the needs and prevailing values of the diverse school community.</p>	<p>There is clear evidence that the school leader frequently demonstrates appreciation for and/or sensitivity to the needs and prevailing values of the diverse school community.</p>	<p>There is clear, convincing, and consistent evidence that the school leader demonstrates appreciation for and sensitivity to the needs and prevailing values of the diverse school community on an ongoing basis.</p>

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner)

Members of the Community –Component Performance Table

3.1.1.4.2 Component 4b: Involving

LEVEL OF PERFORMANCE				
Central Themes*	Rudimentary	Developing	Proficient	Accomplished

# PROPOSED REGULATIONS

<b><u>A Vision for Success</u></b>	<u>There is little or no evidence that the school leader demonstrates any understanding of, or an interest in, what is needed to involve members of the community in achieving the school vision.</u>	<u>The school leader demonstrates an understanding of the issues and challenges in engaging the school community in achieving the school vision or engages any significant segments of the community in this activity.</u>	<u>There is clear evidence that the school leader has a basic plan to engage the community to assist the school in achieving its vision. The plan generally addresses the issues and challenges to be faced in working toward the vision, and involves most appropriate stakeholders.</u>	<u>There is clear, convincing, and consistent evidence that the school leader has an effective, multifaceted plan for collaborating with families and community members in a way that contributes to the success of the school's vision. The plan's strategies address the issues and challenges to be faced in working toward the vision, and involve all appropriate stakeholders.</u>
<b><u>A Focus on Teaching and Learning</u></b>	<u>There is little or no evidence that the school leader plans for any partnerships between the school and community that will enhance or support the teaching and learning process.</u>	<u>There is limited evidence that the school leader attempts to develop partnerships between the school and the community, and only limited evidence that the school leader is aware of the benefits that this would bring to the process of teaching and learning.</u>	<u>There is clear evidence that the school leader establishes partnerships with some community groups that contribute to the success of the teaching and learning process.</u>	<u>There is clear, convincing, and consistent evidence that the school leader establishes solid, ongoing partnerships with a variety of community groups and organizations to strengthen school programs and support the success of the teaching and learning process.</u>
<b><u>An Involvement of all Stakeholders</u></b>	<u>There is little or no evidence that the school leader enlists the support of stakeholders in developing relationships with organizations outside the school to foster learning.</u>	<u>There is limited evidence that the school leader has enlisted the support of some stakeholders to develop relationships with organizations outside the school, but the purpose of these relationships may be unclear.</u>	<u>There is clear evidence that the school leader has enlisted the support of a variety of stakeholders to develop relationships with organizations outside the school, many of which are created to assist the school in fostering learning.</u>	<u>There is clear, convincing, and consistent evidence that the school leader has enlisted the support of a wide variety of stakeholders to develop relationships with organizations outside the school with the specific intent of assisting the school to foster learning.</u>
<b><u>A Demonstration of Ethical Behavior</u></b>	<u>There is little or no evidence that the school leader demonstrates fairness in engaging equal representation of the diverse school community in an attempt to foster learning.</u>	<u>There is limited evidence that the school leader demonstrates fairness in engaging some equal representation of the diverse school community in an attempt to foster learning.</u>	<u>There is clear evidence that the school leader frequently demonstrates equity and fairness in engaging representatives of the diverse school community in an attempt to foster learning.</u>	<u>There is clear, convincing, and consistent evidence that the school leader demonstrates equity and fairness in engaging representatives of the diverse school community in an ongoing basis to foster learning.</u>

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner)

Opportunities for the Community and School to Serve Each Other – Component Performance Table

### 3.1.1.4.3 Component 4c: Providing

LEVEL OF PERFORMANCE				
Central Themes*	Rudimentary	Developing	Proficient	Accomplished
<b><u>A Vision for Success</u></b>	<u>There is little or no evidence that the school leader sees the school and community as anything other than separate and district entities or provides any opportunities for members of the community to engage in improvement efforts outside the school.</u>	<u>There is limited evidence that the school leader provides any opportunity for the school and community to engage in any meaningful way to achieve the school vision or provides any opportunities for the school community to engage in improvement efforts outside the school.</u>	<u>There is clear evidence that the school leader provides some opportunities for some community groups to serve the school in achieving its vision and clear evidence that the school leader encourages members of the school community to be active in supporting improvement efforts outside the school.</u>	<u>There is clear, convincing, and consistent evidence that the school leader provides a variety of opportunities for all appropriate community groups to address and help solve problems in a way that supports the school in achieving its vision, and that the leader ensures that members of the school community are active participants in improvement efforts.</u>
<b><u>A Focus on Teaching and Learning</u></b>	<u>There is little or no evidence that the school leader sees any potential benefit in developing partnerships or lines of communication with community youth and family service organizations to support the instructional program or provides any opportunities that might support community improvement.</u>	<u>There is limited evidence that the school leader uses community youth and service agencies to support the school program or has developed any opportunities for the instructional program to support community improvement.</u>	<u>There is clear evidence that the school leader integrates most community groups (e.g., youth and family service agencies, etc.) into many school programs that support and improve teaching and learning and has developed some instructional activities that support community improvement.</u>	<u>There is clear, convincing, and consistent evidence that the school leader fully integrates a variety of community groups (e.g., service agencies, cultural groups, etc.) in school programs to improve teaching and learning and that the school has instructional activities that support a variety of community improvement efforts throughout the year.</u>

<b><u>An Involvement of all Stakeholders</u></b>	<u>There is little or no evidence that the school leader involves stakeholders in developing ways that the school and the community might support each other's improvement efforts.</u>	<u>There is limited evidence that the school leader has enlisted the involvement of stakeholders to develop strategies that will provide members of the community an opportunity to foster learning in the school, and in finding ways for the school to assist the community in improvement efforts.</u>	<u>There is clear evidence that the school leader involves stakeholders in developing a variety of ways in which the community can assist the school to foster learning and for finding some opportunities for the school to help the community bring about improvement.</u>	<u>There is clear, convincing, and consistent evidence that the school leader continuously involves stakeholders in developing a comprehensive program to provide community members an opportunity to foster learning and to assist the school in becoming active in community improvement efforts.</u>
<b><u>A Demonstration of Ethical Behavior</u></b>	<u>There is little or no evidence that in activities in which the school and community serve each other, the school leader makes any attempt to seek participation from school and community members, is aware of equitable and respectful treatment of those involved, or is aware of appropriate ways the school and community could support each other.</u>	<u>There is limited evidence that in activities in which the school and community serve each other, the school leader seeks participation from representative groups within the school and community, treats stakeholders fairly, respects opinions, and works to ensure that the school and community support each other appropriately.</u>	<u>There is clear evidence that in most activities in which school and community serve each other, the school leader usually seeks participation from most representative groups within the school and community, treats all stakeholders fairly, respects all opinions, and works to ensure that the school and community support each other in an ethical manner.</u>	<u>There is clear, convincing, and consistent evidence that in all activities in which the school and community serve each other, the school leader actively seeks participation from all representative groups, treats all stakeholders equitably and respectfully, hears and values all opinions, and works to ensure that the school and community support each other in a fair and equitable manner.</u>

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner) Valuing Diversity – Component Performance Table

### 3.1.1.4.4 Component 4d: Understanding and

LEVEL OF PERFORMANCE				
<u>Central Themes*</u>	<u>Rudimentary</u>	<u>Developing</u>	<u>Proficient</u>	<u>Accomplished</u>
<b><u>A Vision for Success</u></b>	<u>There is little or no evidence that the school leader has developed a vision for the school that is sensitive to the diversity within the community or sees the school as a microcosm of society.</u>	<u>There is limited evidence that the school leader attempts to create a school vision that includes success for all students and provides some limited means of acknowledging, in a positive way, the diversity of the community.</u>	<u>There is clear evidence that the school leader works for the creation of a school vision that includes high expectations for all students regardless of race, ethnicity, socioeconomic status, or gender, and provides opportunities for school and community to honor the diversity of the community.</u>	<u>There is clear, convincing, and consistent evidence that the school leader ensures the creation of a school vision that includes high expectations for all students regardless of race, ethnicity, socioeconomic status, or gender, and that the leader has provided multiple opportunities for the school and community to celebrate diversity.</u>
<b><u>A Focus on Teaching and Learning</u></b>	<u>There is little or no evidence that the school leader is either sensitive to or aware of diversity within the school community and the impact that this has on teaching and learning.</u>	<u>There is limited evidence that the school leader is sensitive to and aware of diversity within the school community, or ensures that the instructional program reflects the special needs that result from this diversity.</u>	<u>There is clear evidence that the school leader encourages teachers to plan and deliver differentiated lessons designed to address the needs of diversity within the community, that curriculum guides usually integrate cultural sensitivity and diversity, and that programs are developmentally</u>	<u>There is clear, convincing, and consistent evidence that the school leader has ensured that all teachers address cultural diversity, that students' differences are addressed in differentiated lesson plans, and that curriculum guides integrate cultural sensitivity and diversity in developmentally appropriate units of study.</u>
<b><u>An Involvement of all Stakeholders</u></b>	<u>There is little or no evidence that the school leader involves stakeholders to engage representative of the diverse community in the decision-making process.</u>	<u>There is limited evidence that the school leader involves stakeholders to engage representatives of the diverse community in the decision-making process.</u>	<u>There is clear evidence that the school leader involves stakeholders in an attempt to engage representatives of the diverse community in many decision-making activities.</u>	<u>There is clear, convincing, and consistent evidence that the school leader involves appropriate stakeholders to ensure that representatives of the diverse community actively participate in decision-making.</u>

# PROPOSED REGULATIONS

<b><u>A Demonstration of Ethical Behavior</u></b>	There is little or no evidence that the school leader is sensitive to the issues of ethnicity, race, gender, and socioeconomic status among the students or larger community, or that the school leader treats others equitably.	There is limited evidence that the school leader respects the diversity within the school and community, expects others to do so, or addresses the need for equity in all aspects of the school program.	There is clear evidence that the school leader models respect for diversity within the school and community, usually holds members of the school community to that standard, and works to provide equity for students in all aspects of the school program.	There is clear, convincing, and consistent evidence that the school leader models respect for diversity within school and community, holds all members of the school community accountable for the value, and assures that equity exists for students in all aspects of the school program.
---	--	--	---	---

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner) by acting with integrity, with fairness, and in an ethical manner

3.1.1.5.1 Component 5a:

Demonstrating a Personal and Professional Code of Ethics –  
Component Performance Table

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

LEVEL OF PERFORMANCE				
Central Themes*	Rudimentary	Developing	Proficient	Accomplished
<b><u>A Vision for Success</u></b>	There is little or no evidence that the school leader has provided equitable opportunities for members of the school community to work toward the development and implementation of the school vision.	There is limited evidence that the school leader provides equitable opportunities for most members of the school community to work toward the development and implementation of the school vision, or has demonstrated integrity in ensuring each person's engagement in that pursuit.	There is clear evidence that the school leader fosters the development of a vision for success with concern that the vision addresses the needs of all students, actively promotes opportunities for each member of the school community to work toward the vision of the school, and fairly monitors each person's participation in that pursuit.	There is clear, consistent, and convincing evidence that the school leader ensures the development of a vision for success with equitable and ethical considerations for the needs of all students, applies the vision of the school equitably among all the members of the school community, excludes no one from the opportunity to succeed, and assesses each person's progress toward the vision.
<b><u>A Focus on Teaching and Learning</u></b>	There is little or no evidence that the school leader possesses a personal and professional code of ethics that is reflected in the behaviors and values of the staff and students in the teaching and learning process.	There is limited evidence that the school leader possesses a personal or professional code of ethics that is reflected in the behaviors and values of the staff and students in the teaching and learning process.	There is clear evidence that the school leader models personal and professional codes of ethics that are reflected in the behaviors and values of most of the staff and students in the teaching and learning process.	There is clear, consistent, and convincing evidence that the school leader models personal and professional codes of ethics that are clearly reflected in the behaviors and values of the staff and students in the teaching and learning process throughout the year.
<b><u>An Involvement of all Stakeholders</u></b>	There is little or no evidence that the school leader seeks to protect the stakeholders from the unethical behavior of others such as favoritism and exclusion of some groups from activities and opportunities.	There is limited evidence that the school leader treats stakeholders fairly, and opposes such inappropriate behavior as favoritism, withholding of information, or the exclusion of stakeholders from activities or opportunities.	There is clear evidence that the school leader treats members of the school community fairly, stands strongly against showing favoritism to or withholding information from any stakeholders or excludes any from activities or opportunities.	There is clear, consistent, and convincing evidence that the school leader consistently and genuinely treats all stakeholders fairly, vigorously expects ethical behavior in others, and is willing to confront those who fail to meet this expectation.
<b><u>A Demonstration of Ethical Behavior</u></b>	There is little or no evidence that the school leader is concerned about ethical behavior in the school or outside the school.	There is limited evidence that the school leader represents ethical behavior in the school or in personal activities outside the school.	There is clear evidence that the school leader demonstrates ethical behavior in the school and in personal activities outside the school.	There is clear, convincing, and consistent evidence that the school leader models ethical behavior both in the school and in personal activities outside the school.

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner) Understanding One's Impact on the School and Community – Component Performance Table

3.1.1.5.2 Component 5b:

LEVEL OF PERFORMANCE				
Central Themes*	Rudimentary	Developing	Proficient	Accomplished



<b><u>A Vision for Success</u></b>	There is little or no evidence that the school leader has assessed the needs of the community or understands how the vision of the school affects these needs.	There is limited evidence that the school leader assesses the needs of the members of the community of the school, or uses any assessment information in any meaningful way to address these needs.	There is clear evidence that the school leader periodically assesses the needs of the members of the school and the community and considers this information to gain some understanding of how the vision of the school will affect these individuals in addressing their needs.	There is clear, convincing, and consistent evidence that the school leader continually assesses the needs of the members of the school and community on an ongoing basis and uses this information effectively to understand how the vision of the school will affect those individuals.
<b><u>A Focus on Teaching and Learning</u></b>	There is little or no evidence that the school leader seeks feedback from students and teachers to assess the administration's effect on the learning environment and student achievement.	There is limited evidence that the school leader seeks feedback from students and teachers to assess the administration's effect on the learning environment and student achievement, or that the school leader uses this information to consider how to improve the learning atmosphere.	There is clear evidence that the school leader seeks periodic feedback from students and teachers to assess the administration's effect on the learning environment and student achievement, and usually uses this information to consider positive change to the learning atmosphere.	There is clear, convincing, and consistent evidence that the school leader seeks frequent feedback from student's and teachers to assess the administration's effect on the learning environment and student achievement, and consistently uses this information to bring about positive change to the learning atmosphere.
<b><u>An Involvement of all Stakeholders</u></b>	There is little or no evidence that the school leader seeks feedback from the members of the community about the administration's impact on learning.	There is limited evidence that the school leader seeks feedback from the members of the community about the administration's impact on learning or uses this information in a significant way.	There is clear evidence that the school leader periodically seeks some feedback from members of the community about the administration's impact on learning and uses this information in some ways to strengthen the relationship between the school and the community.	There is clear, convincing, and consistent evidence that the school leader frequently seeks feedback from the community about the administration's impact on learning and consistently uses the information to strengthen the relationship between school and community.
<b><u>A Demonstration of Ethical Behavior</u></b>	There is little or no evidence that the leader seeks input from or is concerned about the administration's impact on the school and community.	There is limited evidence that the school leader provides an opportunity for some members of the school community to provide information about the leader's impact on the school and community, and at times uses this information in making changes.	There is clear evidence that the school leader provides opportunities for an open and honest discussion with members of the school and community concerning the administration's impact and considers their opinions in making changes.	There is clear, convincing and consistent evidence that the school leader continuously provides opportunities for an open, honest, and constructive discussion with members of the school and community concerning the administration's impact and thoughtfully uses this information to bring about positive change.

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner) **the Rights and Dignity of All –Component Performance Table**

3.1.1.5.3 Component 5c: Respecting

LEVEL OF PERFORMANCE				
Central Themes*	Rudimentary	Developing	Proficient	Accomplished
<b><u>A Vision for Success</u></b>	There is little or no evidence that the school leader has taken any measure to ensure that the vision of the school is appropriate for all members of the school community or that all have an opportunity to attain the vision.	There is limited evidence that the school leader has ensured either that the vision of the school is appropriate for all members of the school community or that all have an opportunity to attain the vision.	There is clear evidence that the school leader ensures that the vision of the school is appropriate for all members of the school community and all have an opportunity to attain the vision.	There is clear, convincing, and consistent evidence that the school leader ensures that the vision of the school is appropriate for all members of the school community, all have an opportunity to attain the vision, and all are supported in working toward the vision throughout the school year.
<b><u>A Focus on Teaching and Learning</u></b>	There is little or no evidence that the school leader is concerned with the rights and dignity of teachers or students.	There is limited evidence that the school leader demonstrates respect for the rights and dignity of teachers or students.	There is clear evidence that the school leader demonstrates respect for the rights and the dignity of all teachers and clearly advocates that the rights and dignity of all students are protected.	There is clear, convincing, and consistent evidence that the school leader demonstrates and insists on respect for the rights and dignity of all teachers and ensures that all students are treated with dignity and with full concern for their rights.

# PROPOSED REGULATIONS

<b><u>An Involvement of all Stakeholders</u></b>	<u>There is little or no evidence that the school leader is concerned with involving stakeholders in developing or participating in activities that support the rights and dignity of all.</u>	<u>There is limited evidence that the school leader provides opportunities for members of the school community to participate in or develop activities that support the rights and dignity of all.</u>	<u>There is clear evidence that the school leader provides some opportunities for members of the school community to participate in and/or develop activities that support the rights and dignity of all.</u>	<u>There is clear, convincing, and consistent evidence that the school leader provides frequent and various opportunities for all members of the school community to participate in and develop activities that support the rights and dignity of all throughout the school.</u>
<b><u>A Demonstration of Ethical Behavior</u></b>	<u>There is little or no evidence that the school leader is concerned with respecting or protecting the rights and dignity of teachers, students, or parents.</u>	<u>There is limited evidence that the school leader creates rules and routines that respect the rights of teachers, students, or parents, or enforces such rules or procedures effectively.</u>	<u>There is clear evidence that the school leader creates and routinely supports rules and routines that respect the rights of teachers, students, and parents.</u>	<u>There is clear, convincing, and consistent evidence that the school leader creates and consistently supports rules and routines that respect and protect the rights of teachers, students, and parents; and actively confronts efforts by others who might seek to infringe on these rights.</u>

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner) Integrity and Ethical Behavior in Others – Component Performance Table

### 3.1.1.5.4 Component 5d: Inspiring

<b>LEVEL OF PERFORMANCE</b>				
<b>Central Themes*</b>	<b>Rudimentary</b>	<b>Developing</b>	<b>Proficient</b>	<b>Accomplished</b>
<b><u>A Vision for Success</u></b>	<u>There is little or no evidence that the school leader is aware of the need to create an environment in which all members of the school community act with integrity and a sense of ethics in any activities involving the school vision for success.</u>	<u>There is limited evidence that the school leader takes any actions designed to cause all members of the school community to set with integrity and a sense of ethics in working with the school vision for success.</u>	<u>There is clear evidence that the school leader works effectively with students, faculty, staff, and community to act with integrity and a sense of ethics as they create, implement, evaluate, and revise the school vision for success.</u>	<u>There is clear, convincing, and consistent evidence that the school leader is highly effective in inspiring students, faculty, staff, and community to demonstrate highest principles of integrity and ethical behavior as they create, implement, evaluate and revise the school vision for success.</u>
<b><u>A Focus on Teaching and Learning</u></b>	<u>There is little or no evidence that the school leader is aware of the impact that integrity and ethics have on the teaching and learning process.</u>	<u>There is limited evidence that the school leader is sensitive to the impact that integrity and ethics have on the teaching and learning process or is successful in addressing these types of issues as they arise.</u>	<u>There is clear evidence that the school leader is sensitive to the impact that integrity and ethics have on the teaching and learning process and demonstrates success in addressing these types of issues as they arise.</u>	<u>There is clear, convincing, and consistent evidence that the school leader actively and continuously monitors the school climate to assure that all aspects of the teaching and learning process are carried out with the highest regard for principles of integrity and ethical behavior.</u>
<b><u>An Involvement of all Stakeholders</u></b>	<u>There is little or no evidence that the school leader is aware of the value of enlisting the support of members of the community to inspire ethical behavior in others.</u>	<u>There is limited evidence that the school leader has enlisted the support of members of the community to inspire ethical behavior in others.</u>	<u>There is clear evidence that the school leader has enlisted the support of all appropriate stakeholders in creating an environment in which all behave with integrity and a sense of ethics.</u>	<u>There is clear, convincing, and consistent evidence that the school leader has enlisted the support of all appropriate stakeholders to model integrity and ethical behavior and to inspire these values in others and specifically recognizes and rewards their efforts.</u>
<b><u>A Demonstration of Ethical Behavior</u></b>	<u>There is little or no evidence that the school leader is aware of the responsibility to demonstrate ethical behavior as a model for other members of the school community.</u>	<u>There is limited evidence that the school leader behaves in a manner that would inspire a sense of integrity and ethical behavior in other members of the school community.</u>	<u>There is clear evidence that the school leader demonstrates a sense of integrity and ethical behavior that serves as a model for all members of the school community.</u>	<u>There is clear, convincing, and consistent evidence that the school leader consistently demonstrates a clear and compelling sense of integrity and ethical behavior that serves as a model for all members of the school community.</u>

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner)

3.1.1.6.1 Component 6a: Operating Schools on Behalf of Students and Families – Component Performance Table

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

<b>LEVEL OF PERFORMANCE</b>				
<b>Central Themes*</b>	<b>Rudimentary</b>	<b>Developing</b>	<b>Proficient</b>	<b>Accomplished</b>
<b><u>A Vision for Success</u></b>	There is little or no evidence that the school leader has any awareness of the need to consider the needs of students and families in the creation of the school vision.	There is limited evidence that the school leader considers the needs of students and parents in the creation of the school vision.	There is clear evidence that the school leader facilitates the creation of a school vision that is based on his or her understanding of the needs of the students and their families.	There is clear, convincing, and consistent evidence that the school leader considers a documented analysis of the needs of the community to facilitate the creation of a school vision based on the best interest of the students and their families.
<b><u>A Focus on Teaching and Learning</u></b>	There is little or no evidence that the school leader has any understanding of how teaching and learning are affected by issues faced by students and families outside the school.	There is limited evidence that the school leader is aware of the challenges faced by students and families within the community or understands how to address these issues as they impact teaching and learning.	There is clear evidence that the school leader is aware of the challenges faced by students and families within the community and has used this information in an attempt to improve teaching and learning.	There is clear, convincing, and consistent evidence that the school leader is aware of the challenges faced by students and families within the community and uses this information as part of an ongoing process to improve teaching and learning.
<b><u>An Involvement of all Stakeholders</u></b>	There is little or no evidence that the school leader is aware of the responsibility to collaborate with stakeholders to provide resources that support students and their families.	There is limited evidence that the school leader attempts to collaborate with stakeholders to provide resources that support students and their families.	There is clear evidence that the school leader collaborates with stakeholders to provide resources that support students and their families.	There is clear, convincing, and consistent evidence that the school leader is highly successful in collaborating with stakeholders throughout the year to provide resources that support students and their families.
<b><u>A Demonstration of Ethical Behavior</u></b>	There is little or no evidence that the school leader demonstrates integrity in ensuring that students and families are treated fairly, equitably, and with dignity.	There is limited evidence that the school leader demonstrates integrity in ensuring that some students and some families are treated fairly, equitably, and with dignity.	There is clear evidence that the school leader frequently demonstrates integrity in ensuring that most students and most families are treated fairly, equitably, and with dignity.	There is clear, convincing, and consistent evidence that, throughout the school year, the school leader demonstrates integrity in ensuring that all students and families are treated fairly, equitably, and with dignity.

3.1.1.6.2 Component 6b:

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner) Communicating Changes in Environment to Stakeholders

<b>LEVEL OF PERFORMANCE</b>				
<b>Central Themes*</b>	<b>Rudimentary</b>	<b>Developing</b>	<b>Proficient</b>	<b>Accomplished</b>
<b><u>A Vision for Success</u></b>	There is little or no evidence that the school leader informs any members of the school or community about external forces that impact work toward the school's vision.	There is limited evidence that the school leader attempts to inform members of the school and/or community about some external forces that impact work toward the school's vision.	There is clear evidence that the school leader keeps members of the school and community informed about external forces that impact work toward the school's vision.	There is clear, convincing, and consistent evidence that the school leader maintains an ongoing dialogue with members of the school and community about external forces that impact work toward the school's vision.
<b><u>A Focus on Teaching and Learning</u></b>	There is little or no evidence that the school leader is aware of external forces that might challenge or support instructional programs and student achievement.	There is limited evidence that the school leader identifies external forces that might challenge or support instructional programs and student achievement, or communicates this information to the community when it is known.	There is clear evidence that the school leader identifies external forces that might challenge or support instructional programs and student achievement and communicates this information to the community.	There is clear, convincing, and consistent evidence that the school leader identifies external forces that might challenge or support instructional programs and student achievement, communicates this information to the community, and collaborates to assess the impact of these forces and plans accordingly.

# PROPOSED REGULATIONS

<b>An Involvement of all Stakeholders</b>	There is little or no evidence that the school leader involves any stakeholder in communicating changes in the environment that might impact the operation of the school.	There is limited evidence that the school leader involves some stakeholders in communicating changes in the environment that might impact the operation of the school.	There is clear evidence that the school leader communicates with appropriate stakeholders about changes in the environment that might impact the operation of the school and about how school programs are impacted.	There is clear, convincing, and consistent evidence that the school leader continuously involves appropriate stakeholders in communicating any changes in the environment that might impact the operation of the school. In addition, the leader provides opportunities for members of the community to engage in a dialogue about these changes and adjust plans in light of them.
<b>A Demonstration of Ethical Behavior</b>	There is little or no evidence that the school leader communicates changes in the environment in an open, honest way that is accessible to all.	There is limited evidence that the school leader communicates changes in the environment in an open and honest way that is accessible to all the diverse community groups.	There is clear evidence that the school leader periodically communicates changes in the environment in an open and honest way that is accessible to all diverse community groups.	There is clear, convincing, and consistent evidence that the school leader communicates changes in the environment on an ongoing basis that is readily accessible to all diverse community groups in a manner that is honest, ethical, and unbiased.

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner) 3.1.1.6.3 Component 6c: Working Within Policies, Laws, and Regulations

<b>LEVEL OF PERFORMANCE</b>				
<b>Central Themes*</b>	<b>Rudimentary</b>	<b>Developing</b>	<b>Proficient</b>	<b>Accomplished</b>
<b>A Vision for Success</b>	There is little or no evidence that the school leader considers any policies, laws, or regulations that govern the operation of the school to support the vision of the school.	There is limited evidence that the school leader is familiar with the policies, laws, and regulations that govern the operation of the school, or uses this information to support the vision of the school.	There is clear evidence that the school leader is aware of the policies, laws, and regulations that govern the operation of the school and takes appropriate measures to be sure the school adheres to these governances to support the vision of the school.	There is clear, convincing, and consistent evidence that the school leader is highly knowledgeable about the policies, laws, and regulations that govern the operation of the school and uses this knowledge to further promote, support, and enhance the vision of the school.
<b>A Focus on Teaching and Learning</b>	There is little or no evidence that the school leader uses knowledge of policies, laws, or regulations that govern the school to bring about any positive change in teaching and learning.	There is limited evidence that the school leader has an understanding of how policies, laws, and regulations that govern the school can be used to bring about positive change in teaching and learning.	There is clear evidence that the school leader is aware of policies, laws and regulations that govern the school and has used this information to bring about some positive change in teaching and learning.	There is clear, convincing, and consistent evidence that the school leader is knowledgeable about the policies, laws, and regulations that govern the school and uses this knowledge to bring about significant, positive change in teaching and learning that impacts all student groups.
<b>An Involvement of all Stakeholders</b>	There is little or no evidence that the school leader collaborates with stakeholders within the structure of the policies, laws, and regulations that govern the school, or ensures that stakeholders operate only within the limits of those regulations.	There is limited evidence that the school leader collaborates with stakeholders within the structure of the policies, laws, and regulations that govern the school and ensures that stakeholders operate only within the limits of those regulations.	There is clear evidence that the school leader collaborates with appropriate stakeholders within the structure of the policies, laws, and regulations that govern the school and attempts to ensure that all stakeholders operate only within the limits of those regulations.	There is clear, convincing, and consistent evidence that the school leader collaborates with appropriate stakeholders within the structure of the policies, laws, and regulations that govern the school and ensures that all stakeholders operate only within the limits of those regulations.
<b>A Demonstration of Ethical Behavior</b>	There is little or no evidence that the school leader abides by the spirit or the intent of policies, laws, and regulations that govern the school and society.	There is limited evidence that the school leader abides by the spirit, as well as the intent, of policies, laws, and regulations that govern the school and society.	There is clear evidence that the school leader abides by the spirit, as well as the intent, of policies, laws, and regulations that govern the school and society.	There is clear, convincing, and consistent evidence that throughout the year, the school leader abides by the spirit, as well as the intent, of policies, laws and regulations that govern the school and society, and inspires others to that same behavior.

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner)

Communicating with Decision-Makers Outside the School Community – Component Performance Table

3.1.1.6.4 Component 6d:

LEVEL OF PERFORMANCE				
Central Themes*	Rudimentary	Developing	Proficient	Accomplished
<b><u>A Vision for Success</u></b>	There is little or no evidence that the school leader makes any efforts to make decision-makers outside the school aware of the vision of the school.	There is limited evidence that the school leader makes decision-makers outside the school aware of the vision of the school.	There is clear evidence that the school leader has established a dialogue with decision-makers outside the school and makes them aware of the vision of the school.	There is clear, convincing and consistent evidence that the school leader has established an ongoing dialogue with decision-makers outside the school, shares with them the vision of the school and how they can support and shape it.
<b><u>A Focus on Teaching and Learning</u></b>	There is little or no evidence that the school leader makes any attempt to communicate with decision-makers outside the school concerning the efforts of teachers and students.	There is limited evidence that the school leader provides information to decision-makers outside the school concerning the efforts of teachers and students.	There is clear evidence that the school leader has provided information to decision-makers outside the school concerning the efforts of teachers and students and discusses with these decision-makers how they can influence and improve instruction and student performance.	There is clear, convincing, and consistent evidence that the school leader has established an ongoing dialogue with decision-makers outside the school concerning the efforts of teachers and students and how these decision-makers can effectively influence and improve instruction and student performance.
<b><u>An Involvement of all Stakeholders</u></b>	There is little or no evidence that the school leader makes any attempts to collaborate with any stakeholder to form networks with decision-makers outside the school.	There is limited evidence that the school leader collaborates with stakeholders in an attempt to form networks with decision-makers outside the school.	There is clear evidence that the school leader collaborates with appropriate stakeholders to form networks with decision-makers outside the school for the improvement and support of teaching and learning.	There is clear, convincing, and consistent evidence that the school leader collaborates throughout the school year with appropriate stakeholders, forming networks designed to facilitate effective communication with decision-makers outside the school for the improvement and support of teaching and learning.
<b><u>A Demonstration of Ethical Behavior</u></b>	There is little or no evidence that the school leader's communications with decision-makers outside the school is open or honest.	There is limited evidence that the school leader's communications with decision-makers outside the school is open or honest.	There is clear evidence that the school leader communicates openly and honestly with decision-makers outside the school in support of the success of all students.	There is clear, convincing, and consistent evidence that the school leader communicates openly and honestly with decision-makers outside the school in support of the success of all students. Further, the school leader provides these decision-makers guidance in understanding the purpose of education and how their actions impact the school.

© ETS (Reprinted by permission of Educational Testing Service, the copyright owner)

goals and target performances for the administrator.

3.1.2.2 Domain 2: Assessment on Goals and

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

Priorities

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

# PROPOSED REGULATIONS

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

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

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

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

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

LEVEL OF PERFORMANCE				
	Unsatisfactory	Basic	Proficient	Distinguished
<b>3a</b> <u>School or District Improvement Plan</u>	<u>There is no evidence that the administrator had any influence, implicit or explicit, on the accomplishment of the school or district improvement plan goals.</u>	<u>There is limited or unclear evidence that the administrator had any influence, implicit or explicit, on the accomplishment of the school or district improvement plan goals.</u>	<u>There is clear and convincing evidence that the administrator had influence, both implicit and explicit, on the accomplishment of the school or district improvement plan goals, and that a limited group was engaged with the administrator in planning.</u>	<u>There is clear, consistent and convincing evidence that the administrator had significant influence, both implicit and explicit, on the accomplishment of the school or district improvement plan goals. The administrator used the skills and knowledge in relation to the improvement and has worked in collaboration with staff and community, and articulated the design to the staff and community.</u>
<b>3b</b> <u>Unique School or District Conditions</u>	<u>There is no evidence that the administrator identified goals that focus on the school's or district's unique needs, challenges and opportunities.</u>	<u>There is limited or unclear evidence that the administrator identified goals that focus on the school's or district's unique needs, challenges and opportunities.</u>	<u>There is clear and convincing evidence that the administrator identified goals that focus on the school's or district's unique needs, challenges and opportunities, and has used these goals to inform educational decisions.</u>	<u>There is clear, convincing and consistent evidence that the administrator identified goals that focus on the school's or district's unique needs, challenges and opportunities. The administrator has addressed the goals collaboratively with others and articulates decisions/solutions to staff and community.</u>

3.1.4 Domain 4: Assessment on Measures of Student Improvement provides an assessment of student

performance based on data from the DSTP, and student achievement in other areas. In the fall of the evaluation cycle, the administrator and the evaluator will meet to

discuss the student improvement domain. Each party will bring data to inform the process of mutually establishing performance objectives and the criteria for defining success in achieving those objectives in each of the three

components of the domain.

**3.1.4.1 Domain 4: Student Improvement**

		<b>LEVEL OF PERFORMANCE</b>		
	Unsatisfactory	Basic	Proficient	Distinguished
<b>4a</b> <u>Uses data from the DSTP School Accountability Performance Rating to help educators make instructional decisions</u>	The DSTP I and II school accountability performance rating did not meet the targets established at the beginning of the evaluation cycle. The scores fell well below the targets established by the evaluator and the administrator.	The DSTP I and II school accountability performance rating partially met the targets established at the beginning of the evaluation cycle. The scores fell below the targets established by the evaluator and the administrator.	The DSTP I and II school accountability performance rating fully met the targets established at the beginning of the evaluation cycle. The scores met the targets established by the evaluator and the administrator.	The DSTP I and II school accountability performance rating exceeded the targets established at the beginning of the evaluation cycle. The scores exceeded the targets established by the evaluator and the administrator.
<b>4b</b> <u>Other Measures of Student Improvement</u>	Other measures of student achievement did not meet the targets established at the beginning of the evaluation cycle. The evidence provided by the other measures fell well below the targets established by the evaluator and the administrator.	Other measures of student achievement did not meet the targets established at the beginning of the evaluation cycle. The evidence provided by the other measures fell below the targets established by the evaluator and the administrator.	Other measures of student achievement met the targets established at the beginning of the evaluation cycle. The evidence provided by the other measures met the targets established by the evaluator and the administrator.	Other measures of student achievement met the targets established at the beginning of the evaluation cycle. The evidence provided by the other measures exceeded the targets established by the evaluator and the administrator.
<b>4c</b> <u>Demonstrates an awareness of, and attention to, differences in achievement</u>	There is little, or flawed, evidence that the administrator is aware of, and attentive to, differences in student achievement.	There is limited evidence that the administrator is aware of, and attentive to, differences in student achievement.	There is clear and convincing evidence that the administrator is aware of, and attentive to, differences in student achievement and uses disaggregated data to inform instruction.	There is clear, convincing, and consistent evidence that the administrator is aware of, and attentive to, differences in student achievement and uses disaggregated data to involve staff and parents in strategies for future improvement.

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

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

3.3.1 A rubric shall be used to rate each domain,

as well as to derive the overall rating of the DPAS II evaluation.

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

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

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

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

3.4 Summative Domain Ratings -- Administrators shall receive an overall rating, annually, of “distinguished”, “proficient”, “basic”, or “unsatisfactory”. Such rating shall be a summative rating, arrived at in accordance with the procedures for annual summative evaluation form, based on ratings on all four domains over the year.

3.5 Overall performance on a Summative Evaluation.

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

# PROPOSED REGULATIONS

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

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

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

3.5.5 Summative Evaluation Scoring Guide

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

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

0	1	1	2	Unsatisfactory
0	1	0	3	Unsatisfactory
1	0	0	3	Unsatisfactory
0	0	3	1	Unsatisfactory
0	0	2	2	Unsatisfactory
0	0	1	3	Unsatisfactory
0	0	0	4	Unsatisfactory

3.6 Pattern of Ineffective Administration

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

4.0 Procedures for Novice Administrators.

4.1 Administrators who are in the first three years in a given role will complete the self evaluation twice each year, once by November 30 and once by April 30. The rubric survey for Domain 1 will be completed in the same time periods by those the administrator directly supervises. In the case of a building level administrator, the survey will be completed by all teachers directly supervised by the administrator. In the case of a district level administrator, the administrator and his/her supervisor shall jointly identify those individuals who will complete the rubric survey. An annual goal setting conference during which the administrator and his/her supervisor establish goals, identify evidence that will be used to make judgments, and agree upon criteria by which achievement will be measured, will take place in the early fall of the year. In the event that there is lack of agreement on the goals and targets, the evaluator will make the final determination. The administrator and the supervisor shall hold a minimum of two conferences during the school year to review progress toward goals and objectives, and either the administrator or the supervisor may request additional conferences, as necessary. A formative evaluation conference form shall be completed during each conference, and signed by both the administrator and the evaluator. The supervisor will observe the administrator at least twice each year to gather data to inform the evaluator on the administrator’s performance on the domains.. An annual summative evaluation shall be completed for each administrator in the first three years in a given role, and shall result in a rating for each domain and an overall performance rating of “distinguished”, “proficient”, “basic”, or “unsatisfactory”. The administrator may submit a summative evaluation response form within ten days of receipt of the evaluation, which shall be appended to the summative evaluation.

5.0 Procedures for Experienced Administrators.



5.1 Experienced administrators, those who have three or more years in a role shall complete the self evaluation twice each year, once by November 30 and once by April 30. The rubric survey for Domain 1 will be completed in the same time periods by those the administrator supervises. In the case of a building level administrator, the survey will be completed by all teachers directly supervised by the administrator. In the case of a district level administrator, the administrator and his/her supervisor shall jointly identify those individuals who will complete the rubric survey. An annual goal setting conference during which the administrator and his/her supervisor establish goals, identify evidence that will be used to make judgments, and agree upon criteria by which achievement will be measured, will take place in the early fall of the year. In the event that there is lack of agreement on the goals and targets, the evaluator will make the final determination. The administrator and the supervisor shall hold a minimum of two conferences during the school year to review progress toward goals and objectives, and either the administrator or the supervisor may request additional conferences, as necessary. A formative evaluation conference form shall be completed during each conference, and signed by both the administrator and the evaluator. The supervisor will observe the administrator at least twice each year to gather data to inform the evaluator on the administrator's performance on the domains. An annual summative evaluation shall be completed for each administrator in the first three years in a given role, and shall result in a rating for each component and an overall performance rating of "distinguished", "proficient", "basic", or "unsatisfactory". The administrator may submit a summative evaluation report response form within ten days of receipt of the evaluation, which shall be appended to the summative evaluation.

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

7.0 Experienced administrators who receive a rating of "proficient" or "distinguished" may be granted a waiver from the required one year cycle. When a waiver is granted, prescribed rubric surveys, goal setting conferences and observations set forth in 5.0 shall be conducted over a two year period, beginning in the fall of the school year immediately after the waiver is granted and concluding in the spring of the following school year.

8.0 The goal of an assistance plan is to provide a structured vehicle to assist an administrator whose performance is unsatisfactory to improve performance to a proficient level. An assistance plan shall be developed for any administrator whose performance is rated "unsatisfactory" or "basic" on any domain of DPAS II for Administrators or whose overall

rating on the annual summative evaluation is rated "unsatisfactory" or "basic" on any domain of DPAS II for Administrators or whose overall rating on the annual summative evaluation is rated "unsatisfactory" or "basic" or receives a score of less than eight. The criteria set forth in an assistance plan must be designed to result in an overall summative rating of "proficient" at the conclusion of the assistance plan.

8.1 Assistance plans must include the following:

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

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

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

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

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

8.1.6 Procedures for evaluating and documenting improvement.

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

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

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

9.0 School districts and charter schools shall follow the

procedures and use forms and software developed by the Department for implementation of DPAS II.

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

10.1 A challenge applies to all challenges brought by both novice and experienced administrators.

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

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

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

10.1.4 Within 10 calendar days of receipt of the challenge form and supporting documentation, the district superintendent or charter school administrator or designee shall provide a written response either supporting or not supporting the challenge. If the remedy sought is granted, the revised evaluation document replaces the challenged document.

10.1.5 If the superintendent is the evaluator, the provisions set forth in 10.1.3 and 10.1.4 above do not apply.

10.1.6 The decision of the district superintendent or charter school administrator or designee shall be final.

11.0 Evaluators must be credentialed in accordance with regulations for credentialing for evaluators promulgated by the Standards Board and administered by the Department. Prior to conducting evaluations, evaluators must provide evidence of satisfactory completion of the specified training program and shall demonstrate competency as evaluators. Credentialing as an evaluator is renewable every five years. Members of local school boards who engage in the evaluation of the superintendent shall participate in the appropriate training program and shall be credentialed in order to conduct the evaluation of the superintendent.

12.0 Pilot of the Delaware Performance Appraisal System II.

12.1 The Delaware Performance Appraisal System II is a comprehensive system of evaluation and quality assurance for educators. It represents current research and best practice. A pilot will be conducted during the 2003-04 school year to determine:

12.1.1 The effectiveness and adequacy of the training.

12.1.2 The application of the evaluation process.

12.2 The pilot will take place in a minimum of three school districts, one in each county. In order to gather sufficient data from the pilot, a pilot district must agree to participate with all schools and all educators, including teachers, specialists and administrators.

12.3 The Department shall provide training in the evaluation process for all administrators in the pilot districts prior to the implementation of the pilot.

12.4 The Department shall collect data from the participating school districts on the effectiveness of the training and of the efficiency and effectiveness of the evaluation process, including the demands of time on both the evaluators and the teachers. Data will be collected from the pilot districts at least twice during the pilot period. No later than June 1, 2004, data collected will be analyzed by the Department to determine modifications and/or revisions to the system to be recommended to the Standards Board prior to statewide implementation.

13.0 DPAS II will be implemented in all school districts and charter schools in September, 2004.

13.1 Prior to implementation, the Department shall provide training for all administrators in the evaluation process. Such training will include training in any modifications made as a result of the pilot.

13.2 The Department shall implement a monitoring system for DPAS II to ensure that on-going training is provided to new teachers and evaluators, that all evaluators are properly trained and credentialed, and to ensure that all districts and charter schools are employing DPAS II in accordance with this regulation.

---

## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 122(3)(c) (16 Del.C. §122(3)(c))

#### **PUBLIC NOTICE**

These proposed regulations, "Regulations Governing Public Drinking Water Systems," will replace by revision the current "Regulations Governing Public Drinking Water

Systems," previously adopted May 14, 1971 and most recently amended May 10, 2002

### **Nature Of Proceedings**

The Department is proposing to adopt new U.S. Environmental Protection Agency (EPA) requirements for public drinking water systems. The new requirements include the Lead/Copper Rule Minor Revisions, the Filter Backwash and Recycle Rule, the Radionuclides Rule and additional requirements of the Arsenic Rule. The Department is also setting proficiency testing requirements for laboratories that conduct drinking water analyses for public drinking water systems. The Department is requiring that any major sanitary defects noted during sanitary surveys must be corrected within 45 days. In addition, the Department would like to take comment on how best to establish regulatory limits for interim health effect levels for unregulated contaminants.

### **Notice Of Public Hearing**

The Office of Drinking Water, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss proposed revisions to the "State of Delaware Regulations Governing Public Drinking Water Systems." The public hearing will be held on April 1, 2003 at 4:00 PM in the Emergency Preparedness Training Center, Suite 4-g, Blue Hen Corporate Center, 655 S. Bay Road, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

Office of Drinking Water  
Blue Hen Corporate Center, Suite 203  
655 Bay Road  
Dover, DE 19901  
Telephone: (302) 739-5410

Anyone wishing to present his or her oral comments at this hearing should contact Mr. Edward Hallock at (302) 739-5410 by March 28, 2003. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by April 4, 2003:

Dave Walton, Hearing Officer  
Division of Public Health  
PO Box 637  
Dover, DE 19903

**PLEASE NOTE: DUE TO THE SIZE OF THE PROPOSED REGULATION ONLY A SUMMARY IS BEING PRINTED HERE. THE FULL TEXT IS AVAILABLE FROM EITHER THE DIVISION OF PUBLIC HEALTH OR THE REGISTRAR'S OFFICE.**

### **ADOBE ACROBAT PDF VERSION:**

Regulations Governing Public Drinking Water Systems

### **Summary of changes to Regulations Governing Public Drinking Water Systems**

22.1 Definitions – Slight modification to definitions for point-of-entry and point-of-use treatment devices. (pg 7)  
Modification to definition of Subpart H system. (pg 10)

22.211 Plans and Specifications – Clarification that plans and specifications for alterations to existing water systems must be submitted by a professional engineer. (pg 18)

22.214 Certified Laboratory – Sections have been added to clarify the lab certification process, annual proficiency testing and reporting requirements. (pg 19)

22.215 Quality – Sets interim health effects levels for unregulated contaminants. (pg 20)

22.216 Required Sampling, Monitoring or Analysis – Modified this section to establish that the Division along with the U.S. EPA can treat consecutive PWSs as a single water system for purposes of monitoring. (pg 21)

22.302 Sanitary Surveys – Adding requirement that major defects must be corrected within 45 days of being notified. (pg 21)

22.407 and 22.408: Certification and Submission to the Division have been added to meet requirements of the public notice rule. These sections require water supply owners to submit certification that they have complied with the public notice requirements and send that certification to the Division within 10 days. 22.408 requires water supply operators to submit any requested information to the Division, in the time noted on the request, any information we are entitled to under the SDWA and Delaware law. (pg 24)

22.412(E)(3)(M) and (N) revisions to health effects language for Di(2-ethylhexyl)adipate and Di(2-ethylhexyl)phthalate. (pg 34)

22.413(A) Revisions to the table of violations that added the FBRR violations and uranium. (pg 42)

22.426 Uranium added to table for converting MCLs to CCR units. (pg 58)

22.427 Uranium added to table of sources of contaminants. (pg 60)

22.601(D) Arsenic – clarifies that compliance determination for arsenic is the same as other inorganic compounds and the MCL is 0.05 mg/L until January 23, 2006. (pg 72)

22.602 Sampling and Analytical Requirements – Added arsenic into list of inorganic compounds for monitoring purposes. (pg 72-77)

22.607 Lead/Copper rule minor revisions. (pg 80-131) Changes include the following:

22.607(B) Corrosion Control treatment – updates when a system is deemed to be in compliance with corrosion control treatment requirements.

22.607(C) Description of Corrosion Control Treatment Requirements – updates requirements for complying with corrosion control treatment.

22.607(E) Lead Service Line Replacements – specifies requirements for lead service line replacement.

22.607(F) Public Education and Supplemental Monitoring – Sets new requirements for public education by making distinctions in the requirements for non-community, small and large public water systems.

22.607(G) Monitoring Requirements for Lead and Copper in Tap Water – Clarifies the monitoring requirements for tap sampling by noting that:

The minimum number of samples must be collected even if it means sampling the same tap on different days.

Allows for invalidation of samples by the Division under certain conditions and notes replacement samples must be collected within 20 days.

Specifies that if a homeowner collects the sample the water system cannot invalidate that sample.

Allows for a system to go to reduced monitoring more quickly if it meets certain criteria.

Provides for full (both lead and copper) or partial (lead or copper) waivers up to nine years under certain conditions.

22.607(H) Monitoring requirements for Water Quality Parameters – Clarifies requirements for monitoring for water quality parameters after a system exceeds the action level for either lead or copper.

22.607(I) Monitoring Requirements for Lead and Copper in Source Water – clarifies requirements for monitoring for lead and copper in source water.

22.607(J) Reporting Requirements – Clarifies reporting requirements by specifying what requests and decisions must be put in writing.

22.607(L) Analytical Methodology – Adopts analytical requirements by reference to the CFR.

22.612 Sampling, Analytical Requirements and Compliance Determination for VOCs and SOCs – Clarifies that compliance is determined by monitoring at distribution entry points and that if one entry is determined to exceed the MCL then the entire system is out of compliance. (pg 133)

22.62 BATs – identifies the best available technologies for arsenic and adds a section on small systems compliance technologies for small systems. (pg 148)

22.804 Sampling, analytical Requirements, and Compliance Determinations for Disinfectant Residuals, Disinfection Byproducts, and Disinfection Precursors – Correct citation

for Subpart M in Section (F)(5) to read 61 FR 24368, May 14, 1996 and add provision in (G)(1)(d) that allows systems to return to routine monitoring after one year of TTHM and HAA5 levels at or below ½ of the MCL. (pg 154)

22.805 Compliance Requirements – section (B)(1)(b) clarification on calculating compliance with TTHMs and HAA5s. (pg 159)

22.9 Radioactivity – This section has been replaced in its entirety with the new radionuclide rule. The new rule includes MCLs for uranium (15 pCi/L) and beta particle and photon radioactivity (Average annual dose equivalent not to exceed 4 mrem/year) BATs for small system compliance has been included along with a list of compliance technologies. The rule will still only apply to community water systems. (pg 168-181)

22.913 Variance and Exemption – variance and exemption criteria have been established for small systems.

22.92 Monitoring frequency and compliance requirements – establishes monitoring requirements for systems that will go from once every four years to once every three years. This will bring the radionuclide monitoring into the standard monitoring framework that other contaminants are monitored under.

22.1012 Recycle Provisions – the filter backwash and recycle rule has been added to the surface water treatment rule section. (pg 195) Numerous corrections made to citations within the document.

---

### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 122(1) & (3)d & j (16 Del.C. §122(1) &  
(3)d & j )

### **PUBLIC NOTICE**

These regulations, "State of Delaware Regulations Governing Public Pools," replace by revision the current "State of Delaware Regulations Governing Public Pools" previously adopted on May 22, 1958 and most recently amended April 22, 1997.

### **Nature Of Proceedings**

The proposed changes in the "State of Delaware Regulations Governing Public Pools" cover three main areas. First, any pools that share the same recirculation/filtration/disinfection system must have separate systems for each pool within three years. Second, any pool that is a maximum of four feet deep can be monitored by an attendant instead of a lifeguard. Finally, an approved pool operator must monitor all pools. This proposed change will require

that each pool facility have a copy of the Division of Public Health certificate, issued to their approved operator, available for viewing by representatives of the Division. Also, the proposed changes include minor wording changes for the purpose of clarification along with the deletion of language that is either redundant or unnecessary.

### Notice Of Public Hearing

The Health Systems Protection Section, Division of Public Health of the Department of Health and Social Services, will hold a public hearing to discuss the proposed changes to the State of Delaware Regulations Governing Public Pools. This public hearing will be held on March 28, 2003 at 1:30 PM in the 3rd floor conference room of the Jesse Cooper Building, located on Federal and Water Streets, Dover, Delaware.

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

Health Systems Protection Section  
Jesse Cooper Building  
417 Federal Street  
Dover, Delaware 19901  
Telephone: (302) 744-4546

Anyone wishing to present his or her oral comments at this hearing should contact Mike Joyce at (302) 739-5410 by close of business March 26, 2003. Anyone wishing to submit written comments as a supplement to, on in lieu of, oral testimony should submit such comments by close of business March 31, 2003 to:

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

### Regulations Governing Public Pools

#### SECTION 26.1 DEFINITIONS

26.101 "**Approved**" means acceptable to the Division, unless stated otherwise, based on its determination as to conformance with appropriate standards and good public health practices.

26.102 "**Approved Pool Operator**" means a person who is at least eighteen (18) years of age and has successfully completed a pool operator-training course that is approved by the Division.

26.103 "**Attendant**" means a person who meets the training requirements of the Division specified in Section 26.707.

26.104 "**Attendant on Duty**" means an attendant who

is either at poolside or in the pool (special situations), visually guarding the life of the bathers. An attendant on duty shall not be assigned other duties that will distract his/her attention from proper observation of the bathers, or prevent the rendering of immediate assistance to someone in distress. All attendants on duty should be identified by emblems or distinguishing apparel. In facilities with a spa pool(s) (SpP) only it means an attendant who is on the premises and can be easily located and summoned to render assistance to someone in distress. If the attendant is not in direct view of the spa pool when it is open, he/she shall be located such that the poolside alarm required by Section 26.719 can be easily heard.

26.105 "**Beneficial Owner**" means an ownership interest in the entity owning the pool through direct ownership of the real property where the pool is located, direct ownership of stock in a stock corporation owning the real property where the stock represents an equity interest in the corporation, or direct ownership through being a member in a limited liability company (L.L.C.) or a partner in a partnership owning the real property upon which the pool is placed.

26.106 "**Competitive Diving**" means either the training of divers or an actual diving competition among trained divers, which is sanctioned by the Federation Internationale de Natation Amateur (FINA), the National Collegiate Athletic Association (NCAA), the National Federation of State High School Associations (NFSHSA) or United States Diving Inc. (USD). The institution which is sponsoring the diving training or diving competition shall be responsible for the hiring of a qualified person(s) who is competent and knowledgeable in the areas of diving mechanics and safety. This person(s) shall be present at every practice session and competition in order to ensure proper training, supervision and safety.

26.107 "**Cyanuric Acid**" means a chemical added to pool water intended to counter-act degradation of the chlorine residual by ultraviolet light.

26.108 "**Director**" means the Director of the Division of Public Health or an authorized agent.

26.109 "**Diving**" means a head first entry into a body of water.

~~26.110 "**Diving Board Water Entry Area**" means a water surface area of three hundred twenty (320), three hundred sixty (360) or four hundred (400) square feet (see Section 26.320) immediately in front of a diving board.~~

26.110 "**Division**" means the Division of Public Health of the Department of Health and Social Services, or anyone authorized by the Division as its designated representative, in conformance with ~~the~~ 29 Delaware Code, Section 7904.

26.111 "**Fence**" means a continuous vertical barrier, either solid, or with openings, holes or gaps not exceeding four (4) inches in diameter or width, completely enclosing

the pool area which will prevent the entry of small children and minimize the entry of unauthorized or unwary persons. ~~Chain link may be used provided that the openings are not greater than 2 and 3/8 inches measured horizontally.~~

26.112 **"Fixture Set"** means one (1) lavatory, two (2) water closets\* and one (1) shower for each sex. \*In the male facilities, up to fifty (50) percent may be substituted with urinals, and if more than one (1) fixture set is required based on water surface area, this is reduced to one (1) water closet (male and female) for the subsequent fixture sets.

26.113 **"Flume"** means an inclined channel or tube which may receive a constant supply of flowing water and which is designed to provide a safe transit path for conveying sliders to a run-out slide, a splash pool or a designated area of a swimming pool (SwP) of a water slide flume.

26.114 **"Halogen"** means one of the chemical elements chlorine, bromine, or iodine.

26.115 **"Inactive Pool"** means a pool, which has been closed, for twelve (12) or more continuous months.

26.116 **"Lifeguard"** means a person who meets the training requirements of the Division specified in Section 26.706.

26.117 **"Lifeguard on Duty"** means a lifeguard who is either at poolside or in the pool (special situations), visually guarding the life of the bathers. A lifeguard on duty shall not be assigned other duties that will distract his/her attention from proper observation of the bathers, or prevent the rendering of immediate assistance to someone in distress. ~~All lifeguards on duty should be identified by emblems or distinguishing apparel.~~

~~26.118 **"Maximum Bathing Load"** means the maximum number of persons allowed in a pool at the same time~~

26.118 **"NTU"** means Nephelometric Turbidity Unit, which is a means of measuring the water turbidity.

26.119 **"ORP"** means oxidation-reduction potential, which is an electrical measurement in millivolts (mV) of the strength of the disinfectant (oxidizer). A higher ORP means a higher disinfecting potential. ~~Pools should maintain a minimum ORP of 650 mV.~~

26.120 **"Person"** means any corporation, company, association, firm, partnership, society, joint stock company or individual.

26.121 **"Person In Charge"** means the/an owner of the pool. This individual shall represent the pool at any hearing scheduled pursuant to Section 26.12. Every pool shall, upon request, provide the Division with the name of the person(s) in charge and how they can be contacted. An operator, hired by the/an owner, cannot be the person in charge.

26.122 **"Private Pool"** means any indoor or outdoor artificial basin containing a body of water which is used for swimming, wading, diving, recreative bathing, or other

aquatic purposes and is not open to the general public, or a limited section of the public, but is intended strictly for the use of the beneficial owner(s) and his/her/their family and/or their guests in either of the following situations:

- a. Individual beneficial owner or
- b. Multiple beneficial owners where all of the following can be demonstrated to the Division:
  1. The pool is owned by a legal entity which is in turn owned by the beneficial owners.
  2. Pool ownership is part of the ownership of real property by the beneficial owners.
  3. The beneficial owners are able to assert ultimate dominion and control over access to and maintenance of the pool.
  4. No pool memberships are available to non-beneficial owners.

If it can be demonstrated that a pool meets all of the above criteria and if the owners want the pool to be approved as private, they shall contact the Division for the required procedure. Any multiple beneficial ownership pool that is approved private shall remain so until the owners notify the Division that the pool no longer meets all of the above criteria. These Regulations shall not apply to private pools. ~~Multiple ownership private pools, however, should go through the plan review/approval process outlined in Section 26.202 so the pool will be in compliance with the design and construction requirements of these Regulations in the event that, at some future time, the pool no longer meets all of the criteria for remaining private.~~

26.123 **"Public Pool"** means any indoor or outdoor artificial basin constructed of concrete, metal, fiberglass or any other nontoxic, impervious, and structurally rigid approved materials, which contains a body of continuously recirculated and filtered water with automatic disinfection which is used for swimming, wading, diving, recreative bathing, or other aquatic purposes and is open to either the general public, or a limited section of the public, with or without a fee. These Regulations shall not apply to pools that are used by one (1) patron at a time and whose water is completely changed after each patron. A public pool may hereafter be referred to as a pool, a swimming pool, a wading pool, a spa pool, a water slide, or a special purpose pool in these Regulations. Based on the design, size, usage, or other factors, public pools shall be categorized as follows:

**"SwP"** means a swimming pool, which is open to either the general public, or a limited section of the general public based on residency, membership, or some other specific criteria.

**"WP"** means a wading pool, which is open to either the general public, or a limited section of the general public based on residency, membership, or some other specific criteria.

**"SpP"** means a spa pool, which is open to either the general public, or a limited section of the general public

based on residency, membership, or some other specific criteria.

"**WSF**" means a water slide flume which is open to either the general public, or a limited section of the general public based on residency, membership, or some other specific criteria.

"**SpPP**" means a special purpose pool, which is open to either the general public, or a limited section of the general public based on residency, membership, or some other specific criteria.

26.124 "**Run-Out Slide**" means a flume where the bathers stop in the flume and then exit to the pool deck/walkway.

26.125 "**Sanitary Survey**" means a comprehensive on-site review of the facilities, operation and management of a pool for the purpose of determining whether a safe environment and bathing water of acceptable quality are being provided.

26.126 "**Secretary, Delaware Health and Social Services**" means the Administrator of the Department of Health and Social Services (DHSS) of the State of Delaware, who shall hereafter in this document be referred to as the Secretary, DHSS in conformance with 29 Delaware Code Section 7904.

26.127 "**Slip Resistant**" means a textured surface that is neither conducive to slipping when wet nor abrasive to bare feet and has a minimum static coefficient of friction of 0.6 (measured by an approved method).

26.128 "**Spa Pool**" means a pool containing water greater than ninety five (95) degrees Fahrenheit (°F) which is not emptied after each use, ~~which~~ has a maximum depth of four (4) feet, ~~a maximum water surface area of two hundred fifty (250) square feet,~~ is large enough for the immersion of at least one person, and may have a high velocity air and/or water jet system.

26.129 "**Special Purpose Pool**" means a pool which is used for a specific supervised purpose, and which does not fall into any of the first four (4) categories listed in Section 26.124 (SwP, WP, SpP or WSF).

26.130 "**Splash Pool**" means the body of water located at the end of a flume from which bathers exit to the deck.

26.131 "**Superchlorinate**" means the addition to the pool water of an amount of chlorine sufficient to produce a free chlorine residual which is at least ten (10) times the amount of the combined chlorine residual plus the required minimum free chlorine residual, in order to oxidize any ammonia or other nitrogenous materials which may be present in the pool water.

26.132 "**Swimming Pool Slide**" means a commercially manufactured water entry device consisting of an inclined plane (either straight or curved) with a small raised edge (a few inches like a playground slide) which may receive a ~~constant~~ supply of flowing water, is securely

attached to the pool deck and is designed to provide a safe transit path for conveying sliders to a pool (water slide flumes are not included in this definition).

~~26.135 "**Swimming Pool Slide Water Entry Area**" means a water surface area of two hundred fifty-six (256) square feet (16'x 16') immediately in front of a swimming pool slide.~~

26.133 "**Turbidity**" means a measure of the clarity or cloudiness of water.

26.134 "**Turnover**" means the circulation, through the recirculation system, of a quantity of water equal to the pool volume.

26.135 "**Wading Pool**" means a familiarization pool for small children that may range in water depth from zero (0) to a maximum of two (2) feet, with a maximum wall height (distance from rim to bottom) of nine (9) inches at the pool edge and a maximum depth of eighteen (18) inches.

26.136 "**Water Slide Flume**" means a water entry device consisting of one or more flumes that discharge into a ~~with a~~ run-out slide, a splash pool or a designated area of a swimming pool (SwP) (swimming pool slides are not included in this definition).

26.137 "**Wet Deck/Walkway Area**" means any deck/walkway area that may become wet from splash or from bather traffic, the pump/filter room floor and the floors of all sanitary and bathhouse facilities.

## SECTION 26.2 GENERAL PROVISIONS

26.201 *Scope and Purpose* - The provisions of these Regulations shall apply to all public pools in the State of Delaware. The purpose of these Regulations is to provide minimum standards for design, construction, maintenance and operation of public pools in the State of Delaware, and to assure a clean, healthful, and safe environment for all bathers using these pools. These Regulations in no way preclude a facility from establishing additional rules and operating procedures as long as they do not contradict those established herein.

26.202 *Plans and Specifications* - No person shall construct, install, alter or replace a pool, auxiliary pool structure, or pool equipment, and no person shall convert a private pool to a public pool until three (3) copies of plans and specifications have been submitted to the Division, and a Certificate of Approval has been issued. Whenever it is discovered that any of the above have occurred or are occurring without such approval, the Director shall order the owner, operator or contractor to immediately close the pool if it is open or stop the work or conversion, and to submit plans and specifications to the Division. Any part of the unapproved work or pool that is not in compliance with these Regulations shall be removed, replaced or reconstructed in order to achieve compliance. Plans and specifications shall be legible and on paper no larger than 30" x 42" and shall include, but are not limited to the following information:



a. The facility name and the name and telephone number of a contact person at or near the site.

b. The name, mailing address and telephone number of the owner.

c. The name, mailing address and telephone number of the builder/contractor/engineer.

d. A map of the area (city, town, rural area, etc.) showing the project location and a scaled drawing of the site showing the pool location.

e. A scaled drawing showing an overhead view of the pool which includes the location of but is not limited to: all recirculation system fittings and piping, depth markings, steps/ladders, diving board, lifeguard stand, fillspout, safety line/bottom marking, lights (underwater and overhead), deck/walkway, fence, pump/filter room\*, bathhouse facilities, food/beverage service facilities and any other pools (e.g. wading pool, spa pool). This drawing shall also specify the materials of construction for the pool and deck, and the color of the pool walls and floor. If wood is planned for the wet deck/walkway area the manufacturer of the wood shall be specified, and if the wood has been treated by the manufacturer or will be treated by the installer, any preservatives, coatings, paints, etc. shall be specified.

\*Either on this drawing on a separate sheet, a blown up scaled drawing of the pump/filter room showing all piping, equipment, fittings, and the flow pattern shall be provided.

f. A scaled drawing showing a profile view(s) of the pool, the pool depths and the relative elevation of the pump and filter. If a diving board is planned, an end view showing the required dimensions shall also be provided.

g. The following pool information: volume, water surface area, perimeter filter type, filter surface area, design flow rate, recirculation pump capacity, total dynamic head (TDH) in feet (if not provided a minimum of sixty (60) TDH will be used), pool turnover time, and the size and type of all piping (i.e., ductile iron, copper, plastic).

h. Specifications for and drawings or pictures of all recirculation system components, including but not limited to: skimmers\* or gutters; drains, inlets; recirculation pump with pump curve; rate of flow indicator with manufacturer's installation instructions; the type, brand and surface area in square feet of the filter(s)\*; multiport valve\*; the type, brand and capacity of automatic disinfection equipment\*; heater (including proof of AGA or UL approval); portable vacuum equipment; and the chemical name of the disinfectant to be used. All specifications shall include the manufacturer's name and model #.

\*Specifications shall include proof of NSF International listing, or approved equivalent. In the remainder of these Regulations, wherever there is a referral to NSF, it means NSF International or approved equivalent.

i. The source of potable water (i.e. their own on-site well or the name of the water supplier if the water comes

from off-site), and the location and methods of disposal for sanitary waste, filter backwash water and pool water pumped to waste.

j. For new pools, the following signed statement from the owner ~~in all three (3) sets of plans and specifications~~: "I hereby acknowledge that all items either listed or shown in these plans and specifications as not in contract (NIC), by others, or equivalent, are my responsibility. I also realize that this entire project must be completed in accordance with the approved plans and specifications, and all conditions listed in the Certificate of Approval, prior to the issuance of an operating permit by the Division." This statement with signature may appear directly on the plan drawings.

k. For changes to existing pools, the following signed statement from the owner ~~in all three (3) sets of plans and specifications~~: "I hereby acknowledge that all items either listed or shown in these plans and specifications as not in contract (NIC), by others, or equivalent, are my responsibility. I also realize that this entire project must be completed in accordance with the approved plans and specifications, and all conditions listed in the Certificate of Approval, prior to this pool receiving permission from the Division to reopen." This statement with signature may appear directly on the plan drawings.

Upon receipt of plans and specifications, the Division shall determine if the project is approved or disapproved and notify the responsible person within thirty (30) days. If disapproved, the reasons shall be specified. If approved, a Certificate of Approval shall be issued which shall be valid for one (1) year. All construction shall be in accordance with the approved plans and specifications, and all conditions listed in the Certificate of Approval. Prior to opening, the owner or operator of a new pool shall contact the Division for a pre-opening sanitary survey in order to receive an operating permit. The Division reserves the right to reject plans and specifications from a pool builder/pool service company based upon evidence of malfeasance or non-feasance related to a previous Certificate of Approval.

~~The Division may establish a fee for plan review/approval. Public notice and opportunity for a public hearing will be provided prior to the implementation of such a fee.~~

26.203 *Site Inspection* - Prior to the issuance of a Certificate of Approval for the construction of a new outdoor pool, a site inspection shall be made by a representative of the Division in order to confirm that the pool location meets the requirements of Section 26.301. After a specific site is approved, any change of location shall require another site inspection.

26.204 *Operating Permit* - No person shall operate a pool without a valid permit from the Division and operating permits shall expire annually. The operating permit is not transferable if either the pool name or ownership changes. ~~For new pools, the operating permit application should be~~



~~submitted at least thirty (30) days prior to the planned opening date. The operating permit shall be available for viewing by any patron or representative of the Division upon request and should be conspicuously posted. The Division may establish an annual fee for the operating permit. Public notice and opportunity for a public hearing will be provided prior to the implementation of such a fee.~~

~~26.205 *Pool Builder/Pool Service Company* - No person or company shall install, construct or sell a public pool that does not conform to these Regulations. All pools should be built/serviced by a qualified person or company. The Division may establish certification and licensing requirements for pool builders/service companies along with a fee for such license. At such time, the Division shall require that all pools be built/serviced by a certified and licensed person. Public notice and opportunity for a public hearing will be provided prior to the implementation of certification and licensing requirements and/or a license fee. This section is in no way meant to preclude the owner of a pool or the owner's employees from performing work on their own pool.~~

26.205 *Pool Operator* - The operation of every pool shall be monitored by an approved pool operator. This person may be part of the pool staff or from a private company and shall monitor the pool as often as necessary to maintain compliance with these Regulations. The approved pool operator's certificate issued by the Division, or a copy, shall be available for viewing by any patron or representative of the Division upon request and should be conspicuously posted. The Division reserves the right to revoke the approval of any operator based upon evidence of malfeasance or non-feasance.

26.206 *Right of Entry and Sanitary Surveys* - Representatives of the Division shall have the right of immediate entry any time a pool is open, and in special situations, at any reasonable time, in order to perform a sanitary survey to determine compliance with these Regulations. A sanitary survey shall be conducted at least once per year at every active pool. These surveys may include any room or area associated with the pool operation. In addition, the representatives shall be permitted to examine any pertinent records.

26.207 *Inactive Pools* - ~~Any pool which closes for thirty (30) continuous days or more, should contact the Division for a sanitary survey prior to re-opening. Any pool which closes for twelve (12) or more continuous months shall: be classified as inactive; contact the Division for a sanitary survey prior to re-opening; and make whatever changes are deemed necessary to achieve compliance with the current Regulations. If the inactive pool does not have its own recirculation/filtration/disinfection system, this shall be provided prior to receiving approval to reopen. If there is no intention of reopening an inactive pool, it should shall be properly abandoned (removed or filled with dirt to ground~~

level). Outdoor inactive pools shall be equipped with a tightly fitting cover during mosquito breeding season (normally May through September).

26.208 *Variance Standards* - The Division may allow for some deviation from these Regulations on a temporary trial basis, in order to allow the pool owner or operator to demonstrate that some alternate procedure or innovation in design, construction or operation should be approved. Such permission shall only be granted if the Division is convinced that the health, safety and well-being of the pool patrons will not be jeopardized. If the procedure or innovation in design, construction or operation is approved, the Regulations shall be amended accordingly, if necessary.

### **SECTION 26.3 LOCATION, DESIGN AND CONSTRUCTION**

26.301 *Location* - Pools shall not be located in areas which are subject to contamination from dust, soot, flyash, smoke, improper drainage, a high water table, or other undesirable substances. For outdoor pools, any overhead wiring not inside an electrical conduit shall not pass over any part of the deck or an area within twenty (20) feet of the nearest edge of the pool. If the edge of a pool, extended upward vertically, is located within fifteen (15) feet of a building, roof or balcony, a protective barrier may be required (discretion of the Division) to prevent diving from the building, roof or balcony.

26.302 *Design* - No limits are specified for the shape of pools, however, consideration shall be given to shape from the standpoint of safety and proper water circulation. Pools shall be designed such that: there is even and complete water circulation throughout; safe, sanitary conditions can be maintained at all times; and all bathers can be effectively monitored; ~~and all bather entry points to the pool deck are at the shallow end of the pool if any part of the pool is greater than five (5) feet deep. When the bather entrance gate cannot be located at the shallow end, an interior fence at least four (4) feet high shall be provided, which will create a corridor to the shallow end.~~ There shall be no protrusions, extensions, means of entanglement, or other obstructions in the pool which can cause entrapment or injury. Underwater or overhead projections or obstructions except for handholds, steps, ladders, handicapped access facilities or recirculation system fittings shall be prohibited, unless such construction can be justified by engineering design. Underwater seat benches may be permitted in areas where the water depth is five (5) feet or less provided that: the maximum water depth over the seat bench is twenty-four (24) inches; the seat bench is completely recessed; the outer edge of the seat bench shall be outlined in contrasting color by a solid marking line at least one (1) inch wide; and the seat bench surface is slip resistant.

26.303 *Construction* - Pool walls and bottoms shall be constructed of concrete, fiberglass, metal or other nontoxic,

impervious and structurally rigid materials approved by the Division, which will provide a watertight basin, smooth, easily cleanable surfaces and a finish without cracks. Sand, earth or wood construction shall be prohibited. The walls and bottom shall be white or light in color for the purpose of insuring contrast to identify objects. Corners formed by the intersections of walls or walls and floors shall be curved (radiused). Surfaces within the pool intended to provide footing for patrons shall be designed to be slip resistant. Offset or safety ledges shall be prohibited.

~~26.304 *Hydrostatic Relief Valve* - All below ground pools, with the exception of indoor crib bed pools, should have a hydrostatic relief valve, which will relieve ground water pressure and prevent the shell from being lifted upward.~~

26.304 *Walls* - All SwP and WSF splash pool walls shall be vertical for a minimum depth of two (2) feet six (6) inches in areas less than five (5) feet deep. Exceptions may be made for irregularly shaped pools (e.g. zero depth entry, T, L or Z shapes) in the recessed areas out of the main swimming area.

26.305 *Floor/Slope* - All pool floors shall be sloped toward the outlet/drain and all slopes shall be constant. The slope shall not exceed one (1) foot in twelve (12) feet (1':12") where the water depth is five (5) feet or less, shall not exceed one (1) foot in (3) feet (1':3") where the depth is greater than five (5) feet. Any pool having a transition from the slope in the shallow end to the deep end shall do so through a slope break starting at a depth not less than three and one half feet (3-1/2) feet and not greater than five (5) feet. At least one (1) foot and not more than two (2) feet on the shallow side of the slope break directly under the safety line, the floor shall be marked with a line of contrasting color that is either: solid and at least two (2) inches wide or intermittent with sections that are at least four (4) inches by four (4) inches and not more than one (1) foot apart on centers.

26.306 *Shallow End Minimum/Maximum Depth* - With the exception of diving pools, all SwP pools shall have a minimum depth in the shallow area of three (3) feet and a maximum depth of four (4) feet. Exceptions may be made for irregularly shaped SwP pools (e.g. zero depth entry, T, L or Z shapes) with recessed areas out of the main swimming area.

26.307 *Ladders and Steps* - With the exception of WP, SpP and WSF splash pools, all pools shall have at least two entry/exit points (ladders or steps), one (1) for each end. Any pool with water deeper than five (5) feet shall have at least two (2) ladders in the deep end. In addition to the above, any pool with a perimeter greater than two hundred twenty-five (225) feet shall have one (1) additional ladder or set of steps for each additional seventy-five (75) feet of perimeter or fraction thereof.

Ladders shall be constructed of corrosion resistant materials and shall be securely anchored into the pool deck

or built into the pool wall. All ladders shall have two (2) handrails and at least two (2) slip resistant treads which are at least one and one half (1-1/2) inches deep, with a uniform length of at least twelve (12) inches and a uniform spacing of at least seven (7) inches and not more than twelve inches. The clearance between any ladder and the pool wall shall be at least three (3) inches and not more than six (6) inches. Recessed ladders (built into the wall) shall have two (2) handrails and shall have a tread at least five (5) inches in depth, at least twelve (12) inches in width and the uppermost tread shall be within twelve inches of the pool coping top edge or the deck surface. All treads shall slope toward the pool.

Where steps are provided, they shall either be recessed or located in a corner. All steps shall have a minimum tread length of twenty-four (24) inches, a tread depth of at least ten (10) inches and a uniform height of not more than twelve (12) inches, with the exception of either the top or bottom tread which may vary +/- two (2) inches. The top surface edge of each step shall be outlined in contrasting color by a line (painted, tile, etc.) at least one (1) inch wide. Each set of steps shall have at least one (1) handrail per seven (7) feet of tread length. If the steps are less than four (4) feet wide the handrail shall be located at the side and if the steps are four (4) feet or wider, the handrail shall be located in the center. The tread surface shall be slip resistant.

26.308 *Decks and Walkways* - Every pool shall have a continuous unobstructed deck at rim level around the entire perimeter. The deck shall be no less than four (4) feet wide at any point, measured from the pool edge. For outdoor pools, the area of the deck shall be at least equal to the area of the pool water surface, and for indoor pools, the area of the deck shall be at least equal to two thirds (2/3) of the pool water surface. A minimum width of four (4) feet shall be provided behind lifeguard stands and the ladders/steps of all diving boards. Walkways shall be provided from the deck to all pool sanitary and bathhouse facilities. In computing the minimum deck area for adjacent pools, no area of the deck shall be considered as serving both pools.

In order to prevent standing water, decks and walkways shall have a uniform slope of not less than one quarter (1/4) inch per foot and not more than one half (1/2) inch per foot, away from the pool and toward deck drains or areas where the water will have a free unobstructed flow to points of disposal. The edge of the pool deck at its junction with the pool wall shall be constructed of bullnose coping, or some other acceptable material, which will provide an adequate hand hold around the entire pool perimeter and which is not more than twelve (12) inches above the normal water level.

Wet deck/walkway areas shall be constructed of concrete or other approved material which has an impervious slip resistant surface, can be easily cleaned and is installed

such that there are no hazards to patrons or their bare feet (e.g. tripping, abrasions, splinters, etc.). If expansion joints are provided, the joint shall be filled with a non-rigid material such as mastic which shall not protrude above the deck. Exposed wooden expansion joints shall be prohibited. Carpeting shall be prohibited in wet deck/walkway areas. ~~Wood may be used in wet deck/walkway areas if all of the following conditions are met (the following conditions apply only to the wood that forms the wet deck/walkway surface and not to support structures below):~~

~~a. The wood shall not be treated with creosote, pentachlorophenol, inorganic arsenicals or any other substance which has been shown to have either an acute or a chronic health effect. Any substance that has been applied to the wood by the manufacturer and any substance that will be applied to the wood by the installer shall be approved prior to installation.~~

~~b. Spacing between boards not to exceed one quarter (1/4) inch shall be provided.~~

~~e. The area below the wooden deck or walkway shall properly drain to points of disposal.~~

~~d. All wood fasteners shall be corrosion resistant.~~

26.309 *Electrical and Lighting Requirements* - All electrical wiring and equipment associated with the pool shall be in compliance with all appropriate state and local codes and the current edition of the National Electric Code. For indoor pools and all bathhouse facilities, all overhead wiring which is not behind the wall or ceiling shall be inside an electrical conduit.

Artificial lighting shall be provided at all pools which do not have adequate natural lighting or which are to be used for evening/night swimming. The artificial lighting shall meet all of the following conditions:

a. Lighting shall be sufficient such that all areas of the pool, and either of the following are clearly visible without glare from the deck: the main drain(s) and all bottom markings; or a black disk six (6) inches in diameter superimposed upon a white field and placed on the bottom of the deepest point.

b. Outdoor pools shall provide at least thirty (30) footcandles and indoor pools shall provide at least fifty (50) footcandles of illumination at the water surface from natural and/or artificial lighting.

c. All overhead lights shall be covered with adequate shatter resistant shields and equipped with shatter resistant bulbs.

26.310 *Hose Bibbs* - A sufficient number of hose bibbs shall be provided and located such that all parts of the deck area, the pump/filter room and the bathhouse facilities are easily reachable with a fifty (50) foot hose, without the hose passing over or through the pool water. Hose bibbs shall be located at the edge of the deck such that they do not constitute a tripping hazard and shall be equipped with vacuum breakers or other approved backflow prevention

devices.

26.311 *Trees, Sand Areas and Planted Areas* - Trees at the pool site prior to construction shall not be permitted inside the pool fence ~~and should be removed if they will be within fifty (50) feet of the pool edge.~~ Sand areas and other nongrass/unsodded areas designed for bather access shall not be permitted inside the pool fence or room. Provisions shall be made so that bathers returning to the pool deck from these areas are routed past a foot rinse shower. Flower beds, shrubs and other similar planted areas may be permitted inside the pool fence or room if all of the following conditions are satisfied:

a. There shall be a separation distance of at least ten (10) feet between the edge of the pool and the edge of the planted area.

b. The planted area shall be designed such that regular maintenance can be easily accomplished.

c. All planted area drainage shall be conducted away from the pool in a manner that will not create muddy, hazardous, or objectionable conditions.

d. The planted area shall be designed to discourage patron entry.

26.312 *Sanitary/Bathhouse Facilities* - All pools shall have at least one (1) permanent water closet with lavatory for the lifeguard/attendant, which is accessible when the pool is open and is located contiguous to the pool deck or pool room. Furthermore, all pools, with the exception of those where all patrons' sanitary/bathhouse facilities are within one thousand (1000) feet, shall provide the following permanent sanitary/bathhouse facilities located contiguous to the pool deck or pool room:

Number of Fixture Sets For Each Sex	*Pool(s) Water Surface Area (Square Feet)
One (1)	Up to 2000
Two (2)	2001 to 4000
Three (3)	4001 to 6000
Four (4)	6001 to 8000

\*For pools greater than eight thousand (8000) square feet, one additional fixture set for each sex shall be provided for each additional four thousand (4000) square feet, or fraction thereof.

All sanitary and bathhouse facilities shall be indoors, enclosed to provide privacy, finished in light colors, well ventilated, in good working order and designed such that good sanitation can be maintained throughout at all times. Floors shall be constructed of concrete or other approved material, shall have a smooth slip resistant finish and shall be sloped to floor drains or points of drainage. Carpeting shall be prohibited in all wet deck/walkway areas. Floor and wall junctions shall be curved (radiused) for easy cleaning. Lighting shall provide at least thirty (30) footcandles of illumination at floor level. All lavatories and

showers shall have hot and cold water and shall be equipped with tempering valves which provide water at a temperature not exceeding 120°F. All bathhouses shall have soap (liquid recommended), single service towels or hot air dryers, toilet tissue, and waste baskets. All plumbing shall be in compliance with the "State of Delaware Regulations Governing a Detailed Plumbing Code" and new installations shall be inspected and approved by the appropriate authority prior to use. ~~Floors shall have a slip resistant finish, and carpeting and duckboard shall be prohibited.~~ All bathhouse facilities shall be at the same elevation as the pool deck or at an elevation that is accessible with a ramp having a slope that shall not exceed one (1) inch per foot and should not exceed one (1) inch per twenty (20) inches. ~~The pool operator should require all bathers to take a shower prior to entering the pool.~~

All outdoor pools, except those where bathers must go through the bathhouse in order to reach the deck, shall have a foot rinse shower at each patron entry point. Any indoor pool with direct bather access to an outdoor sand beach or other unsodded area shall also have a foot rinse shower at the access point. The foot rinse shower shall be located such that bathers must walk past the deck discharge area. In order to prevent standing water, the deck discharge area shall slope toward a drain or an area where the water will have a free unobstructed flow to points of disposal. The foot rinse shower shall ~~should~~ be a shower head; be approximately twelve (12) to twenty-four (24) inches above the deck; have an automatic shut off valve when released; and point toward the deck at approximately a forty-five (45) degree angle. Foot baths (standing water in which patrons rinse their feet) shall be prohibited.

26.313 *Drinking Fountain* - At least one (1) sanitary type (guarded angle jet) drinking fountain in good working order shall be provided. The fountain shall be easily accessible and located inside the pool fence or room ~~at the shallow end.~~ Common drinking cups shall be prohibited.

26.314 *Food and Beverage Facilities* - Food and beverage service facilities that are inside the pool fence or room shall not be located within twenty (20) feet of the pool edge. If licensing is required, all such facilities shall be licensed by the Division or the appropriate authority.

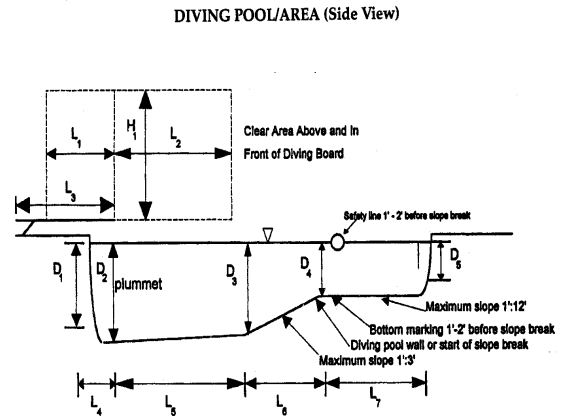
26.315 *Starting Blocks* - If starting blocks for competitive swimming events are installed, the water depth under the blocks shall be greater than five (5) feet.

26.316 *Escutcheon Plates* - All anchor bolts shall be covered by escutcheon plates.

26.317 *Handicapped Access* - Steps, ramps, handrails, lifts, or other appurtenances designed to accommodate handicapped individuals will be approved within the limits of sound engineering practice and nationally recognized standards. Lifts shall be mounted into the pool deck and shall have a minimum deck width of four (4) feet behind the lift mount.

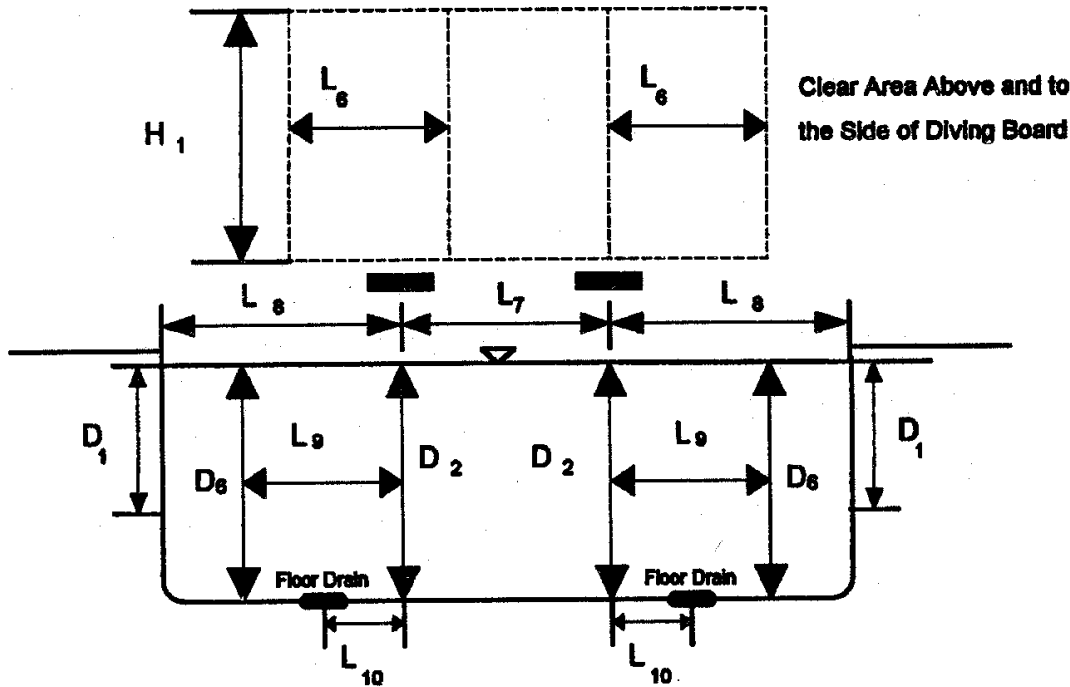
26.318 *Swimming Pool Slides* - The installation of swimming pool slides shall be prohibited. ~~All swimming pool slides that are in existence on the effective date of these Regulations (April 15, 1990) should be removed.~~

26.319 *Diving Area/Diving Pool and Diving Board* - The dimensions of the diving area/diving pool and the diving board shall be in accordance with the following:



Minimum (\*) and Maximum (\*\*) Dimensions for Pools with Diving Boards

DIVING POOL/AREA (End View at Plummet)



DIVING BOARD HEIGHT ABOVE-WATER	HEIGHT		LENGTHS							DEPTHS				
	$H_1$	$L_1$	$L_2$	$L_3$	$L_4$	$L_5$	$L_6$	$L_7$	$D_1$	$D_2$	$D_3$	$D_4$	$D_5$	
MAXIMUM 1/2 METER (20 INCHES)	* 15'	* 8'	* 15'	**12' 10'	*3' **4'	*16'	*13' 6"	* 12'	* 6'4"	* 10'	* 9'6"	* 3'6" **5'	* 2'6" ** 3'6"	
>1/2 METER TO 1 METER (SEE $L_3$ )	* 15'	* 8'	* 16'	** 12'	*4'	* 18' 16'6"	* 16'6"	* 12'	* 6'6"	* 11'	* 10'6"	* 3'6" **5'	* 2'6" ** 3'6"	
>1/2 METER TO 1 METER (SEE $L_3$ )	* 16'	* 8'	* 16'	** 16'	*5'	* 20' 16'6"	* 19'6"	* 12'	* 7' 6"	* 12' 11'	* 11'6"	* 3'6" **5'	* 2'6" ** 3'6"	
>1 METER TO 3 METERS	* 16'	* 8'	* 16'	** 16'	*5'	* 20' 16'6"	* 22'6"	* 12'	* 7'6" 6"	* 8' 12'	* 12'6"	* 3'6" **5'	* 2'6" ** 3'6"	

>greater than

Minimum (\*) and Maximum (\*\*\*) Dimensions for Pools with Diving Boards

DIVING BOARD HEIGHT ABOVE-WATER	HEIGHT	LENGTHS					DEPTHS		
	H <sub>1</sub>	L <sub>6</sub>	L <sub>7</sub>	L <sub>8</sub>	L <sub>9</sub>	L <sub>10</sub>	D <sub>1</sub>	D <sub>2</sub>	D <sub>6</sub>
MAXIMUM 1/2 METER (20 INCHES)	*	*	*	*	*	*	*	*	*
	15'	8'	<del>10'</del> 7'	<del>12'</del> 9'	<del>10'</del> 7'	<del>5'</del> 3'	6'	10'	10'
>1/2 METER TO 1 METER (SEE L <sub>3</sub> )	*	*	*	*	*	*	*	*	*
	15'	8'	<del>10'</del> 7'	<del>12'</del> 9'	<del>10'</del> 7'	<del>5'</del> 3'	6'6"	11'	11'
>1/2 METER TO 1 METER (SEE L <sub>3</sub> )	*	*	*	*	*	*	*	*	*
	16'	8'	<del>10'</del> 7'	<del>12'</del> 10'	<del>10'</del> 8'	<del>5'</del> 3'	7' 6'	<del>12'</del> 11'	<del>12'</del> 11'
>1 METER TO 3 METERS	*	*	*	*	*	*	*	*	*
	16'	8'	<del>10'</del> 8'	<del>12'</del> 11'	<del>10'</del> 9'	<del>5'</del> 3'	7'6" 6'	<del>13'</del> 11'	<del>12'6"</del> 11'

>greater than

Pools with diving boards higher than three (3) meters, and/or pools with diving platforms shall be constructed in accordance with the standards of the FINA, NCAA and USD and these devices shall be labeled "COMPETITIVE DIVING ONLY."

Diving boards shall have guardrails on both sides which are at least thirty (30) inches high and extend from the back end of the board to at least one (1) foot past the pool edge. Diving boards that are greater than one (1) meter high shall have handrails on both sides of the ladder/steps and ~~the guardrails should be completely closed but in no case shall the spacing between them exceed twelve (12) inches.~~

All diving boards shall be level and shall have slip resistant surfaces. All supports, steps, and railings shall be made of material which is of sufficient strength to handle the anticipated load. Trampoline type diving facilities and rope drops shall be prohibited. With the exception of competitive diving, any adjustable fulcrum diving board shall have the fulcrum locked in the maximum forward position.

~~Any diving board in existence on the effective date of these Regulations (April 15, 1990) that cannot comply with the requirements of this Section by being shortened and/or lowered, should be removed. Also, In order for the replacement of any diving board stand, or the replacement of~~

any diving board stand and diving board to be approved, the pool shall be in compliance with the requirements of this Section.

## SECTION 26.4 RECIRCULATION SYSTEM

26.401 *General Requirements* - Each pool shall have its own recirculation system. The recirculation system shall consist of, but is not limited to: a pump, a flow measuring device, a removable strainer with spare basket (not required on vacuum filters), a filter with at least one (1) pressure gauge, an automatic disinfectant feeder, piping, deep end floor outlets/drains, a perimeter overflow gutter or surface skimmers, return inlets, valves and other necessary equipment. The recirculation system shall be designed to provide a minimum of four (4) turnovers of the pool volume per day [one (1) every six (6) hours] against the maximum head. In the pump/filter area, each suction and discharge line shall have a manual control valve capable of regulating flow or shutting off flow completely. If the required flow rate is provided collectively by multiple pumps, all of these pumps shall operate by a single control switch. The difference between the minimum required flow rate in gallons per minute (gpm) (based on the type of pool) and the maximum allowable flow rate in gpm (based on the type of filtration) shall be at least ten (10) gpm. ~~Water velocities~~

through piping should not exceed the following: three (3) feet per second in gravity pipe; five (5) feet per second in suction pipe and ten (10) feet per second in pressure pipe.

26.402 *Recirculation Pump* - All recirculation pumps shall be of adequate capacity to provide the required turnover rate, a sufficient backwash rate and sufficient suction for any vacuum fittings. If the pump or any suction side piping is located above the pool water level, the pump shall be self-priming. All recirculation pumps shall be equipped with the necessary piping, valves, etc. such that pool water can be pumped directly to waste. This line shall terminate above any drain entry point by a distance of at least twice its diameter. For the purpose of confirming or determining the flow rate, all recirculation pumps shall be equipped with pressure gauges on both the suction and pressure side the pump and the pump curve should be conspicuously posted nearby.

26.403 *Rate of Flow Indicator* - At least one (1) rate of flow indicator reading in gpm shall be installed after filtration on the pool return line. The indicator shall be easily accessible for viewing, in proper working condition when the pool is open, sized such that the design flow rate is in the mid range of the indicator, and capable of measuring at least fifty (50) percent more than the design flow rate. The clearance upstream and downstream from the indicator shall comply with the manufacturer's specifications. In lieu of the above, a pre-set flow control valve with a direct mounted meter kit and conversion chart may be used.

26.404 *Floor Outlets/Drains* - All pools shall be provided with at least two (2) floor outlets/drains at the deepest point which: are connected to the recirculation system through the same line; are at least six (6) feet apart on centers (for special designs, as far apart as possible or on different planes); are not more than fifteen (15) feet from the side wall; are equipped with a flow control valve(s) near the recirculation pump; have an antivortex cover or a twelve inch by twelve inch (12" x 12") grate or larger; and can completely drain the pool. The velocity of the water entering the outlet/drain should not exceed one and one half (1-1/2) feet per second. All drain outlet pipes shall be recessed within the fitting or in a pit and equipped with a cover which can only be removed with a Phillips screwdriver or a special tool. The width and length of slot openings in the cover shall not exceed one half (1/2) inch and one (1) inch respectively.

26.405 *Perimeter Overflow Gutters and Surface Skimmers* - All pools shall have either perimeter overflow gutters or surface skimmers (not recommended for pools with a water surface area greater than 2500 square feet) which: are capable of conducting one hundred (100) percent of the required flow rate; are connected to the recirculation system; have flow control valves near the recirculation pump; and effectively remove any floating material. If perimeter overflow gutters are used, they shall be continuous

around the pool with a uniform level rim which is not more than twelve (12) inches below the deck and which will provide a suitable handhold. Gutters shall be designed so that the channel is easily accessible for cleaning and presents no entanglement hazard to bathers. If the gutters are recessed, the access opening shall be at least four (4) inches. Gutter drains shall be provided at uniform intervals ~~not to exceed fifteen (15) feet~~ and the gutter shall slope sufficiently to these drains. The design shall ensure that the recirculation pump receive a continuous supply of water at all times either by adequate surge capacity within the gutters or a surge/balancing tank. Any perimeter overflow gutter with a submerged protruding edge, shall have a solid marking line of contrasting color which is at least one (1) inch wide on the top surface edge of the gutter. ~~Under normal operating conditions the flow rate through the gutter should be one hundred (100) percent of the design flow rate.~~

If surface skimmers are used, they shall be NSF listed and at least two (2) shall be provided. For pools that are greater than one thousand (1000) square feet of water surface, one (1) additional skimmer shall be provided for each additional (500) square feet of pool water surface or fraction thereof. Skimmers shall be optimally located around the pool perimeter and the recirculation system shall be designed such that the flow through each skimmer is at least twenty (20) gpm. All skimmers shall have individual flow controls devices, an equalizer line (except WP pools), an easily removable, cleanable basket or screen and a cover. ~~Under normal operating conditions the total flow rate through the skimmers should be at least eighty (80) percent of the design flow rate.~~

26.406 *Inlets* - ~~With the exception of WP and SpP pools,~~ All pools shall have at least four (4) inlets, either on the side walls or on the floor, which are connected to the recirculation system. Side wall inlets, with the exception of those built into a gutter, shall discharge at a depth of at least twelve (12) inches below the normal water level. The distance between side wall or bottom inlets, measured along the wall or floor surface, shall not exceed twenty (20) feet and the spacing between any floor inlet and the side wall, measure along the surface, shall not exceed ten (10) feet. When wall inlets are used, an inlet shall be provided within five (5) feet of each corner and one (1) in each recessed step area. The inlets, either by adjustability or by design, shall provide the necessary flow to maintain the required disinfectant residual and chemical quality evenly throughout the pool.

26.407 *Vacuuming* - All pools shall have the capability of vacuuming the bottom either through a skimmer, a separate vacuum fitting or a portable vacuum system. If a portable vacuum system must be used, it shall be stored on-site when the pool is open. Vacuuming through a portable vacuum system that is connected to the potable water supply shall be prohibited. In line and portable vacuum pumps shall

be equipped with a removable strainer with a spare basket.

26.408 *Piping* - Recirculation system piping shall be made of non-toxic material ~~and should be sized such that head losses do not exceed one (1) foot per hundred (100) feet on suction lines and three (3) feet per hundred (100) feet on discharge lines; and flow velocities do not exceed three (3) feet per second in gravity, six (6) feet per second under suction, and ten (10) feet per second under pressure.~~ All plastic piping shall: be labeled with the manufacturer's name and the NSF logo for potable water; appear in the current NSF Listing "Plumbing and Related Products", or approved equivalent; and be used/installed in accordance with the manufacturer's specifications.

26.409 *Multiport Valves* - All multiport valves shall be NSF listed.

26.410 *Pool Water Heaters* - All gas heaters shall be design-certified by the American Gas Association (AGA) and shall display a rating data plate and the AGA seal. All electric heaters shall be Underwriters Laboratories (UL) approved and shall display the UL seal. All heaters shall have sufficient piping and valves to permit isolation and removal of the heater from the system.

26.411 *Equipment Access, Freezing Protection and Drainage* - Easy access shall be provided to all parts of the recirculation system that must be inspected or serviced. All piping and equipment that is subject to freezing shall be provided with an adequate means of draining. At least thirty (30) foot candles of illumination shall be provided around all equipment. In order to prevent standing water, all equipment rooms shall be adequately graded toward floor drains or areas where the water will have a free unobstructed flow to points of disposal.

## SECTION 26.5 FILTRATION SYSTEM

26.501 *General Requirements* - Each pool shall have its own filtration system. All filters shall bear the manufacturer's name, the model #, the surface area and the filter shall be NSF listed. All filtration systems shall be sized such that the maximum allowable filtration rates are not exceeded and shall be operated such that the passage of unfiltered water will be prevented. The filter effluent water shall have a turbidity of five tenths (.5) NTU or less. All filters shall be capable of being totally drained through a manual valve or by disconnecting a union, and all filtration surfaces shall be accessible for inspection, maintenance or replacement. Filters that require backwashing shall have a pressure gauge(s) for determining the time to backwash, and a site glass for observing the backwash water clarity. The backwash discharge line shall terminate above the drain entry point by a distance of at least twice its diameter. All pressure filters shall be equipped with manual or automatic air release valves, or shall be self-purging. If a manual air release valve is present, specific instructions explaining its use shall be provided and shall be conspicuously posted on

or near the filter. In multiple filter installations filter piping shall be valved such that each filter can be isolated for repairs, while other filters remain in service.

26.502 *Rapid Sand Filters* - All media shall meet all of the specifications of the filter manufacturer. In multiple filter installations filter piping shall be valved such that each filter can be individually backwashed. The filtration rate for rapid sand filters shall not exceed three (3) gpm per square foot of filter area, or the NSF listed flow rate, whichever is less.

26.503 *High Rate Sand Filters* - All media shall meet all of the specifications of the filter manufacturer. The filtration rate for high rate sand filters shall not exceed twenty (20) gpm per square foot of filter area, or the NSF listed flow rate, whichever is less.

26.504 *Diatomaceous Earth Filters* - If diatomaceous earth filters are equipped with a pressure type separation tank, there shall be no manual valves on the effluent line, and the following statement or equivalent shall be conspicuously posted on the top of the separation tank and at the pump control switch "Do not start the pump without opening the manual air release on the separation tank and checking to make sure that the top of the separation tank is securely attached." Also, any manufacturer's instructions for the proper use of this separation tank shall be displayed either on the top of the separation tank or on the wall nearby. The filtration rate for diatomaceous earth filters shall not exceed two (2) gpm per square foot of filter area, or the NSF listed flow rate, whichever is less. Diatomaceous earth filters that have an NSF listing for slurry feed shall not exceed a filtration rate of 2.5 gpm per square foot of filter area. ~~All diatomaceous earth filters that are backwashed to waste should have a settling tank/chamber for capturing the earth.~~

26.505 *Cartridge Filters* - All pools with cartridge filtration systems shall have at least one (1) spare cartridge for each cartridge in use, which is clean and ready for installation, along with at least one (1) vat which is capable of submerging all of the cartridges from one filter vessel. Pools with modular media cartridge filtration shall have at least one (1) spare cartridge for each type of cartridge in use, which is clean and ready for installation. When cartridges become clogged to the extent that cleaning does not restore them, or they become damaged, they shall be discarded. The filtration rate for cartridge filters shall not exceed three hundred seventy-five one thousandths (.375) gpm per square foot of filter area, or the NSF listed flow rate, whichever is less.

## SECTION 26.6 POTABLE WATER SUPPLY, POOL WATER QUALITY/TESTING, CHEMICALS AND WASTEWATER

26.601 *Potable Water Supply* - All pools shall have a water supply which: is approved by the Division; is in compliance with the requirements of the "State of Delaware



Regulations Governing Public Drinking Water Systems;" and is of adequate capacity to meet peak demands while maintaining at least twenty five (25) pounds per square inch (psi) and not more than one hundred (100) psi at all points in the system. All drinking fountains shall be in good working order. Cross connections between the potable water supply and the pool water shall be prohibited. Hose bibbs shall be located such that they do not constitute a tripping hazard and shall be equipped with vacuum breakers or other backflow prevention devices approved by the Division.

26.602 *Fillspout* - All pools shall have a permanent fillspout that shall be air gapped at least two (2) pipe diameters above the pool rim, or the rim of any vessel or pipe that connects to the pool. In order to minimize the possibility of creating a tripping hazard, all fillspouts that are on the deck shall be located immediately next to one of the pool ladders, or another approved location. The portion of the water line passing through a concrete deck shall either be non-plastic piping or shall be inside a metal sleeve. All pools that ~~are in existence on the effective date of these Regulations and do not have a permanent fillspout, or~~ have a fillspout that is a potential tripping hazard ~~should~~ shall take whatever steps are appropriate to ~~install the fillspout or~~ eliminate the ~~potential tripping hazard. All fillspouts located on the pool deck should be braced.~~

26.603 *Clarity* - The water in all pools shall be sufficiently clear and the lighting shall be sufficient such that all areas of the pool, and either of the following are clearly visible from the deck: the main drain(s) and all bottom markings; or a black disk six (6) inches in diameter superimposed upon a white field and placed on the bottom at the deepest point. The turbidity of the pool water shall be five tenths (.5) NTU or less.

26.604 *Bacteriological Quality* - If samples are taken for the heterotrophic plate count test [standard plate count (SPC)], the result shall be less than (<) two hundred (200) colonies per milliliter. If samples are taken for the total coliform test, when the membrane filtration (MF) technique is used, the result shall be less than (<) one (1) colony per one hundred (100) milliliters of sample, when the multiple tube fermentation or most probable number (MPN) method is used, none of the conformed portions shall show the presence of the coliform group [result reported as less than (<) 2.2] and when the presence/absence test is used, the result shall be absent.

Samples shall be taken by, or required by the Division whenever it is deemed necessary. For the purpose of determining compliance with this Section, samples may be considered only if they have been analyzed by the Division or by another approved laboratory.

26.605 *Chemical Quality* -The chemical quality of pool water shall ~~not cause any irritation to the eyes or skin of bathers and shall~~ be in compliance with the requirements of the "State of Delaware Regulations Governing Public

Drinking Water Systems." The pH shall not be less than 7.2 or greater than 7.8. ~~All pool water should be balanced (pH, calcium hardness, alkalinity, and temperature) and maintained in accordance with either Langelier Index/Water Balance method shown in Appendices A and B, or an approved equivalent, and the total dissolved solids (TDS) level should not exceed one thousand five hundred (1500) parts per million (ppm).~~ Any chemical added directly or indirectly to a pool shall be approved by the Division, registered with the U.S. Environmental Protection Agency, used strictly in accordance with the manufacturer's directions and properly labeled in accordance with the Hazardous Chemical Information Act 16 Del. C. Chapter 24 (Right to Know). ~~The Material Safety Data Sheet (MSDS) for each chemical should be kept at the pool.~~

~~All pools should have an automatic pH adjustment chemical feeder.~~ Any pool ~~using gas chlorine, and any pool~~ with a documented history of pH level violations shall have an automatic pH adjustment chemical feeder that: is NSF listed; is approved by the Division; has approved anti-siphon protection; and is wired such that it feeds only when the recirculation pump runs (shall be done on all pools which are in existence on the effective date of these Regulations when either the chemical feeder or recirculation pump are replaced). The manual addition of approved non-disinfectant chemicals shall be permitted only in special situations (e.g. trying to achieve water balance), which require that the pool shall remain closed for at least one (1) turnover and until such time as the chemical is thoroughly and evenly dispersed throughout the pool.

26.606 *Disinfection* - All pools shall be disinfected with an approved halogen that imparts an easily measured residual and is fed through an automatic feeder that: is NSF listed ~~(with the exception of gas feeders);~~ is approved by the Division; has approved anti-siphon protection; is capable of providing a dosage of at least ten (10) ppm for outdoor pools and a dosage of five (5) ppm for indoor pools (shall be done on an existing pool when the disinfectant feeder is replaced); and is wired such that it feeds only when the recirculation pump runs (shall be done on all pools which are in existence on the effective date of these Regulations when either the disinfectant feeder or recirculation pump are replaced). A flow-through (erosion) feeder shall feed only the disinfectant(s) specified by the manufacturer. All shall add the disinfectant downstream from the filter and heater. All pool disinfectants shall be registered with the U.S. Environmental Protection Agency and approved by the Division. Manual addition of an approved halogen disinfectant shall be permitted only in special situations (e.g. superchlorination), which require that the pool be closed. After this manual addition has been completed, the pool shall remain closed: for at least one (1) turnover and until such time as the chemical is thoroughly and evenly dispersed throughout the pool; and the automatic feeder is operating

properly if it was not at the time of manual addition. Use of gas chlorine shall be prohibited. Use of stabilized chlorine (cyanuric acid) in indoor pools shall be prohibited. In order for any non-halogen to be approved as a stand alone disinfectant, satisfactory performance shall be demonstrated during an NSF evaluation.

~~Pools using gaseous type chlorination shall comply with the following requirements:~~

- ~~a. All gas chlorine shall be fed by use of a vacuum injector system. Direct cylinder feed shall be prohibited.~~
- ~~b. All chlorine gas feed and storage shall be located at or above ground level in a separate room used for nothing else; and all openings from this room to any other rooms shall be sealed.~~
- ~~c. The chlorine room shall be provided with a light and a positive ventilation fan with a floor level discharge to the outdoors that provides one complete air change per minute and operates continuously while the pool is open.~~
- ~~d. The chlorine room shall have a shatter resistant inspection window and a door that opens outward to the building exterior.~~
- ~~e. Light and fan switches shall be located outside the chlorine room.~~
- ~~f. All chlorine cylinders shall be securely fastened or restrained against falling and all chlorine cylinders in use~~

~~(connected to the feeder) shall be mounted on scales or equipped with an automatic switchover device. All cylinders should be stored in the chlorine room.~~

- ~~g. The chlorinator shall be vented outdoors above grade and the vent shall be screened.~~
- ~~h. If floor drains must be installed, they shall discharge outside of the building and shall not be connected to any other drains.~~
- ~~i. The chlorine room temperature shall be at least 60°F at all times and shall be protected against excessive heat.~~
- ~~j. A self contained breathing apparatus, and a bottle of ammonia for leak detection, shall be kept readily accessible at a location outside the chlorine room.~~
- ~~k. A gas chlorine warning sign shall be posted outside the room.~~
- ~~l. A new seal shall be installed each time a cylinder is changed.~~
- ~~m. A chlorine leak detection device with audible and visual alarm should be provided.~~

All pools shall ~~should~~ be disinfected in accordance with the following ~~requirements/~~ recommendations:

	REQUIRED Minimum Level	RECOMMENDED Level	RECOMMENDED Maximum Level
Free Chlorine	0.5 ppm	1.0-3.0 ppm	5.0 ppm
Free Chlorine (Spa Pool)	1.0 ppm	2.0-5.0 ppm	10.0 ppm
Free Chlorine with Cyanuric Acid	1.5 ppm	1.5-3.0 ppm	5.0 ppm
Free Chlorine with Cyanuric Acid (Spa Pool)	2.0 ppm	2.0-5.0 ppm	10.0 ppm
Bromine	1.0 ppm	2.0-4.0 ppm	6.0 ppm
Bromine (Spa Pool)	2.0 ppm	3.0-6.0 ppm	10.0 ppm
Cyanuric Acid	None	30-50 ppm	*100 ppm
Combined Chlorine	None	0.0 ppm	0.2 ppm
ORP**	**650 mV	**700-750mV	

\*required\*\*(recommended)

~~NOTE Pools using bromine should use ozone as a supplementary disinfectant/oxidizer.~~

26.607 *Water Testing Equipment and Sampling Frequency* - All pools shall have approved testing equipment for pH, disinfectant residual, alkalinity, and calcium hardness. For disinfectant residual, the DPD (Diethyl-p-Phenylene Diamine) method, or any other method in the current edition of Standard Methods for the Examination of Water and Wastewater, shall be used. If the disinfectant is chlorine, the test kit shall be capable of measuring both free and total chlorine residual. For pH, the phenol red colorimetric method, or any other method in the current

edition of Standard Methods for the Examination of Water and Wastewater, shall be used and the test kit shall have a range of at least 6.8-8.2. In addition to these parameters, pools that use a stabilized halogen shall have approved cyanuric acid testing equipment.

All chemical test kit reagents shall be dated when received, and shall be replaced just prior to the start of each outdoor pool season, and at least yearly for indoor pools, with the exception of phenol red which shall be replaced at least every six (6) months.

pH and disinfectant residual shall be measured daily, prior to the pool opening, and as often as necessary while the pool is open (recommended every one (1) to two (2) hours) in order to ensure the proper levels.

Alkalinity, calcium hardness and cyanuric acid (if

applicable) shall be measured after each addition of make up water and at least weekly. All sample results shall be recorded along with the date, time and sample location (area of the pool). Records of sample results shall be kept at the pool for at least one (1) year, shall be available for viewing by any representative of the Division during a sanitary survey and shall be submitted to the Division upon request. If any other substance is added to the pool on a regular basis (e.g., copper/silver from a supplemental disinfection system), the Division may require testing to ensure that the concentrations do not exceed acceptable levels.

26.608 *Pool Water Level and Recirculation System* - When the pool is open, the water level shall be maintained at an elevation suitable for continuous flow into the ~~perimeter overflow gutter or surface skimmers or intermittent flow into the gutter as bathers enter~~. The recirculation system shall operate continuously (24 hours per day), with the exception of the automatic disinfectant feeder when the disinfectant level approaches or exceeds the upper recommended level. Within three (3) years of the effective date of these Regulations ( 2003) each pool shall have its own recirculation, filtration and disinfection system. All pools shall have the capability of pumping water to waste either directly or via filter backwash. ~~A dye test should be performed at least annually on every pool.~~ The Division may require a dye test to ensure that the recirculation system is providing even and complete recirculation throughout the pool.

26.609 *Chemical Storage* - All chemicals, including test kits, shall be stored in accordance with the storage recommendations on the manufacturer's label and the MSDS, and they shall be stored in areas that are not easily accessible to bathers or other unauthorized personnel. All pools shall keep adequate quantities of chemicals on hand such that shortages are not experienced. "NO SMOKING" signs shall be conspicuously posted in all chemical storage areas.

26.610 *Wastewater Disposal* - Cross connections between the pool recirculation system and any wastewater system, including the filter backwash drain, shall be prohibited. The backwash discharge line shall terminate above the drain entry point by a distance of at least twice its diameter. ~~All wastewater, including filter backwash water, should discharge into facilities that are in compliance with all appropriate state and local codes.~~

~~26.611 *Ozone* - All ozone systems should be NSF listed.~~

## **SECTION 26.7 OPERATION, MAINTENANCE, GENERAL SANITATION PERSONNEL, SUPERVISIOIN AND SAFETY**

26.701 *Operation and Maintenance* - All pools, their premises, and appurtenances, shall be operated and maintained at all times with regard to the safety of bathers

and employees. All plumbing shall be properly installed and maintained. During an electrical storm, use of any pool (indoor or outdoor) shall be prohibited. Alcoholic beverages shall be prohibited in the pool and on the pool deck (area required by Section 26.308). Food and beverages shall be prohibited in the pool and within four (4) feet of the pool edge. Glass or other breakable containers, utensils, etc., shall be prohibited within the pool fence, pool room or bathhouse facilities. Pool walls and floors shall be refinished when safe sanitary conditions cannot be maintained. Any deck/walkway areas that are hazardous to patrons or their bare feet (e.g., tripping, abrasions, splinters, etc.) or do not properly drain, shall be repaired or replaced such that the hazard or drainage problem is eliminated. Any electrical hazard shall be eliminated. All pools that have a slope break, shall install a line of contrasting color one (1) to two (2) feet on the shallow side of the break directly under the safety line that is either: solid and at least two (2) inches wide or intermittent with sections that are at least four (4) inches by four (4) inches and not more than one (1) foot apart on centers. All pools which have steps or benches, shall install a solid marking line of contrasting color which is at least one (1) inch wide on the top surface edge of each pool step or bench. All pools which have any type of overflow gutter or a safety ledge with a submerged protruding edge, shall install a solid marking line of contrasting color which is at least one (1) inch wide on the top surface edge of the gutter.

26.702 *General Sanitation and Sanitary Facilities* - All pools and related facilities shall be maintained in a clean sanitary condition. The pool floor, walls, deck, walkways and bathhouse facilities shall be cleaned and disinfected with an approved disinfectant as often as necessary in order to maintain an environment which is free of sediment, dirt, algae, grass/weeds and foreign objects. All garbage shall be stored in containers which are sufficient in number and properly covered so as not to attract vermin. Effective control measures shall be utilized to minimize or eliminate the presence of rodents, flies, roaches or other vermin. All pools shall have at least one (1) permanent or portable water closet for the lifeguard/attendant, which is accessible when the pool is open and is located such that the path of travel from the nearest pool entrance/exit does not exceed five hundred (500) feet. If a portable water closet is provided, it shall be properly vented, designed to exclude flies, equipped with a self-closing door, provided with toilet tissue, and maintained in a clean sanitary condition and. ~~This water closet should be~~ located contiguous to the pool deck or pool room.

26.703 *Animals* - With the exception of guide animals for the handicapped, animals shall be prohibited within the pool fence, pool room or bathhouse facilities.

26.704 *Bathing Suits* - It is recommended that all bathers ~~should~~ wear bathing suits. A bathing suit is ~~should~~

be a garment designed for that purpose which covers the buttocks (male and female) and breasts (female). If anyone who is not toilet trained is going to use a pool, the operator shall ~~should~~ take whatever steps are necessary to ensure that fecal material does not enter the water (e.g. requiring the use of a swimsuit diaper). Should fecal material enter any pool, the pool shall be closed immediately and the operator shall follow Division procedures for reopening.

26.705 *Employee/Bather Health* - No person with evidence of a communicable or contagious disease shall be employed at a pool. No person with evidence of a communicable disease, cough, cold, open sore or bandaged wound shall be allowed to enter the pool water except where certified by a physician not to have a disease in the communicable stage. Any person suspected of being under the influence of alcohol or drugs shall be prohibited from entering the pool.

26.706 *Lifeguard* - Unless exempted by 16 Delaware Code, each pool that is ~~greater than 250 square feet (water surface) or greater than four (4) feet deep (any portion)~~ shall have a lifeguard on duty when the pool is open. ~~It is recommended that there be a minimum of two (2) lifeguards on duty when the pool is open and further recommended that there be one (1) lifeguard per either: fifty (50) bathers; or two thousand (2000) square feet of pool water surface; or fractions thereof.~~ If a lifeguard who is working alone must leave poolside, for whatever reason, he/she shall take whatever steps are necessary to ensure that no one remains in or enters the water in his/her absence. Copies of training/certification documentation for all lifeguards currently employed by the pool's management shall be present at the pool when it is open ~~and should be available for viewing by patrons.~~ No person shall serve as a lifeguard unless he or she meets all of the following training requirements and can produce the appropriate documentation upon request of the Division:

a. Current certification in National YMCA Lifeguarding, or American Red Cross Basic Lifeguarding, Ellis & Associates National Pool & Waterpark Lifeguard Training, Aquatic Resource Service Associates Aquatic Rescue Training or approved equivalent.

b. Current certification in American Red Cross, American Heart Association or National Safety Council (NSC) Cardiopulmonary Resuscitation (CPR), or approved equivalent, that includes training in: one (1) person adult CPR, child CPR and infant CPR.

c. Current certification in American Red Cross Standard First Aid, or approved equivalent, that includes training in: obstructed airway, artificial breathing, control of bleeding and treatment of shock.

26.707 *Attendant* - If none of the pools at a facility require a lifeguard based on ~~surface area or depth~~, each pool, with the exception of those exempted by Title 16 Delaware Code, shall have an at least one (1) attendant with approved

training on duty when the pool is open. If an attendant who is working alone must leave poolside, for whatever reason, he/she shall take whatever steps are necessary to ensure that no one remains in or enters the water in his/her absence. In facilities with a spa pool(s) (SpP) only, if the attendant is not in direct view of the pool, he/she shall be located such that the poolside alarm required by Section 26.720 can be easily heard. Copies of training/certification documentation for all attendants currently employed by the pool's management shall be present at the pool when it is open ~~and should be available for viewing by patrons.~~ No person shall serve as an attendant unless he or she meets all of the following training requirements and can produce the appropriate documentation upon request of the Division:

a. Current certification in American Red Cross, American Heart Association or NSC Cardiopulmonary Resuscitation (CPR), or approved equivalent that includes training in: one person adult CPR, child CPR and infant CPR.

b. Current certification in American Red Cross Standard First Aid, or approved equivalent, that includes training in: obstructed airway, artificial breathing, control of bleeding, and treatment of shock.

26.708 *Lifeguard Warning Sign* - Any exempted pool or any pool with a maximum depth of four (4) feet that does not have a lifeguard or attendant on duty shall conspicuously post the following sign at the pool entrance(s) and at least one (1) other location inside the pool room/fence: "WARNING NO LIFEGUARD ON DUTY" in letters at least four (4) inches high along with "CHILDREN UNDER THE AGE OF SIXTEEN (16) SHOULD BE ACCOMPANIED BY A PARENT OR GUARDIAN" in letters at least one (1) inch high. (NOTE - A guardian is an adult designated by a parent who is responsible for the children and their behavior).

26.709 *Lifeguard Stand* - All pools with a water surface area greater than two thousand (2000) square feet shall have at least one (1) lifeguard stand ~~and additional stands should be provided based on each additional two thousand (2000) square feet or fraction thereof.~~ The lifeguard stand shall be at poolside, however, no part of the stand shall extend past the edge of the pool. ~~The lifeguard stand seat should be four (4) to six (6) feet above the pool deck.~~

26.710 *Unsupervised Solo Bathing* - Unsupervised solo bathing shall be prohibited at all pools with the exception of those exempted by 16 Delaware Code.

~~*Maximum Bathing Load* - In SwP pools, the maximum bathing load shall be based on one (1) bather per twenty five (25) square feet of pool water surface. If a diving board is present and in use, the three hundred twenty (320), three hundred sixty (360) or four hundred (400) square feet of diving board water entry area per device (Sections 26.110 and 26.320) shall not be included in~~

~~computing the maximum bathing load. If a swimming pool slide is present and in use, the two hundred fifty six (256) square feet of swimming pool slide water entry area (Section 26.135) shall not be included in computing the maximum bathing load.~~

26.711 *Injury, Resuscitation or Death* - The Division shall be notified within twenty-four (24) hours of any incident at a pool which: requires referral to a hospital, doctor or other facility for medical attention; requires resuscitation; or results in death. The notification shall be followed up by a written report within thirty (30) days which contains all pertinent details of the incident.

26.712 *Pool Security* - All entrances to indoor pools shall be equipped with locks and each entrance shall be locked when the pool is closed. All outdoor pools shall be enclosed by a fence which provides a barrier that is at least four (4) feet high everywhere [six (6) feet recommended], measured from ground level outside the fence. All pool fences shall be equipped with a locking gate which shall be locked when the pool is closed.

26.713 *Depth Markings* - With the exception of wading pools and spa pools, the water depth of all pools, in feet to the nearest one half (1/2) foot, shall be plainly marked at or above the water surface on the vertical pool wall, and on the coping or deck within eighteen (18) inches of the pool edge. For pools with open gutters, the depth marking required on the vertical pool wall may be located on the wall of the room for indoor pools, and on the fence for outdoor pools. These pairs of depth markings shall be located at the points of minimum depth, maximum depth, intermediate depths at no more than two (2) foot depth increments ~~with one (1) foot increments recommended~~, breaks in slope and on each end of the pool. All depth markings shall be at least four (4) inches high, of a contrasting color and spaced no more than twenty-five (25) feet apart on the pool perimeters. Markings on the pool walls shall be positioned to be read from the water. Markings on the deck shall be positioned to be read while standing on the deck and facing the pool and shall be slip resistant.

26.714 *Safety Line* - Whenever non-swimmers are in the water, all pools that have a slope break shall have a safety line located at least one (1) foot and not more than two (2) feet on the shallow side of the slope break, directly above the line on the bottom required by Section 26.701. The safety line shall have clearly visible colored floats spaced not more than five (5) feet apart. The safety line shall be of sufficient size and strength to provide a handhold which will support any bather who is in need of help and the connections to the pool wall shall be recessed.

26.715 *Safety Equipment* - All pools shall have the following safety equipment which shall be easily accessible:

a. A telephone, within or immediately adjacent to the pool fence or room, with appropriate emergency numbers posted nearby. Pay telephones are acceptable if

they do not require coins in an emergency. In lieu of a telephone, a manually activated emergency alarm system that alerts someone else to dial the telephone is acceptable. All of the above must be able to send and receive calls.

b. Two blankets.

c. A first aid kit with the current edition of the American Red Cross standard first aid book or equivalent. ~~The kit should include at least the following: soap, ice packs, bandaids, compresses (2"x2" and 4"x4"), gauze roller bandages, two (2) triangle bandages, surgical gloves and a mouth to mouth mask.~~

In addition to the above, all SwP pools without a lifeguard on duty (those exempted by 16 Delaware Code) shall also be equipped with the following safety equipment which shall be easily accessible:

d. One (1) or more lightweight poles at least twelve (12) and not more than fifteen (15) feet long, and equipped with a shepherd's hook.

e. One ring buoy at least eighteen (18) to twenty-four (24) inches in diameter attached to at least fifty (50) feet of rope.

In addition to the above, all SwP pools with a lifeguard on duty shall also be equipped with the following safety equipment that shall be easily accessible:

f. One rigid backboard (long board) with at least three (3) attached ties/straps which is compatible for transport in the Delaware State Police MED-E-VAC helicopter, meets the design requirements of Emergency Medical Services, and is approved by the Division. Six (6) attached ties/straps are recommended. If a pool, because of size, will not accommodate a long board being placed under a bather, a reduced backboard (short board) with at least one (1) tie/strap may be substituted. Current specification requirements for backboards are available upon request from the Division. (NOTE - This is not required for exempted pools that operate without a lifeguard).

g. In place of the ring buoy, at least one (1) rescue tube for each lifeguard on duty. ~~(NOTE - This is not required for exempted pools that operate without a lifeguard).~~

26.716 *Diving* - With the exception of official competition or when there is qualified instruction, diving shall be prohibited into water that is five (5) feet deep or less. At SwP and WSF splash pools, all areas where the water is five (5) feet deep or less shall be clearly labeled "No Diving" on the coping (edge of the deck). ~~For indoor pools, the "No Diving" markings may be approved on the walls of the room if it can be demonstrated that it is not feasible to provide them on the edge of deck.~~ The "No Diving" markings shall be: of a contrasting color; easily readable; slip resistant and at least four (4) inches high consisting of the words "No Diving," the words "No Diving" in combination with the picture (international) sign (diver inside a red circle with a red line across), or other approved markings. The number of

markings shall be at least equal to the number of depth markings within the "No Diving area" ~~and shall be spaced no more than twenty five (25) feet apart on the perimeter of the "No Diving" area.~~

26.717 *Shallow End Starting Blocks* - Shallow end starting blocks (water depth that is five (5) feet or less) shall be removed when there is no official competition, instruction or practice. Shallow end starting blocks that are not removable shall be labeled "starting blocks shall be used only during official competition or when there is qualified instruction."

26.718 *Wading Pool Supervision* - It is recommended that all children using a wading pool ~~should~~ be supervised by a responsible person who is at least sixteen (16) years of age.

26.719 *Attendant Alarm* - Any SpP pool, with the exception of those at facilities exempted by ~~Title~~ 16 Delaware Code, which is located such that it is not in direct view of the attendant shall have, in the immediate vicinity of the pool, a clearly labeled alarm device that can be activated when a bather is in trouble and is easily heard throughout the area or building. This alarm shall produce a distinctly different sound than that of the high temperature alarm.

26.720 *Spa Pool Warning Sign* - A clearly visible sign shall be mounted at the entrance of each SpP pool facility or adjacent to each SpP pool and shall include, but is not limited to, the following:

- a. All bathers should take a shower prior to entering.
- b. Enter and exit slowly and cautiously.
- c. Unsupervised solo bathing is prohibited.
- d. Use by anyone under sixteen (16) years of age is prohibited unless there is documented written permission from his or her physician.
- e. Elderly persons and anyone with heart disease, diabetes, high or low blood pressure, or anyone under a physician's care should not enter without consulting with their physician.
- f. Pregnant women should not enter unless the temperature is less than 102°F.
- g. Hot water immersion while under the influence of alcohol, anticoagulants, antihistamines, vasoconstrictors, vasodilators, stimulants, hypnotics, narcotics or tranquilizers may be hazardous to your health and is prohibited.
- h. Observe a fifteen (15) minute time limit, then shower, cool down and return if your wish. Longer exposures to this water may result in nausea, dizziness or fainting.
- i. Do not submerge to the bottom of the pool, hair may become entangled in bottom outlet. Long hair should be tied in a knot or a bun in order to keep it out of the water.
- j. No body lotions or oils are permitted.

26.721 *Spa Pool Timer Switch* - All SpP pools shall have a clearly labeled reversible aeration/jetting system

timer switch with a fifteen (15) minute time limit located in the pool area but such that it cannot be reset from within the pool.

26.722 *Spa Pool Temperature/High Temperature Prevention System* - The water temperature in SpP pools ~~should not exceed 100°F and~~ shall not exceed 104°F. All spa pools shall have a thermometer that is measuring the current water temperature ~~and the temperature should be checked and recorded at least hourly when the pool is open.~~ If the thermometer is in the pool, it shall be non-glass and tethered. All SpP pools shall be equipped with an approved system that will ensure that the water does not exceed 104°F (e.g. a high temperature alarm, an automatic heater shut off device, etc.). The alarm shall produce a distinctly different sound than that of the attendant alarm. If there is a documented history of high temperature violations, the high temperature prevention system shall be replaced/upgraded. The Division may test the high temperature prevention system to ensure proper operation.

26.723 *Spa Pool Clock* - A clock that is easily readable from the SpP pool shall be provided.

26.724 *Water Slide Flume - Head of the Flume Personnel* - At least one person who meets the training requirements of Section 26.707a shall be stationed at the head of the flume to supervise and control the start of each slider, the spacing of sliders and the monitoring of the downward progress of each slider.

26.725 *Water Slide Flume - Splash Pool Attendant* - At least one attendant shall be stationed near the end of the flume/run-out slide to supervise and control the sliders as they arrive. Additional attendants shall be required at the discretion of the Division.

26.726 *Ventilation* - All bathhouse rooms, equipment rooms, chemical storage rooms and indoor pool rooms shall be provided with adequate natural or mechanical ventilation such that satisfactory indoor air quality is maintained.

26.727 *Cartridge Filtration* - All pools with cartridge filtration systems shall have at least one (1) spare cartridge for each cartridge in use, which is clean and ready for installation, along with at least one (1) vat which is capable of submerging all of the cartridges from one filter vessel. Pools with modular media cartridge filtration shall have at least one (1) spare cartridge for each type of cartridge in use, which is clean and ready for installation. When cartridges become clogged to the extent that cleaning does not restore them or they become damaged, they shall be discarded.

## SECTION 26.8 WADING POOLS

26.801 *General Requirements* - Except as otherwise noted previously and in this Section, WP pools shall comply with all other requirements of these Regulations.

26.802 *Location* - WP pools which are installed in conjunction with a SwP pool shall be located adjacent to the shallowest area of the SwP pool and shall be at least ten (10)

feet away. ~~If any part of the SwP pool is greater than five (5) feet deep the WP pool shall be located at least twenty (20) feet away.~~

26.803 *Floor/Slope* - The slope of a WP pool floor shall not exceed six (6) inches in ten (10) feet (6"/10') and the floor shall be slip resistant.

26.804 *Fencing* - All WP pools which are indoors or within the confines of another pool fence shall be surrounded by a fence which is at least three (3) feet high and is equipped with a gate.

26.805 *Recirculation System* - The WP pool recirculation system shall be capable of providing a minimum of twenty-four (24) turnovers of the pool volume per day [one (1) every hour] against the maximum lead.

~~26.806 *Floor Outlets/Drains* - All WP pools shall be provided with at least one (1) of the following connected to the recirculation system and capable of draining the pool: two (2) antivortex floor outlets/drains as far apart as possible on the same line with a flow control valve; one (1) antivortex floor outlet/drain connected to the skimmer line with no individual flow control valves prior to the pump; or another approved fitting. The velocity of the water entering the outlet/drain should never exceed one and one half (1-1/2) feet per second.~~

26.806 *Perimeter Overflow Gutters and Surface Skimmers* - All WP pools shall be equipped with either a perimeter overflow gutter or at least one skimmer which is connected to the recirculation system and effectively remove any floating material. For WP pools that are greater than five hundred (500) square feet of water surface, one (1) additional skimmer shall be provided for each additional (500) square feet of pool water surface or fraction thereof. ~~Under normal operating conditions the total flow rate through the skimmers should be one hundred (100) percent of the design flow rate.~~

26.807 *Inlets* - All WP pools shall have at least two (2) inlets and in WP pools where only one (1) skimmer is required, the inlets shall be located such that they direct water toward the skimmer.

26.808 *Water Replacement* - The entire WP pool water volume should be replaced on at least a weekly basis either by normal backwashing or by pumping directly to waste.

## **SECTION 26.9 SPA POOLS**

26.901 *General Requirements* - Except as otherwise noted previously and in this Section, SpP pools shall comply with all other requirements of these Regulations.

26.902 *Location* - A SpP pool shall be at least eight (8) feet away from any other pool.

26.903 *Decks and Walkways* - A deck at least four (4) feet wide shall be provided around at least fifty (50) percent of the perimeter of a SpP pool. If the SpP pool is free standing and not higher than thirty six (36) inches, the deck may be at floor level.

26.904 *Steps and Benches* - SpP pools which are greater than twenty-four (24) inches deep shall have at least one (1) step with at least one (1) handrail ~~(two (2) are recommended)~~ and all steps shall be located at a point where the deck is at least four (4) feet wide. The step tread shall be at least ten (10) inches deep and at least twelve (12) inches wide, and the step riser shall be at least seven (7) inches and not be more than twelve (12) inches high. When the bottom tread also serves as the bench, the height above the pool floor shall not exceed fourteen (14) inches. The first and last risers need not be uniform. Intermediate risers, however, shall be uniform in height. Benches that are installed in SpP pools shall be permanent and the depth of water over the bench shall not exceed twenty-four (24) inches. The top surface edge of all benches and steps shall be outlined in contrasting color by a marking line at least one (1) inch wide.

~~26.905 *Fencing* - SpP pools that are installed inside the confines of another pool fence are not required to be fenced.~~

26.905 *Recirculation System* - The SpP pool recirculation system shall be completely separate from the air/water jet system and shall be capable of providing a minimum of ninety-six (96) turnovers of the pool volume per day [one (1) every fifteen (15) minutes] against the maximum head.

~~26.906 *Floor Outlets/Drains* - All SpP pools shall be provided with at least one (1) of the following connected to the recirculation system and capable of draining the pool: two (2) floor outlets/drains as far apart as possible on the same line with a flow control valve; one (1) floor outlet/drain connected to the skimmer line with no individual flow control valves prior to the pump; or another approved fitting. The velocity of the water entering the outlet/drain should never exceed one and one half (1-1/2) feet per second.~~

26.906 *Perimeter Overflow Gutters and Surface Skimmers* - All SpP pools shall be equipped with either a perimeter overflow gutter or at least one skimmer which is connected to the recirculation system and effectively removes any floating material. ~~If the second option in 26.907 is chosen, any approved through the wall skimmer with a weir may be used.~~

26.907 *Inlets* - All SpP pools shall have at least two (2) inlets which are connected to the recirculation system and in SpP pools where only one (1) skimmer is required, the inlets shall be located such that they direct water toward the skimmer.

26.908 *Air Jetting System* - All air jetting (blower) systems shall have a raised loop or some other approved method to prevent water backup that could cause electrical shock hazards.

~~26.909 *Water Replacement* - The entire SpP pool water volume should be replaced on at least a weekly basis either by normal backwashing or by pumping directly to waste.~~

## SECTION 26.10 WATER SLIDE FLUMES

26.1001 *General Requirements* - Except as otherwise noted previously and in this Section, WSFs shall comply with all other requirements of these Regulations.

26.1002 *Splash Pool Design and Depth* - In order to facilitate prompt, safe exiting by bathers, all splash pools shall have either a set of steps along the entire length of the exit side (side opposite the flume terminus), or a floor that slopes upward to meet the water surface. The steps or upward sloping floor shall have one (1) handrail per flume or one (1) handrail every seven (7) feet, whichever is greater. Ladders shall be prohibited. The depth of the splash pool at the flume end shall be at least three (3) feet and not more than four (4) feet, and this depth shall be maintained for at least twenty (20) feet in front of the flume end. The floor slope shall not exceed one (1) foot in seven (7) feet and all slopes shall be constant.

26.1003 *Flume End* - Flumes shall terminate either at a depth of at least six (6) inches below the splash pool operating water level, or not more than two (2) inches above the splash pool operating water level, provided the flume is level for at least the last ten (10) feet. The distance between the side of any flume end and the side of the splash pool shall be at least five (5) feet. The distance between the sides of adjacent flumes shall be at least six (6) feet and adjacent flumes utilizing the same splash pool shall be parallel at the ends.

26.1004 *Decks and Walkways* - A deck at least ten (10) feet in width shall be provided along the entire exit side of the splash pool. All walks and steps from the exit side to the top of the flume shall be: at least four (4) feet wide; constructed of concrete or other slip resistant material approved by the Division; smooth, easily cleanable and properly maintained; and separated from any flume by a physical barrier such that people on the walks or steps cannot reach the flumes.

26.1005 *Recirculation System* - The WSF recirculation system shall be capable of providing a minimum of twenty-four (24) turnovers of the splash pool and pump reservoir volume per day [one (1) every hour] against the maximum head.

26.1006 *Pump Reservoirs* - Pump reservoirs shall be separate from the splash pool, shall be made of concrete or other impervious material with a smooth slip-resistant finish, and shall be connected to the splash pool by a weir. The minimum pump reservoir volume shall be equal to five (5) minutes of the combined flow rate in gpm of all water slide flume pumps. Pump reservoirs shall be accessible only to authorized individuals. Access decks shall be provided. The pump intake(s) shall be located in the pump reservoir and shall be designed to allow cleaning without danger of operator entrapment. The pump intake(s) shall be located in the pump reservoir and shall be designed to allow cleaning

without danger of operator entrapment. The pump reservoir shall have a minimum of one (1) main drain with separate piping and valve to the filtration system. Pumps shall have check valves on all discharge lines.

26.1007 *Perimeter Overflow Gutters and Surface Skimmers* - All splash pools and pump reservoirs shall have either perimeter overflow gutters or surface skimmers which effectively remove any floating material and are connected to the recirculation system. Where perimeter overflow gutters are used, they are not required along the weirs or under the flume end. Where surface skimmers are used, one (1) shall be in the splash pool and one (1) shall be in the pump reservoir. Where an odd number of surface skimmers are required they shall be positioned appropriately based on the size of the splash pool and pump reservoir.

26.1008 *Disinfection* - WSF pools may be permitted to manually add a halogen disinfectant, in addition to the automatic feeder, if it can be done somewhere other than the flume or splash pool.

## SECTION 26.11 SPECIAL PURPOSE POOLS

26.1101 *General Requirements* - Child care facility pools and other pools that do not fit into the categories SwP, WP, SpP, or WSF, of Section 26.123 because of the design, size, usage, or other factors, shall be classified as SpPP by the Division, provided that the design is within the limits of sound engineering practice. The Division shall require compliance with any Sections of these Regulations which are deemed necessary, to assure the health and safety of SpPP pool bathers.

## SECTION 26.12 PROCEDURE FOR ADMINISTRATIVE ACTION

26.1201 *Operating Without a Permit* - If a pool is found operating without a valid permit, ~~as required by Section 26.204, the Division Director shall issue a written notice for order immediate closure. This notice shall be delivered to either the lifeguard/operator or the person in charge. This closure shall be effective upon delivery receipt of the a written notice by the person in charge of the pool. and a closure notice statement on the sanitary survey report constitutes a written notice. A sign stating that the pool is closed may be posted at the bather entry point(s) and this sign shall be removed only by, or with the consent of the Director. Within five (5) days of receipt of this closure notice, The person in charge may request a hearing before the Director. If a hearing is requested, it shall be scheduled within ten (10) days. At least five (5) days prior to hearing, the person in charge shall be notified of the date, time and place. The pool shall remain closed until submission, review and approval of plans, followed by a sanitary survey confirming compliance with these Regulations and issuance of an operating permit. A conspicuous, colored placard shall be prominently displayed at all entrances of the pool which~~



~~has failed to obtain a valid permit. If plans and specifications for the pool have been previously approved by the Division, the pool may reopen when approval of the Director has been granted and a permit has been issued. If there is not record of a Certificate of Approval, plans and specification shall be submitted in accordance with Section 26.202.~~

~~26.1202 *Suspension of a Permit* - If ~~some~~ conditions exist at a pool that represent an ~~immediate~~ imminent health hazard ~~to the public~~, the ~~Director~~ Division may suspend the operating permit and order immediate closure ~~and issue a written notice for immediate closure~~, without a hearing upon written notice ~~for a period not to exceed ten (10) fifteen (15) days. This notice shall be delivered to either the lifeguard/operator or the person in charge.~~ The suspension shall be effective upon delivery receipt of written ~~the~~ notice by the person in charge and a closure notice ~~suspension~~ statement on the sanitary survey report constitutes a written notice. The person in charge shall yield the permit to the Division. ~~This written notice shall state the reason(s) for the suspension/closure and the person in charge shall be requested to yield the permit to the Director. A sign stating that the pool is closed may be posted at the bather entry point(s) and this sign shall be removed only by, or with the consent of the Director.~~ A suspension/~~closure~~ notice shall be issued for any of the following conditions:\*~~

- a. The clarity of the water is not in compliance with the provisions of Section 26.603.
- b. The bacteriological quality of the pool water is not in compliance with the provisions of Section 26.604.
- c. The pH of the pool water is less than 7.2 or greater than 7.8.
- d. The automatic disinfection system is not functioning properly, or, there is no automatic disinfection system or disinfectant present.
- e. The free chlorine residual is less than the level specified in Section 26.606.
- f. The bromine residual is less than the level specified in Section 26.606.
- g. The cyanuric acid level is greater than one hundred (100) ppm.
- h. The recirculation pump is not operating or not present.
- i. The filter is not operating or not present.
- j. There is no qualified lifeguard or attendant on duty (unless exempted by 16 Delaware Code).
- k. The water temperature exceeds 104°F in a spa pool.
- l. There is a bare electrical wire or other obvious electrical hazard present.
- m. The lighting is not in compliance with the provisions of Section 26.310 and because of this, the following are not clearly visible without glare from the deck: the main drain(s) and all bottom markings; or a black disk six (6) inches in diameter superimposed upon a white field

and placed on the bottom at the deepest point.

n. A bottom drain cover/grate is missing, broken, or not properly secured.

o. An authorized representative of the Division is denied immediate access to the pool pursuant to Section 26.207.

p. Fecal material is discharged into the pool water. (NOTE-Contact the Division for the current procedure for handling fecal contamination).

q. The facility fails to provide an approved pool operator pursuant to Section 26.205.

r. There is any other condition, or combination of conditions which may endanger the health, safety, or welfare of the bathers.

\*If the person in charge, the pool operator or the lifeguard/attendant determines that any of the above conditions exist, they shall immediately close the pool. The Division shall be notified of the closure and the pool shall remain closed until the condition is satisfactorily corrected.

Within five (5) days of receipt of a suspension notice, The person in charge of the pool may request in writing, to the Division at any time during the suspension, a sanitary survey for the purpose of showing that the imminent health hazard no longer exists. The person in charge of the pool may also request, in writing, to the Division at any time during the suspension, an administrative hearing to challenge the findings of the sanitary survey that resulted in the pool closure. When the Division determines that the imminent health hazard no longer exists, the suspension shall be terminated and the permit returned. If the Division determines that the imminent health hazard has not been corrected and that the hazard still exists, the suspension remains in force pending a hearing and the Division may recommend that the permit be revoked. a hearing before the Director for the purpose of demonstrating that the imminent public health hazard no longer exists. If a hearing is requested, it shall be scheduled within ten (10) days. At least five (5) days prior to the hearing, the person in charge shall be notified of the date, time and place. After the hearing, if the Director determines that the public health hazard no longer exists, the suspension shall be immediately lifted. If, however, the Director determines that the public health hazard still exists, the suspension shall continue, and the Director may recommend that the permit be revoked. The person in charge may appeal the decision of the Director to the Secretary, DHSS. However, any such appeal does not stay the decision. This appeal must be in writing and must be filed with the offices of the Secretary, DHSS, in Dover, Delaware within ten (10) days of the Director's decision. The Secretary, DHSS, shall hear this appeal at the earliest opportunity.

*26.1203 Administrative Hearings for Serious Violations and Repeat Violations* - If any condition listed in Section 26.1202 is not corrected within fifteen (15) days or if there

are repeated violations of any provision of these Regulations, the person in charge of the pool requests a hearing pursuant to 26.1202, the Division Director shall schedule an administrative hearing within ten (10) days of the request of such a determination. The purpose of the hearing is to determine if the suspension should be lifted. At least five (5) days prior to the hearing, the person in charge of the pool shall be notified of the date, time, place, and the specific reason(s) for the hearing. After this hearing the Director may establish a compliance schedule, suspend the permit for a period not to exceed ninety (90) days or may recommend revocation of the permit. Failure of the person in charge to be present for an administrative hearing shall result in automatic suspension of the permit and recommendation for revocation to the Secretary, DHSS. The person in charge may appeal the decision of the Director to the Secretary, DHSS. However, any such appeal does not stay the decision. This appeal must be in writing and must be filed with the office of the Secretary, DHSS in Dover, Delaware within ten (10) days of the Director's decision. The Secretary, DHSS shall hear this appeal at the earliest opportunity.

26.1204 Serious Violations, Repeat Violations and General Unsanitary Conditions – If serious violations, repeat violations, or general unsanitary conditions exist, the Division may issue and properly serve due notice, by certified mail or by hand delivery, of the intention of the Division to suspend or revoke the permit of a pool. The Division shall, not suspend or revoke a permit of a pool for serious or repeated violations that do not present an imminent health hazard, without having first issued and properly served such notice of intent to suspend or revoke. Within thirty (30) days of the date of such notice of intent to suspend or revoke, the permit holder may submit to the Division a written request for an administrative hearing. The suspension or revocation shall commence upon expiration of the notice of intent, unless within thirty (30) days of the date of such notice, the Division receives from the permit holder a written request for an administrative hearing. If the permit holder makes a timely request for an administrative hearing, the suspension or revocation shall be stayed pending the results of the hearing. A conspicuous, colored placard shall be prominently displayed at all entrances of a pool whose permit stands suspended or revoked.

26.1205 Pool Permit Holder Right to an Administrative Hearing – Upon due notice that the Division intends to suspend or revoke the permit of a pool as indicated in 26.1204, or for other reasons to protect public health, the permit holder may submit to the Division, within thirty (30) days of the date of such notice of intent, a written request for an administrative hearing. When an administrative hearing is scheduled, the permit holder of the pool shall be informed at least five (5) days prior to the hearing of the place, time and date of the hearing and the specific charges against the

pool. Notification of the hearing shall be by certified mail or by hand delivery. Failure of the permit holder to be present for an administrative hearing shall result in automatic suspension of the permit and recommendation for revocation.

26.1206 Records of Administrative Hearings - Records shall be made of all hearing proceedings and shall become documents of record. A written report of the hearing decision shall be furnished by the Division to the permit holder of the pool to the Secretary, DHSS, the Office of Health Systems Protection and the person in charge of the pool within ten (10) days following the hearing.

26.1207 Reapplication After Revocation – The person in charge of a pool may make written application for a new permit ninety (90) days after the revocation of a permit has become final.

## SECTION 26.13 ENFORCEMENT AND INTERPRETATION

No provisions of Sections 26.3, 26.4, 26.5, 26.8, 26.9, 26.10 of these Regulations shall be applied retroactively, or interpreted to require reconstruction, alteration or replacement of a pool, or any part of a pool, which has been approved by the Division and which has been installed or is under construction. If, however, a pool or any part of a pool is reconstructed, altered or replaced, or if a private pool is converted to a public pool after the effective date of these Regulations, this conversion, reconstruction, alteration or replacement shall meet all of the provisions of these Regulations.

## SECTION 26.14 PENALTY

Any person who neglects or fails to comply with the requirements of these Regulations shall be subject to the provisions of penalty as provided in 16 Delaware Code Section 107, and shall be fined not less than \$100 and not more than \$1000, together with the costs, unless otherwise provided by law.

## SECTION 26.15 REPEAL, DATE OF EFFECT AND AMENDMENTS

All regulations or parts of Regulations in conflict with these Regulations are hereby repealed, and these Regulations shall be in full force and effect on the date of adoption by the Secretary, DHSS. The Secretary, DHSS, may propose changes to the Regulations herein established and shall hold at least one public hearing on the proposed changes. At least thirty (30) days in advance of the public hearing, notice of proposed changes shall be published in at least two newspapers of general circulation in the State. Notice shall include a brief synopsis of the changes to be made, information on when and where the proposed changes may be reviewed by the public, the procedure for submitting comments, and the time, date and location of the public

hearing. A hearing officer shall be appointed by the Secretary, DHSS, and a record shall be kept of the hearing.

### SECTION 26.16 SEPARABILITY

If any provision of these Regulations should be declared invalid for any reason, the decision shall not affect the remaining provisions, which shall remain in full force and effect, and to this end, the provisions of the Regulations are hereby declared separable.

### APPENDIX A

All chemicals in pool water affect the tendency of the water to be corrosive or to deposit a calcium carbonate scale. It is possible to control these two (2) conditions through the use of the Langelier Index (L.I). The index was developed in 1936 by Professor W. F. Langelier at the University of California (Berkeley). It expresses the relationship between pH, alkalinity, calcium hardness and temperature. The resulting number (formula method - below) or position on the nomograph (nomograph method - Appendix B) indicates whether the pool water is chemically "balanced." In theory, pool water that is "balanced" will neither corrode nor deposit a scale.

#### LANGELIER INDEX/WATER BALANCE FORMULA METHOD

"Balanced" pool water has an L.I. between -0.3 and +0.3. An L.I. that is greater negatively than -0.3 indicates a corrosive water and an L.I. greater than +0.3 indicates a water that will deposit scale. After determining the pool water pH, alkalinity, calcium hardness and temperature, find the alkalinity factor (AF), calcium hardness factor (CHF) and temperature factor (TF) using the table below. Use the pH and these three (3) factors in the following equation:

$$\text{L.I.} = \text{pH} + \text{AF} + \text{CHF} + \text{TF} - 12.1$$

#### FACTORS NECESSARY TO CALCULATE THE L.I.

<u>Alkalinity</u> <u>Factor</u>	<u>Hardness</u> <u>Factor</u>	<u>Temp. (°F)</u> <u>Factor</u>
<u>Calcium</u>		
5 ppm	0.7	5 ppm 0.3
25 ppm	1.4	32 0.1
50 ppm	1.7	37 0.1
75 ppm	1.9	46 0.2
100 ppm	2.0	53 0.3
150 ppm	2.2	60 0.4
200 ppm	2.3	66 0.5
300 ppm	2.5	76 0.6
400 ppm	2.6	84 0.7
		94 0.8

800 ppm 2.9 800 ppm 2.5 104 0.9

#### SAMPLE PROBLEM

A pool water has the following characteristics: pH-7.4; alkalinity-50; calcium hardness-50 ppm; temperature-78°F. Using the tables above, the factors are 1.7 for alkalinity, 1.3 for calcium hardness; and 0.6 for temperature. Using the formula:

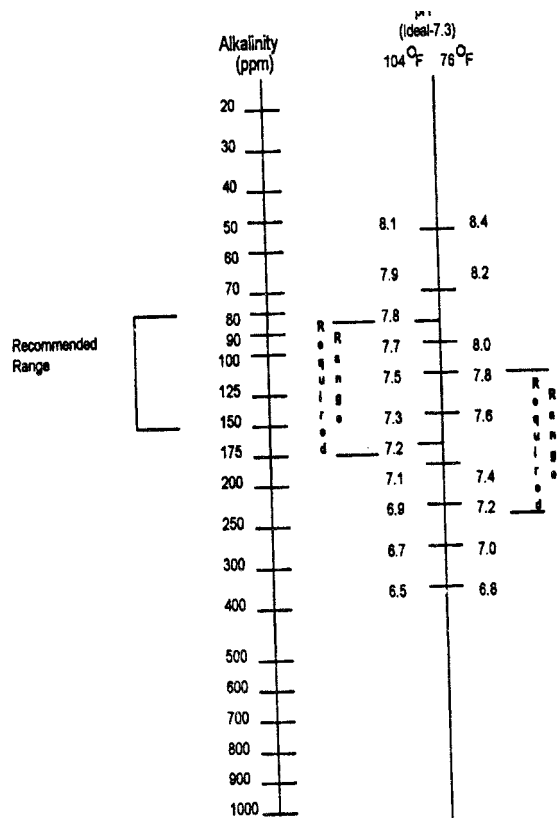
$$\text{L.I.} = 7.4 + 1.7 + 1.3 = 0.6 - 12.1 + -1.1$$

This pool water is not balanced and is corrosive. The pH is within the required range and almost ideal, however, the alkalinity and calcium hardness should be much higher (see Appendix B). Alkalinity can be raised by adding sodium bicarbonate (baking soda) and lowered by adding muriatic acid or sodium bisulfate (dry acid). Calcium hardness can be raised by adding calcium chloride but can only be lowered by replacing part or all of the pool water with lower calcium hardness water.

### APPENDIX B

#### LANGELIER INDEX/WATER BALANCE NOMOGRAPH METHOD

Measure the pool water pH, alkalinity and calcium hardness. The pH must be 7.2 - 7.8 pH can be raised by adding sodium carbonate (soda ash) and can be lowered by adding carbon dioxide (CO<sub>2</sub>), muriatic acid or sodium bisulfate (dry acid). Using the 104°F pH scale for spa pools and the 76°F pH scale for other pools, use a straight edge to line up the pH and alkalinity readings. The point where this extended line intersects the calcium hardness line is the level of calcium hardness needed for the water to be balanced. Do the same for pH and calcium hardness to get the alkalinity level needed for balance. The alkalinity and calcium hardness levels needed should be within the recommended ranges. Alkalinity can be raised by adding sodium bicarbonate (baking soda) and lowered by adding muriatic acid or sodium bisulfate (dry acid). Calcium hardness can be raised by adding calcium chloride but can only be lowered by replacing part or all of the pool water with lower calcium hardness water.



906, New Castle, Delaware by March 31, 2003.

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

**Summary of Proposed Change: Transitional Medicaid Program**

To ensure Federal Financial Participation (FFP) back to October 2002, a state plan amendment was submitted to the Centers for Medicare and Medicaid Services (CMS), on November 22, 2002, to continue Transitional Medicaid using the authority at **Section 1931(d)** of the Social Security Act. Section 1931(d) allows states to continue IV-A waivers if the waiver affects Medicaid eligibility even after the date the waiver would otherwise expire. CMS has rejected the plan amendment language because upon their determination only certain IV-A items can continue. As such, the language in the state plan was changed to indicate that DSS is using the authority at **Section 1931(b)(2)(C)** instead of Section 1931(d) to continue the IV-A waivers. To ensure compatibility with the plan amendment, the rules in the Division of Social Services Manual (DSSM) must change.

**DSS PROPOSED REGULATIONS #03-09**

**REVISIONS:**

**15120.2 Financial Eligibility**

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

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

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

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

When an earner's wages are so low (\$90 or less in the month) that the income is zero before any part of the \$30 plus 1/3 disregard can be applied, that month does not count

**DIVISION OF SOCIAL SERVICES**  
 Statutory Authority: 31 Delaware Code,  
 Section 107 (31 Del.C. §107)

**Public Notice**

**Transitional Medicaid Program**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box

as one of the four (4) consecutive months and the earner is eligible for the disregard for four (4) additional months.

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

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

When an earner has received the \$30 and 1/3 disregard in four (4) consecutive months and the \$30 deduction has been available for eight (8) consecutive additional months, neither disregard can be applied to earned income until the individual has not received the 30 and 1/3 disregard for twelve (12) consecutive months.

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

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

Any diversion assistance provided does not count as income.

Resources are not counted for Medicaid under Section 1931.

### **15200 Transitional Medicaid**

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

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

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

The eligibility group described in "Low Income

Families with Children under Section 1931", will be referred to as "receiving Medicaid under Section 1931" throughout this section.

Delaware's welfare reform waiver, "Delaware's A Better Chance Welfare Reform Program" (DABC) ~~includes included~~ a modification to the length of the Transitional Medicaid period. The DABC waiver ~~extends extended~~ Transitional Medicaid benefits for up to 24 months. This waiver ~~expires expired~~ on September 30, 2002. ~~DSS will use the option under Section 1931(d) of the Social Security Act to continue the 24-month Transitional Medicaid extension.~~ DSS will use the option under Section 1931(b)(2)(C) of the Social Security Act to disregard all earned income for 12 months after employment causes ineligibility for a family under Section 1931. (See DSSM 15120.2.) Effective October 1, 2002, Transitional Medicaid coverage extends for up to one year. The year is divided into two periods of six months each. Families who establish eligibility for Transitional Medicaid prior to October 1, 2002, may be eligible for up to 24 months of Transitional Medicaid. Families who establish eligibility for Transitional Medicaid on or after October 1, 2002 may be eligible for up to 12 months of Transitional Medicaid.

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

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

#### 15200.1 Initial Eligibility for First Six Months

At the time a family becomes ineligible for Medicaid under Section 1931 determine whether the family meets the following three requirements.

(Break in continuity of sections)

#### 15200.4 First Month Of Transitional Medicaid

Transitional Medicaid begins with the month of ineligibility for Medicaid under Section 1931 due to an increase in earned income or loss of earned income disregards. The month of ineligibility for Medicaid under Section 1931 is the month in which the family's income exceeds either 185% of the standard of need or the standard of need.

Someone who is not timely in reporting the start of employment or increased wages could have their family's transitional benefits reduced so that they only receive the ~~24~~ 12 months of transitional coverage from when they should

have been closed. But, we will not totally disqualify a family.

#### 15200.5 Eligibility During First ~~12-~~ Six Month Period

The family will receive Transitional Medicaid without any reapplication for the first ~~12~~ six months. The family must be notified when they lose eligibility for Medicaid under Section 1931 that they are eligible for Transitional Medicaid and the reasons why the benefits could be terminated. DCIS will automatically notify Transitional Medicaid families and issue cards for the family members. The notice will include information about termination of benefits.

##### 15200.5.1 Child Living in the Home

To continue to receive Medicaid throughout the first ~~12-~~ six-month period the following conditions must be met in addition to the initial eligibility requirements:

- there is a child living in the home.

The rules of Medicaid under Section 1931 are used to determine if a child is living in the home. When it is determined that a family no longer has a child living in the home, the family is no longer eligible under this program. The case must be reviewed to determine if the family members are eligible for Medicaid under another program.

#### 15200.6 Eligibility During Second ~~12-~~ Six Month Period

~~A redetermination of eligibility must be completed at the end of the first 12-month period.~~

To continue to receive Medicaid during the second ~~12-~~ six-month period, the conditions listed in 15200.6.1, 15600.6.2 and 15600.6.3 must be met in addition to the initial eligibility requirements.

##### 15200.6.1 Child Living in the Home

To continue to receive Medicaid throughout the second ~~12-~~ six-month period there must be a child living in the home.

The rules of Medicaid under Section 1931 are used to determine if a child is living in the home. When it is determined that a family no longer has a child living in the home, the family is no longer eligible under this program. The case must be reviewed to determine if the family members are eligible for Medicaid under another program.

##### 15200.6.2 Employment of Caretaker Relative

To continue to receive Medicaid throughout the second ~~12-~~ six-month period a caretaker relative must be employed during each month unless good cause exists.

##### 15200.6.3 Limit on Gross Monthly Earnings

The family's gross monthly earnings (less the monthly costs of necessary dependent care) are at or below 185% of the Federal Poverty Level (FPL) and continue to be at or

below 185% FPL throughout the second ~~12-~~ six month period. The FPL is effective each July for Transitional Medicaid.

There are no limits on necessary dependent care costs. Prospective budgeting is used to determine family income. Do not add unearned income to earned income. Count the earned income of all family members living in the home who were members of the family unit the month the family became ineligible for Medicaid under Section 1931 and any individual who would be included in the caretaker relative's assistance unit if the family were now applying for Medicaid under Section 1931.

Exception: Do not count the earned income of a dependent child, regardless of student status.

#### 15200.7 ~~24-~~ 12-Month Period of Eligibility

A family gets ~~24~~ 12 months of Transitional Medicaid from the month of ineligibility for Medicaid under Section 1931, even if they become eligible again for Medicaid under Section 1931. The clock on the ~~24~~ 12-month period does not stop running when eligibility for Medicaid under Section 1931 is reestablished. The ~~24~~ 12 months of Transitional Medicaid run concurrently with months of eligibility for Medicaid under Section 1931.

If the family again loses eligibility for Medicaid under Section 1931 for non-work reasons, the transitional benefit period is unaffected. If the family is terminated again for earned income reasons, a new transitional period may begin.

#### 15200.8 Termination of Eligibility

Eligibility for Transitional Medicaid may be terminated in either the first or second ~~12-~~ six month period for the reasons described below.

##### 15200.8.1 First ~~12-~~ Six-Month Period

Eligibility for Transitional Medicaid will be terminated during the first ~~12-~~ six month period if the family no longer has a child living in the home. Use the definition for child as defined under Section 1931 Medicaid. A child is under age 18 or is under age 19 and who is still a full-time student in high school, GED, or equivalent program and will graduate prior to his or her 19th birthday. Emancipated minors are considered adults.

Eligibility will also be terminated if the family is found to have received Medicaid under Section 1931 "fraudulently" in the preceding six months. Fraud is defined at the end of this section.

##### 15200.8.2 Second ~~12-~~ Six-Month Period

Eligibility for Transitional Medicaid will be terminated if:

- the family no longer has a child living in the home
- the caretaker relative is no longer employed and good cause does not apply

- the family's monthly gross earned income minus dependent care costs exceeds 185% FPL.

We must explore eligibility for any other Medicaid program before Transitional Medicaid is terminated.

Effective November 4, 1998

Amended effective \_\_\_\_\_

---

**DEPARTMENT OF INSURANCE**

18 DE Admin Code 1310

Statutory Authority: 18 Delaware Code,  
Sections 311, 2304(16), and 2312  
((18 Del.C. §§311, 2304(16), and 2312))

**Notice Of Public Hearing**

Insurance Commissioner Donna Lee H. Williams hereby gives notice that a public hearing will be held on Wednesday, March 26, 2003, at 10:00 a.m. in the Hearing Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amendments to Regulation 1310 (formerly Regulation 80) relating to the Standards For Prompt, Fair And Equitable Settlement Of Claims For Health Care Services

The purpose for amending Regulation 1310 is to re-define certain terms and to reduce the number of days in which a health insurer may pay a clean claim from 45 to 30. Additionally, the regulation will be re-numbered to conform to the format required by the Registrar of Regulations. This is a second hearing to consider amendments to the regulation resulting from public comment on the regulation as originally proposed.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del. C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than Tuesday March 25, 2003, at 2:00 p.m. and should be addressed to Deputy Attorney General Michael J. Rich, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or give an oral statement must notify Michael J. Rich at (302) 739-4251, Ext. 171 no later than Tuesday, March 25, 2003.

**REGULATION ~~80~~1310****STANDARDS FOR PROMPT, FAIR AND  
EQUITABLE SETTLEMENT OF CLAIMS FOR  
HEALTH CARE SERVICES**

Adopted and signed on July 2, 1998

**1.0 Authority**

This regulation is adopted by the Commissioner pursuant to 18 Del. C. §§ 311, 2304(16), and 2312. It is promulgated in accordance with 29 Del. C. Chapter 101.

**2.0 Definitions**

For the purpose of this regulation, the following definitions shall apply:

~~a. **Health Insurer** – health insurance companies, health maintenance organizations, health service corporations and any other entity providing a plan of health insurance or benefits subject to state insurance regulations.~~

~~b. **Health Care Provider** – any entity or individual licensed, certified or otherwise permitted by law to provide health care in the ordinary course of business, practice or profession.~~

~~c. **Policyholder** – a person covered under a health insurance policy or a representative designated by such person and entitled to make claims on his or her behalf.~~

~~d. **Clean Claim** – a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that substantially prevents timely payments from being made on the claim.~~

2.1 **“Carrier”** or **“Health Insurer”** shall have the same meaning applied to it by 18 Del.C. § 3343(a)(1).

2.2 **“Clean Claim”** shall mean a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that substantially prevents timely payments from being made on the claim.

2.3 **“Health Care Provider”** shall mean any entity or individual licensed, certified or otherwise permitted by law pursuant to Titles 16 or 24 of the Delaware Code to provide health care services.

2.4 **“Policyholder,” “Insured”** or **“Subscriber”** shall be a person covered under a health insurance policy or a representative designated by such person and entitled to make claims on his or her behalf.

**3.0 Scope**

This regulation shall apply to all health insurers as defined in Section 2 above, and shall apply to all plans or policies of health insurance or benefits delivered or issued for delivery in this State and which cover residents of this State or employees of employers located in this State and their dependents. Exempted from the provisions of this regulation are policies of automobile and workers compensation insurance, hospital income and disability income insurance, Medicare supplement and long-term care

insurance.

#### 4.0 Purpose

The purpose of this regulation is to ensure that health insurers pay claims to policyholders and health care providers in a timely manner. This regulation will establish standards for both determining promptness in settling claims and determining the existence of a general business practice for failing to promptly settle such claims under 18 *Del. C.* § 2304(16).

#### 5.0 Prompt Payment of Claims

5.1 A health insurer shall pay a clean claim to a policyholder or covered person, or make payment to a health care provider no later than ~~30~~45 calendar days after receipt of an electronically filed clean claim or bill for services and no later than 45 calendar days after receipt of a paper filed clean claim for services.

5.2 A claim is not a clean claim as defined in section ~~2~~2.2 if any of the following circumstances exist:

5.2.1 Where the obligation of a health insurer to pay a claim or make a payment for health care services rendered is not reasonably clear due to a good faith dispute regarding the eligibility of a person for coverage, the liability of another insurer or corporation for all or part of a claim, the amount of the claim, the benefits covered under a contract or agreement, or the manner in which services were accessed or provided.

5.2.2 Where there exists a reasonable basis supported by specific information, available for review by the Department, that such claim was submitted fraudulently.

5.2.3 For claims properly disputed or litigated and subsequently paid.

5.3 In those cases covered by ~~subparagraph b(1) above~~section 5.2.1, a health insurer shall pay all portions of a claim meeting the definition of clean claim ~~found in section 2-d~~ in accordance with subsection 5-a hereofsection 5.1. Additionally, a health insurer shall notify the ~~policyholder party financially responsible for the payment of the claim~~ in writing within 3045 days of the receipt of the claim:

5.3.1 that such carrier is not obligated to pay the claim or make the medical payment, in whole or in part, stating the specific reasons why it is not liable; or

5.3.2 that additional information is needed and is being sought to determine liability to pay the claim or make the health care payment.

5.4 Upon receipt of the information ~~provided in subparagraph c(2) above~~ required by section 5.3.2, or upon the administrative resolution of a dispute wherein the health insurer is deemed obligated to pay the claim or make medical payment, a health insurer shall ~~comply with paragraph "a." of this section~~ make payment as required by section 5.1.

#### 6.0 General Business Practice

6.1 Within a 36 month period, three instances of a health insurer's failure to pay a Claim or bill for services promptly, as defined in section 5 above, shall give rise to a rebuttable presumption that the insurer is in violation of 18 *Del. C.* § 2304 (16)(f). In determining whether the presumption is rebutted the Commissioner may consider, among other things, whether the health insurer meets nationally recognized timeline standards for claims payments such as those applicable to the Medicare, Medicaid or Federal Employees Health Benefit Plan programs.

6.2 The 36 month time period established in ~~paragraph "a." above~~ section 6.1 shall be measured based upon the date the claims or bills became due. Each claim or bill, or portion of a claim or bill, pertaining to a single medical treatment or procedure provided to an individual policyholder that is processed in violation of this regulation shall constitute an "instance" as described in ~~paragraph "a." above~~ section 6.1.

#### 7.0 Penalties

In addition to the imposition of penalties in accordance with 18 *Del. C.* § 2312(b), the Commissioner may order the health insurer to pay to the health care provider or claimant, in full settlement of the claim or bill for health care services, the amount of the claim or bill plus interest at the maximum rate allowable to lenders under 6 *Del. C.* 2301(a). Such interest shall be computed from the date the claim or bill for services first became due.

#### 8.0 Causes of Action

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a health insurer or its representative based upon a violation of 18 *Del. C.* § 2304 (16).

#### 9.0 Separability

If any provision of this regulation or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

#### 10.0 Effective Date

This regulation, as amended, shall become effective ~~120~~90 days from the date signed by the Commissioner ~~after its publication in the Register of Regulations on July 1, 2003.~~

Adopted And Signed By The Commissioner  
\_\_\_\_\_, 2003



**DEPARTMENT OF LABOR****DIVISION OF INDUSTRIAL AFFAIRS**

Statutory Authority: 29 Delaware Code,  
Section 8503(7) (29 Del.C. §8503(7))

**PLEASE NOTE: THE FOLLOWING REGULATION IS A REPROPOSAL AND REPLACES THE PROPOSED REGULATION FOUND IN THE NOVEMBER 2002 ISSUE OF THE REGISTER ON PAGE 602 (6 DE REG. 202 (11/1/02))**

**Clean Indoor Air Act Regulations****Notice of Public Comment**

Interested parties are invited to present their views at the public hearing which is scheduled as follows:

9:00 a.m., Monday, March 24, 2003  
Division of Motor Vehicles  
Second Floor Conference Room  
Public Safety Building  
303 Transportation Circle  
Dover, DE 19901

Interested parties can obtain copies of the proposed regulations at no charge by contacting the Office of Labor Law Enforcement at:

4425 North Market Street  
Wilmington DE 19802

or by telephone at (302) 761-8318.

**Delaware Clean Indoor Air Act Regulations****Adopted: 9/15/95****I. Introduction.**

The General Assembly finds that it is in the best interest of the people of this State to protect non-smokers from involuntary exposure to environmental tobacco smoke in most indoor areas open to the public, in public meetings, food service establishments, and places of employment.

The General Assembly recognizes that a balance should be struck between the health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into and regulation of private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places. Therefore, the General Assembly declares that the purpose of the "Clean Indoor Air Act" is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke.

The Department of Labor has been charged with the

enforcement of this Act as it applies to employers, employees, places of employment and the work place.

**II. Definitions**

The words, terms and phrases used in these Regulations, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

1. "Act" means 16 Del.C. §§2901 et seq., the "Clean Indoor Air Act".

2. "Employer" means any person, partnership, association, corporation or nonprofit entity that employs one or more persons, including the legislative, executive, and judicial branches of state government; any county, city, town, village or political subdivision of the state, public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government.

C. "Place of employment" means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services, but that is not generally accessible to the public.

D. "Smoke-free work area" means an indoor area in a place of employment where no smoking occurs. Such area shall be clearly designated and separate from any smoking area.

E. "Smoking" means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

F. "Smoking area" means an enclosed indoor area in which smoking is permitted. Such smoking area shall be clearly designated and separate from any area in which smoking is not permitted. In a place of employment, the smoking area shall be separated from a smoke-free work area by walls or some other means equally effective in reducing the effects of smoke on the smoke-free work area, other than ventilation systems or air cleaning devices.

G. "Work area" means an area in a place of employment where one or more employees are routinely assigned and perform services for their employer.

**III. Requirements In Places Of Employment.**

A. **Written Smoking Policy.** Each employer shall adopt and implement a written smoking policy that contains at least the following:

1. the provision of a work area where no smoking occurs for each employee who requests one;

2. a notice that the employer is not required to incur any expense to make structural or physical modifications to accommodate individual preferences. If a satisfactory accommodation cannot be reached, the

preferences of non-smoking employees shall prevail;

3. the provision that the employer may set aside a work area for smoking;

4. the provision of non-smoking areas in employee cafeterias, lunch rooms and lounges. The non-smoking areas in employee cafeterias and lunchrooms shall be sufficient to meet employee demand;

5. a procedure to resolve employee disputes and objections arising under the smoking policy; and

6. a statement providing that the employer will not retaliate or take any adverse personnel action against any employee exercising his or her rights under the Act.

B. Posting of Smoking Policy. Employers shall post the smoking policy in normal employee posting areas.

#### **IV. Sign Posting Requirements.**

"Smoking" or "No Smoking" signs, or the international "No Smoking" symbol (which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) shall be prominently posted and properly maintained where smoking is regulated by the provisions of the Act. These signs shall be posted and maintained by the employer, owner, operator, manager or other person having control of the indoor area of the place of employment.

#### **V. Violations And Administrative Penalties.**

1. Violations. The following acts constitute violations of these regulations:

1. permitting smoking in an area which has been designated as a non-smoking area;

2. failing to post a non-smoking sign as required by Section IV;

3. willfully destroying or defacing a required posted sign;

4. failing to adopt a smoking policy as set forth in section III, Subsection A; and

5. failing to designate a non-smoking area as required by these regulations.

2. Administrative Penalties. Any person who violates any provision of these regulations shall be subject to an administrative penalty of \$25 for the first violation and not less than \$50 for each subsequent violation.

#### **VI. Enforcement.**

A. Complaint. Any person may file a complaint with the Office of Labor Law Enforcement alleging a violation of any provision of this section. The Complaint shall be in writing, and shall set forth the specifics of any alleged violation of the Act. The Complaint shall be directed to the Administrator of the Office of Labor Law Enforcement.

B. Enforcement Actions. Upon complaint to the Office

of Labor Law Enforcement, the Administrator will assign the Complaint for investigation to a Labor Law Enforcement Specialist. The Office of Labor Law Enforcement, upon a determination that a violation has occurred, shall enforce the provisions of this section of the Act as follows:

1. The Office of Labor Law Enforcement may serve notice requiring the prompt correction by the owner, proprietor, manager or other person having the authority to manage and control any place of employment, of any violation of this section. Such notice will give a specified date on which compliance is required. Follow-up action will be taken to ensure compliance.

2. If prompt corrective action is not taken in accordance with the foregoing notice, the Office of Labor Law Enforcement may issue to any person a citation for payment of administrative penalties as outlined in Section V, Subsection B.

C. Waiver of Provisions. The Director of the Division of Industrial Affairs, upon written request, may waive the provisions of these Regulations, if it is determined that there are compelling reasons to do so, providing that such waiver will not significantly affect the health and comfort of nonconsumers of tobacco products. The Director shall make a decision as to whether a waiver should be granted within thirty (30) days after receipt of the written request. This waiver may be revoked by the Director at any time should the Director believe that there are no longer compelling reasons for the waiver.

#### **VII. Preemption And Severability.**

A. Preemption. The provisions of 16 Del.C. §§2901 et seq. and the provisions of these Regulations shall preempt and supersede any provisions of any municipal or county ordinance or regulation on the same subject which were enacted or adopted after the effective date of the Act.

B. Severability. If any provision of the "Clean Indoor Air Act" or these Regulations, or any portion thereof or the application or method of implementation is held invalid, the remainder of the Act and these Regulations shall not be affected by such holding and shall remain in full force and effect.

#### **VIII. Subsequent Modification Of Regulations.**

The Secretary of Labor may, upon her/his own motion or upon the written request of any member of the public setting forth reasonable grounds therefore, revoke or modify these regulations, after an opportunity has been given to members of the public to present their views on the proposed changes. These regulations shall take effect thirty (30) days after the date of adoption.

Approved and adopted this 15<sup>th</sup> day of September, 1995

Darrell J. Minott, Secretary of Labor

**DELAWARE DEPARTMENT OF LABOR  
DIVISION OF INDUSTRIAL AFFAIRS**

**Proposed Regulations for Public Consideration:**

Title 16- Health and Safety, Chapter 29-Clean Indoor Air Act, affecting places of employment within the jurisdiction of the Delaware Department of Labor as authorized by 16 Del. C. § 2906.

**Department of Labor Policy:** The legislative intent of the Clean Indoor Air Act is to protect nonsmokers from involuntary exposure to environmental tobacco smoke, not only in most indoor public places which fall within the jurisdiction of the Department of Health and Social Services, but also indoor places of employment which fall within the jurisdiction of the Department of Labor. Generally, the Act restricts smoking in any indoor workplace not exempt by statute, regulation or waiver.

**Department of Labor Jurisdiction:** The Department of Labor is charged with the enforcement of this Act as it applies to employers, employees, places of employment and the workplace. The Act authorizes the Department of Labor to impose administrative penalties of \$100 dollars for the first offense but not less than \$250 for subsequent violations when appropriate. The Department shall cite such penalties against the employer, owner, operator, manager or other individual having control of the workplace, who knowingly permits smoking therein.

**Acknowledged Workplace Exemptions:** In attempting to provide clarification on exempt status, the Department may propose regulations acknowledging additional workplace exemptions consistent with the legislative intent under the Act at 16 Del. C. § 2904. The Department hereby proposes to recognize "Private Clubs" as defined herein, as beyond the jurisdiction of the Department of Labor as inapplicable or exempt from enforcement under the Act.

**"Private Club Exemption"** means any club or organization that does not permit the general public to access its facilities or activities. Access is denied to anyone who does not agree or adhere to the rules of membership. In order to be considered a private club or organization for purposes of the Clean Indoor Air Act, the establishment must adhere to all of, but not limited to, the following criteria:

- a. Have a permanent mechanism to carefully screen applicants for membership on subjective rather than objective factors;
- b. Limits access and use of facilities, services, and activities of the organization to members and guests of

the members;

- c. Is controlled by its membership and operates solely for the benefit and pleasure of its members; and
- d. Advertises exclusively and only to its members, excluding membership drives.

**"Workplace"** means a "work area" as defined by the statute.

**Enforcement by the Department of Labor:** The Department's administrative process is as follows: a) Complaint: Any employee alleging a workplace violation of the Clean Indoor Air Act, shall report such violations which has or is occurring, in writing to the Office of Labor Law Enforcement, Division of Industrial Affairs, 4425 North Market Street, Wilmington, DE 19802.

a) Enforcement Actions: The Department shall investigate all written complaints to determine if a violation has or is occurring. The Department may investigate alleged violation from any source. The Office of Labor Law Enforcement may conduct an inspection of any workplace where there is a suggestion of an employer's non-compliance with the Clean Indoor Air Act. The Department shall take such steps as is necessary to bring about immediate correction and future compliance.

b) Administrative Penalties: If the Office of Labor Law Enforcement determines that the employer knowingly failed or refused to comply with the Act's workplace restrictions, the Officer shall provide written notice of such determination. The notice shall include a date certain for compliance with future monitoring of the workplace with inspections. If prompt corrective action is not taken in accordance with the Department's notice, the Department shall serve a citation for payment of the administrative penalty upon the person having control of the workplace where the violation occurred.

c) Right of Appeal of the Penalty: Upon receipt of a citation with assessment of administrative penalties, the person named and served, shall have thirty days from service to appeal the determination to the Secretary. The appeal must be in writing to the Secretary of Labor, 4425 North Market Street, Wilmington DE 19802.  
Severability.

If any provision of these Regulations, or any portion thereof or the application or method of implementation is held invalid, the remainder of these Regulations shall not be affected by such holding and shall remain in full force and effect.

Submitted this February 21, 2003.

Harold E. Stafford  
Secretary of Labor

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

**AIR QUALITY MANAGEMENT SECTION**

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

**REGISTER NOTICE  
SAN # 2003-01**

**1. TITLE OF THE REGULATION:**

Regulation 38 - Emission Standards For Hazardous Air Pollutants For Source Categories

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

In April 2002, the EPA promulgated an amendment to the section 112(j) requirements in 40 CFR Part 63 Subpart B. In May 2002, Air Quality Management Section promulgated similar section 112(j) requirements. Soon after EPA's promulgation, the Sierra Club sued EPA for several reasons, but the primary issue was EPA's delaying the submittal of the second of a two-part MACT application until 24 month following the submittal of the Part 1 MACT application, which was due on May 15, 2002.

On November 26, 2002, these parties settled that suit. The settlement agreement requires EPA to revise the section 112(j) requirements, including the Part 2 MACT application submittal date, and to have those agreed-upon revisions finalized no later than April 27, 2003.

This proposed amendment would revise existing Subpart B of Regulation 38 – EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES to reflect negotiated changes that the EPA must implement as a result of the November 2002 settlement. The amendment to Subpart B proposes to revise the Part 2 MACT application submittal dates and provides new requirements for requesting applicability determinations consistent with that settlement. In addition, several other minor changes in language are proposed to improve clarity.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Delaware Code, Chapter 60

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

None

**6. NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed amendment will extend through March 31, 2003. Interested parties may submit comments in writing during this time frame to: Jim Snead, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Monday, March 24, 2003 beginning at 6:00 PM in the DNREC Auditorium in the Richardson and Robbins Building, located at 89 Kings Highway, Dover, DE.

**7. PREPARED BY:**

James R. Snead (302) 323-4542 February 4, 2003

**REGULATION NO. 38**

**EMISSION STANDARDS FOR HAZARDOUS  
AIR POLLUTANTS FOR SOURCE CATEGORIES**

5/11/02

Subpart B Requirements for Case-By-Case Control Technology Determinations for Major Sources

5/11/02

**OVERVIEW OF SUBPART B**

Subpart B of Regulation No. 38 consists of two separate sets of requirements. One set of requirements, which are included in Sections 63.40 through 44, implement the section 112(g)(2)(B) provisions of the Clean Air Act. These requirements apply to owners or operators who construct or reconstruct a major source of hazardous air pollutants after June 29, 1998. The Department adopted these requirements into Regulation No. 38 in Apr. 1998.

The other set of requirements, which are included Sections 63.50 through 56, implement the section 112(j) provisions of the Clean Air Act. These requirements apply to owners or operators of any collection of equipment defined in a section 112(c) source category for which the Administrator has failed to promulgate an emission standard by the section 112(j) deadline and the collection of equipment is located at a source that is subject to Regulation 30.

Sections 63.45 through 49 of this subpart have been reserved.

4/22/98

Section 112(g)(2)(B) Requirements

The provisions of Sections 63.40 through 63.44 in Subpart B, of Title 40, Part 63 of the Code of Federal Regulations, dated July 1, 1997 are hereby adopted by reference with the following changes:

(a) "Regulation 30" shall replace "title V" wherever it appears.

(b) Paragraph 63.40(b) shall be replaced with the

following language: “The requirements of Secs. 63.40 through 63.44 of this subpart apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after June 29, 1998 unless the major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to section 112(d), section 112(h), or section 112(j) and incorporated in another subpart of part 63, or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before June 29, 1998.

(c) The opening sentence of Section 63.41 shall be replaced with the following language: “Terms used in Secs. 63.40 through 63.44 that are not defined in this section have the meaning given to them in the Act and in subpart A of this regulation.

(d) The opening of the definition of Available information found in Section 63.41 shall be replaced with the following language: “*Available information* means, for purposes of identifying control technology options for the affected source, information contained in the following information sources as of the date of issuance of the construction permit which incorporates the final and effective case-by-case MACT determination:”.

(e) The following errata found in Section 63.41 as published in the Federal Register and Code of Federal Regulations shall be corrected as follows:

(i) “for” in definition (3) of Available information shall be replaced with “from”;

(ii) HAP’s” in definition of Construct a major source shall be replaced with “HAP”;

(iii) “*suite*” in definition of Greenfield suite shall be replaced with “*site*”;

(iv) deduction” in definition of Maximum achievable control technology (MACT) emission limitation for new sources shall be replaced with “reduction”; and

(v) “that potential” in definition of Reconstruct a major source shall be replaced with “the potential”.

(f) “Administrator” in the definition of Available information found in Section 63.41 shall be replaced with “Administrator or Department.”

(g) Paragraph (2)(ii)(A) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: “The permitting authority has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT) or lowest achievable emission rate (LAER) under Regulation 25 of the State of Delaware “Regulations Governing the Control of Air Pollution” for those HAP to be emitted by the process or production unit; or”.

(h) Paragraph (2)(ii)(B) in the definition of Construct a major source found in Section 63.41 shall be replaced with

the following language: “The permitting authority determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT or LAER determination);”.

(i) Paragraph (2)(iv) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: “The permitting authority has provided notice and an opportunity for public comment concerning its determination that criteria in paragraphs (2)(i), (2)(ii), and (2)(iii) of this definition apply and concerning the continued adequacy of any prior LAER or BACT determination;”.

(j) Paragraph (2)(v) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: “If any commenter has asserted that a prior LAER or BACT determination is no longer adequate, the permitting authority has determined that the level of control required by that prior determination remains adequate; and ”.

(k) Paragraph (2)(vi) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: “Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations are made by the permitting authority are applicable requirements under section 504(a) of the Act and under Section 6 of Regulation 30 of the State of Delaware “Regulations Governing the Control of Air Pollution” and either have been incorporated into any existing Regulation 30 permit for the affected facility or will be incorporated into such permit upon issuance or revision.”

(l) The definition of Construction permit is added to the list of definitions found in Section 63.41 with the following language: “*Construction permit* means a construction permit issued pursuant to Regulation 2 and/or 25 of the State of Delaware “Regulations Governing the Control of Air Pollution.”

(m) The opening of the definition of Control technology found in Section 63.41 shall be replaced with the following language: “*Control technology* means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants in a way that would --”.

(n) The definition of Effective date of section 112(g)(2)(B) in a State or local jurisdiction found in Section 63.41 shall be deleted.

(o) The definition of Electric utility steam generating unit found in Section 63.41 shall be replaced with the following language: “*Electric utility steam generating unit* means any fossil fuel fired combustion unit that serves a generator with a nameplate capacity of more than 25 megawatts that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its nameplate electric output capacity and more than

25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.”

(p) The definition of HAP is added to the list of definitions found in Section 63.41 with the following language: “HAP means a hazardous air pollutant (i.e., any chemical listed in or pursuant to section 112(b) of the Act).”

(q) The definition of Notice of MACT Approval found in Section 63.41 shall be deleted.

(r) The definition of Permitting authority found in Section 63.41 shall be replaced with the following language: “Permitting authority means the Department of Natural Resources and Environmental Control as defined in Title 29, Delaware Code, Chapter 80, as amended.”

(s) The entire content of Paragraph 63.42(a) as promulgated shall be deleted and its heading shall be replaced with the following language: “(a) [Reserved].”

(t) The entire content of Paragraph 63.42(b) as promulgated shall be deleted and its heading shall be replaced with the following language: “(b) [Reserved].”

(u) Paragraph 63.42(c) shall be replaced with the following language: “After June 29, 1998, no person may begin actual construction or reconstruction of a major source of HAP unless: ”.

(v) The following errata published in the Federal Register and Code of Federal Regulations shall be corrected as follows:

(i) “owner and operator” in paragraph 63.42(c)(1) shall be replaced with “owner or operator”;

(ii) “63” in paragraph 63.42(c)(1) shall be deleted; and

(iii) “the anticipated” in paragraph 63.43(e)(2)(v) shall be replaced with “The anticipated”.

(w) Paragraph 63.42(c)(2) shall be replaced with the following language: “The permitting authority has issued a construction permit which incorporates a final and effective case-by-case determination pursuant to the provisions of Sec. 63.43; requiring the emissions from the constructed or reconstructed major source to be controlled to a level no less stringent than the maximum achievable control technology emission limitation for new sources.”

(x) Paragraph 63.43(b) shall be replaced with the following language: “When a case-by-case determination of MACT is required by Sec. 63.42(c), the owner and operator shall obtain from the permitting authority an approved MACT determination pursuant to paragraph (c) of this section.”

(y) Paragraph 63.43(c)(1) shall be replaced with the following language: “[Reserved].”

(z) Paragraph 63.43(c)(2) shall be replaced with the following language: “The owner or operator shall follow all procedures in Regulation 2 and/or 25, except that --”.

(aa) Paragraph 63.43(c)(2)(i) shall be replaced with the following language: “the provisions of Section 2.2 of

Regulation 2 do not apply to any owner or operator that is subject to the requirements of Secs. 63.40 through 63.44 and”.

(bb) Paragraph 63.43(c)(2)(ii) shall be replaced with the following language: “in addition to the provisions of Section 11.10 of Regulation 2, the final MACT determination and the construction permit shall expire if construction or reconstruction has not commenced within 18 months of permit issuance. The owner or operator may request and the permitting authority may grant an extension which shall not exceed an additional 12 months.”

(cc) Paragraph 63.43(c)(3) shall be replaced with the following language: “When desiring alternative operating scenarios, an owner or operator may request approval of case-by-case MACT determinations for each alternative operating scenario. Approval of such determinations satisfies the requirements of section 112(g) for each such scenario.”

(dd) Paragraph 63.43(c)(4) shall be replaced with the following language: “The MACT emission limitation and requirements established in the approved construction permit shall be effective as required by paragraph (j) of this section, consistent with the principles established in paragraph (d) of this section, and supported by the information listed in paragraph (e) of this section. The owner or operator shall comply with the requirements in paragraphs (k) and (l) of this section, and with all applicable requirements in subpart A of this regulation.”

(ee) The opening to Paragraph 63.43(d) shall be replaced with the following language: “The following general principles shall govern preparation by the owner or operator of each construction permit application requesting a case-by-case MACT determination concerning construction or reconstruction of a major source, and all subsequent review of and actions taken concerning such an application by the permitting authority:”.

(ff) Paragraph 63.43(e)(1) shall be replaced with the following language: “An application for a MACT determination shall be submitted at the same time as the construction permit application and shall specify a control technology selected by the owner or operator that, if properly operated and maintained, will meet the MACT emission limitation or standard as determined according to the principles set forth in paragraph (d) of this section. At the time of submittal, the owner or operator shall request that the permit application be processed pursuant to Section 11.2 (i) or 11.2 (j) of Regulation 2, whichever is appropriate.”

(gg) The opening to Paragraph 63.43(e)(2) shall be replaced with the following language: “In each instance where a constructed or reconstructed major source would require additional control technology or a change in control technology, the application for a MACT determination shall contain, independent of the permit application, the following information:”.

(hh) Paragraph 63.43(e)(2)(xiii) shall be replaced with the following language: "Any other relevant information required pursuant to subpart A of this regulation."

(ii) The opening to Paragraph 63.43(e)(3) shall be replaced with the following language: "In each instance where the owner or operator contends that a constructed or reconstructed major source will be in compliance, upon startup, with case-by-case MACT under this subpart without a change in control technology, the application for a MACT determination shall contain, independent of the permit application, the following information:"

(jj) The entire content of Paragraph 63.43(f) as promulgated shall be deleted and its heading shall be replaced with the following language: "(f) [Reserved]."

(kk) The entire content of Paragraph 63.43(g) as promulgated shall be deleted and its heading shall be replaced with the following language: "(g) [Reserved]."

(ll) The entire content of Paragraph 63.43(h) as promulgated shall be deleted and its heading shall be replaced with the following language: "(h) [Reserved]."

(mm) Paragraph 63.43(i) shall be replaced with the following language: "The permitting authority shall send notice of any approvals pursuant to paragraph (c)(2) of this section to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in affected States."

(nn) Paragraph 63.43(j) shall be replaced with the following language: "The effective date of a MACT determination shall be the date the permitting authority issues the construction permit which incorporates the final and effective MACT determination."

(oo) Paragraph 63.43(l)(1) shall be replaced with the following language: "An owner or operator of a constructed or reconstructed major source that is subject to a MACT determination shall comply with all requirements in the issued construction permit, including but not limited to any MACT emission limitation or MACT work practice standard, and any notification, operation and maintenance, performance testing, monitoring, reporting, and record keeping requirements."

(pp) Paragraph 63.43(l)(2) shall be replaced with the following language: "An owner or operator of a constructed or reconstructed major source which has obtained a MACT determination shall be deemed to be in compliance with section 112(g)(2)(B) of the Act only to the extent that the constructed or reconstructed major source is in compliance with all requirements set forth in the issued construction permit. Any violation of such requirements by the owner or operator shall be deemed by the permitting authority and by EPA to be a violation of the prohibition on construction or reconstruction in section 112(g)(2)(B) for whatever period the owner or operator is determined to be in violation of such requirements, and shall subject the owner

or operator to appropriate enforcement action under the Act."

(qq) Paragraph 63.43(m) shall be replaced with the following language: "Within 60 days of the issuance of a construction permit, the permitting authority shall provide a copy of such permit to the Administrator, and shall provide a summary in a compatible electronic format for inclusion in the MACT data base."

(rr) The phrase "under any of the review options available" in paragraph 63.44(a) shall be deleted.

(ss) The phrase "40 CFR part 70 or part 71, whichever is relevant," in 63.44(b) shall be replaced with the following language: "Regulation 30."

Secs. 63.45 through 49 [Reserved].

5/11/02~~3~~

Section 112(j) Provisions

Sec. 63.50 Applicability.

(a) General applicability.

(1) The requirements of Secs. 63.50 through 56 of this subpart implement section 112(j) of the Act.

(2) The requirements of Secs. 63.50 through 56 of this subpart apply to owners or operators of affected 112(j) sources that are located at a major source that is subject to Regulation 30 of the State of Delaware "Regulations Governing the Control of Air Pollution."

(3) The requirements of Secs. 63.50 through 56 of this subpart do not apply to research or laboratory activities as defined in Sec. 63.51 of this subpart.

(b) Relationship to other State and Federal requirements.

The requirements of Secs. 63.50 through 56 of this subpart are additional to all other applicable State and Federal requirements.

Sec. 63.51 Definitions.

Terms used in Secs. 63.50 through 56 of this subpart that are not defined in this section have the meaning given to them in the Act or in subpart A of this regulation.

*Affected 112(j) source* means the collection of equipment, activities or both within a single contiguous area and under common control that is in a section 112(c) source category for which the Administrator has failed to promulgate an emission standard by the section 112(j) deadline.

*Available information* means, for purposes of conducting a MACT floor finding and identifying control technology options under Secs. 63.50 through 56 of this subpart, any information contained in the following information sources as of issuance of a final and legally effective case-by-case MACT determination according to paragraph 63.55(a) of this subpart:

(1) A relevant proposed regulation, including all supporting information.

(2) Relevant background information documents for a draft or proposed regulation.

(3) Any relevant regulation, information or guidance collected by the Administrator establishing a MACT floor finding and/or MACT determination.

(4) Relevant data and information available from the Clean Air Technology Center developed according to section 112(l)(3) of the Act.

(5) Relevant data and information contained in the Aerometric Information Retrieval System (AIRS) including information in the MACT database.

(6) Any additional information that can be expeditiously provided by the Administrator or Department.

(7) Any information provided by applicants in a Part 3 MACT application, an application for a permit, permit modification or administrative amendment according to the requirements of Secs. 63.50 through 56 of this subpart.

(8) Any additional relevant information provided by the applicant or others prior to or during the public comment period for a final and legally effective case-by-case MACT determination for an affected or a new affected 112(j) source.

*Control technology* means measures, processes, methods, systems or techniques to limit the emission of hazardous air pollutants which:

(1) Reduce the quantity of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;

(2) Enclose systems or processes to eliminate emissions;

(3) Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point;

(4) Are design, equipment, work practice or operational standards; or

(5) Are a combination of paragraphs (1) through (4) of this definition.

*Equivalent emission limitation* means an emission limitation, established under this subpart, which is equivalent to the MACT standard that the EPA would have promulgated under section 112(d) or (h) of the Act, had they done so by the section 112(j) deadline.

*Existing source maximum achievable control technology (MACT) requirements* means the requirements, which include, where feasible, an equivalent emission limitation, reflecting the maximum degree of reduction in emissions of hazardous air pollutants that the Department, taking into consideration the cost of achieving such emission reductions and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category to which such MACT standard applies. These requirements shall be based upon available information and shall not be less stringent than the MACT

floor.

*Maximum achievable control technology (MACT) floor* means:

(1) For existing sources:

(i) The average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Department and/or Administrator has emissions information), excluding those sources that have, within 18 months before the Department issues a final and legally effective MACT determination under this subpart, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in section 171 of the Act) applicable to the source category and prevailing at the time, in the category, for categories of stationary sources with 30 or more sources, or

(ii) The average emission limitation achieved by the best performing five sources (for which the Department and/or Administrator has emissions information) in the category, for categories with fewer than 30 sources.

(2) For new sources, the emission limitation achieved in practice by the best controlled source in the section 112(c) source category, where such source is equipment or collection of equipment that, by virtue of its structure, operability, type of emissions and volume and concentration of emissions, is substantially equivalent to the new affected 112(j) source and employs control technology for control of emissions of hazardous air pollutants that is practical for use on the new affected 112(j) source.

*New affected 112(j) source* means the collection of equipment, activities or both, that if constructed after the issuance of a final and legally effective case-by-case MACT determination according to paragraph 63.55(a) of this subpart, is subject to the applicable new source MACT requirements. According to paragraph 63.52(f)(3)(i) of this subpart, each permit shall define the term "new affected 112(j) source," which will be the same as the "affected 112(j) source" unless a different collection is warranted based on consideration of factors including:

(1) Emission reduction impacts of controlling individual sources versus groups of sources;

(2) Cost effectiveness of controlling individual equipment;

(3) Flexibility to accommodate common control strategies;

(4) Cost/benefits of emissions averaging;

(5) Incentives for pollution prevention;

(6) Feasibility and cost of controlling processes that share common equipment (e.g., product recovery devices);

(7) Feasibility and cost of monitoring; and

(8) Other relevant factors.



*New source maximum achievable control technology (MACT) requirements* means the requirements, which include, where feasible, an equivalent emission limitation, which shall be based upon available information and shall not be less stringent than the MACT floor and which reflects the maximum degree of reduction in emissions of hazardous air pollutants that the Department, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category to which such MACT standard applies.

*Research or laboratory activities* means activities whose primary purpose is to conduct research and development into new processes and products; where such activities are operated under the close supervision of technically trained personnel and are not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner and where the source is not in a source category, specifically addressing research or laboratory activities, that is listed according to section 112(c)(7) of the Act.

*Section 112(j) deadline* means the date 18 months after the date for which a relevant standard is scheduled to be promulgated under 40 CFR part 63, except that for all major sources listed in those source categories scheduled to be promulgated by November 15, 1994, the section 112(j) deadline is November 15, 1996 and for all major sources listed in those source categories scheduled to be promulgated by November 15, 1997, the section 112(j) deadline is December 15, 1999.

Sec. 63.52 Approval process for new and existing affected 112(j) sources.

(a) Sources that are ~~major~~ affected 112(j) sources on the section 112(j) deadline.

(1) Except as provided for in paragraph 63.52(a)(2) of this section, the owner or operator of any source that is an ~~major~~ affected 112(j) source on the section 112(j) deadline shall comply with the following.

(i) Submit to the Department by the section 112(j) deadline:

(A) A Part 1 MACT application according to paragraph 63.53(a) of this subpart or

(B) If desired, a request for an applicability determination by the Department of whether a source is an ~~major~~ affected 112(j) source.

(ii) An owner or operator that submitted a timely request for an applicability determination in accordance to paragraph (a)(1)(i)(B) of this section that did not received a determination by May 11, 2003 shall submit the following:

(A) A Part 2 MACT application in accordance with paragraph (a)(1)(iii) of this section or

(B) If needed, a new request for an

applicability determination not later than July 11, 2003. The new request shall include the following:

(I) The affected 112(j) source category for which the request is being made;

(II) The specific emission source(s) of concern;

(III) The specific language in the EPA proposed standard associated with each specified concern identified in paragraph (a)(1)(ii)(B)(II) of this section; and

(IV) Any additional information, as appropriate, that illustrates why a determination of applicability is still required.

(iii) Submit to the Department a Part 2 MACT application according to paragraph 63.53(b) of this subpart not later than ~~24 months following~~ the applicable "Part 2 Due Date" listed in Table 52-1 of this section, unless the Administrator has promulgated the final rule for the applicable source category or subcategory on or before the applicable "Part 2 Due Date".

~~(A) The submittal of the Part 1 MACT application or~~

~~(B) The receipt of the Department's positive applicability determination according to paragraph (d)(1) of this section.~~

(iv) If desired, include with the Part 2 MACT application submitted according to paragraph (a)(1)(iii) of this section, a Part 3 MACT application according to paragraph 63.53(c) of this subpart.

(2) The owner or operator of any source that has received a final and legally effective case-by-case MACT determination under ~~§~~section 112(g) according to Sec. 63.43 of this subpart on or before the section 112(j) deadline shall submit a Part 1 MACT application to the Department by the section 112(j) deadline.

(b) Sources that become ~~major~~ affected 112(j) sources after the section 112(j) deadline and that do not have a permit addressing the section 112(j) requirements.

(1) The owner or operator of any source shall comply with the paragraphs (b)(2) and (3) of this section, when section 112(g) requirements are not invoked and when that source would become an ~~major~~ affected 112(j) source due to:

(i) Construction, reconstruction or modification;

(ii) Relaxation of any state or federally enforceable permit limitation; or

(iii) The Department, under subpart A of this regulation, or the Administrator, under section 112(a)(1) of the Act, establishes a lesser quantity emission threshold that results in an ~~area affected 112(j)~~ source becoming an ~~major~~ affected 112(j) source.

(2) The owner or operator of any source identified in paragraph (b)(1) or (c)(2)(i) of this section shall submit the following to the Department:

(i) Part 1, Part 2 and Part 3 MACT applications according to paragraphs 63.53(a) through (c) of this subpart.

(ii) One of the following requests, as appropriate.

(A) A request that any associated Regulation 2 construction permit be processed according to paragraph 11.2(j) of Regulation 2.

(B) A request that the relaxation of any existing permit limitation specified in a Regulation 30 permit be processed as a significant permit modification.

(C) A request that the relaxation of any existing permit limitation specified in a Regulation 2 operating permit, where there is an associated pending initial Regulation 30 permit, be processed according to paragraph 11.2(j) of Regulation 2.

(3) Where the relaxation of any existing permit limitation specified in a Regulation 2 operating permit is

requested, and there is not an associated Regulation 30 or pending initial Regulation 30 permit, operation as an ~~major~~ affected 112(j) source shall not commence until a Regulation 30 permit that addresses the section 112(j) requirements is issued by the Department.

(4) The owner or operator of any source that would become an ~~an~~ ~~major~~ affected 112(j) source due to construction or reconstruction and section 112(g) requirements are invoked shall apply for and obtain a final and legally effective case-by-case MACT determination according to Sec. 63.43 of this subpart.

Table 52-1 of Subpart B - Part 2 MACT Application Due Date for Applicable 112(j) Source Categories

<u>Affected 112(j) Source Category</u>	<u>Subpart</u>	<u>Part 2 Due Date</u>
<u>Flexible Polyurethane Foam Fabrication Operations</u>	<u>MMMMM</u>	<u>May 15, 2003</u>
<u>Coke Ovens: Pushing, Quenching, and Battery Stacks</u>	<u>CCCCC</u>	<u>May 15, 2003</u>
<u>Reinforced Plastic Composites Production</u>	<u>WWWW</u>	<u>May 15, 2003</u>
<u>Semiconductor Manufacturing</u>	<u>BBBBB</u>	<u>May 15, 2003</u>
<u>Refractory Products Manufacturing (1)</u>	<u>SSSSS</u>	<u>May 15, 2003</u>
<u>Brick and Structural Clay Products Manufacturing</u>	<u>JJJJJ</u>	<u>May 15, 2003</u>
<u>Clay Ceramics Manufacturing (2)</u>	<u>KKKKK</u>	<u>May 15, 2003</u>
<u>Asphalt Processing and Asphalt Roofing Manufacturing (3)</u>	<u>LLLLL</u>	<u>May 15, 2003</u>
<u>Integrated Iron and Steel Manufacturing</u>	<u>FFFFF</u>	<u>May 15, 2003</u>
<u>Hydrochloric Acid Production (Included Fume Silica Facilities) (4)</u>	<u>NNNNN</u>	<u>May 15, 2003</u>
<u>Engine Test Cells/Stands (3)</u>	<u>PPPPP</u>	<u>May 15, 2003</u>
<u>Surface Coating of Metal Furniture</u>	<u>RRRR</u>	<u>May 15, 2003</u>
<u>Printing, Coating, and Dyeing of Fabrics and Other Textiles</u>	<u>OOOO</u>	<u>May 15, 2003</u>
<u>Surface Coating of Wood Building Products</u>	<u>QQQQ</u>	<u>May 15, 2003</u>
<u>Stationary Combustion Turbines</u>	<u>YYYY</u>	<u>Oct. 30, 2003</u>
<u>Lime Manufacturing Plants</u>	<u>AAAAA</u>	<u>Oct. 30, 2003</u>
<u>Site Remediation</u>	<u>GGGGG</u>	<u>Oct. 30, 2003</u>
<u>Iron and Steel Foundries</u>	<u>EEEE</u>	<u>Oct. 30, 2003</u>
<u>Taconite Iron Ore Processing</u>	<u>RRRRR</u>	<u>Oct. 30, 2003</u>
<u>Miscellaneous Organic Chemical Manufacturing &amp; Miscellaneous Coating Manufacturing (5)</u>	<u>FFFF &amp; HHHHH</u>	<u>Oct. 30, 2003</u>
<u>Organic Liquids Distribution (Non-Gasoline)</u>	<u>EEEE</u>	<u>Oct. 30, 2003</u>
<u>Primary Magnesium Refining</u>	<u>TTTTT</u>	<u>Oct. 30, 2003</u>
<u>Surface Coating of Metal Cans</u>	<u>KKKK</u>	<u>Oct. 30, 2003</u>
<u>Surface Coating of Plastic Parts and Products</u>	<u>PPPP</u>	<u>Oct. 30, 2003</u>

<u>Mercury Cell Chlor-Alkali Plants (Chlorine Production)</u>	<u>IIII</u>	<u>Oct. 30, 2003</u>
<u>Surface Coating of Miscellaneous Metal Parts and Products (includes Asphalt/Coal Tar Coating of Metal Pipes) (3)</u>	<u>MMMM</u>	<u>Oct. 30, 2003</u>
<u>Industrial/Commercial/Institutional Boilers and Process Heaters (6)</u>	<u>DDDDD</u>	<u>Apr. 28, 2004</u>
<u>Plywood and Composite Wood Products</u>	<u>DDDD</u>	<u>Apr. 28, 2004</u>
<u>Stationary Reciprocating Internal Combustion Engines</u>	<u>ZZZZ</u>	<u>Apr. 28, 2004</u>
<u>Surface Coating of Automobiles and Light-Duty Trucks</u>	<u>IIII</u>	<u>Apr. 28, 2004</u>
<u>Industrial/Commercial/Institutional Boilers and Process Heaters (7)</u>		<u>Aug. 13, 2005</u>
<u>Hydrochloric Acid Production (8)</u>		<u>Aug. 13, 2005</u>

Notes

- (1) Includes Chromium Refractories Production.
- (2) Two subcategories of Clay Products Manufacturing.
- (3) Two source categories.
- (4) Includes all sources within the Hydrochloric Acid Production standard that burn no hazardous waste and all acid production sources at fume silica facilities.
- (5) Covers the 23 source categories listed in Table 52-2.
- (6) Includes all sources in the Industrial/Commercial/Institutional Boilers and Process Heaters standard that burn no hazardous waste.
- (7) Includes all sources in the Industrial/Commercial/Institutional Boilers and Process Heaters standard that burn hazardous waste.
- (8) Includes furnaces that produce acid from hazardous waste at sources in the category Hydrochloric Acid Production.

Table 52-2 of Subpart B - Applicable 112(j) Subcategories under the Miscellaneous Organic Chemical Manufacturing & Miscellaneous Coating Manufacturing MACTs

Subcategories

- Manufacture of Paints, Coatings, and Adhesives
- Alkyd Resins Production
- Maleic Anhydride Copolymers Production
- Polyester Resins Production
- Polymerized Vinylidene Chloride Production
- Polymethyl Methacrylate Resins Production
- Polyvinyl Acetate Emulsions Production
- Polyvinyl Alcohol Production
- Polyvinyl Butyral Production
- Ammonium Sulfate Production--Caprolactam By-Product Plants
- Quaternary Ammonium Compounds Production
- Benzyltrimethylammonium Chloride Production
- Carbonyl Sulfide Production
- Chelating Agents Production
- Chlorinated Paraffins Production
- Ethylidene Norbornene Production
- Explosives Production
- Hydrazine Production
- OBPA/1,3-Diisocyanate Production
- Photographic Chemicals Production
- Phthalate Plasticizers Production
- Rubber Chemicals Manufacturing
- Symmetrical Tetrachloropyridine Production

(c) Sources that have a permit addressing the section 112(j) requirements.

The requirements of paragraphs (c)(1) and (2) of this section apply to ~~major~~ affected 112(j) sources that have a permit addressing the section 112(j) requirements according to Secs. 63.50 through 56 of this subpart, but where changes to equipment, activities or both,

subsequently, occur at the source.

(1) If the existing permit already provides the appropriate requirements that address the subsequent changes that are to occur under paragraph (c) of this section, then that source shall comply with the applicable new source MACT requirements, and the section 112(j) requirements are thus satisfied.

(2) If the existing permit does not provide the appropriate requirements that address the subsequent changes that are to occur under paragraph (c) of this section, the owner or operator shall comply with paragraph (c)(2)(i) or (ii) of this section, whichever appropriate.

(i) If section 112(g) requirements are not invoked, the owner or operator of that source shall comply with the provisions of paragraph (b)(2) of this section.

(ii) If section 112(g) requirements are invoked, the owner or operator of that source shall apply for and obtain a final and legally effective case-by-case MACT determination according to Sec. 63.43 of this subpart.

(d) Applicability and equivalency determinations.

(1) Applicability Determinations.

(i) The Department shall review any request for an applicability determination when requested to do so according to paragraph (a)(1)(i)(B) of this section. If the Department's applicability determination is positive, the owner or operator shall comply with paragraphs (a)(1)(~~ii~~ iii) and (~~iii~~ iv) of this section. If the Department's applicability determination is negative, no further action by the owner or operator is necessary.

(ii) The Department shall review any request for an applicability determination resubmitted in accordance with paragraph (a)(1)(ii)(B) of this section not later than September 10, 2003. If the Department's applicability determination is negative, no further action by the owner or operator is necessary. If the Department's applicability determination is positive, the owner or operator shall comply with paragraphs (a)(1)(iii) and (iv) of this section.

(2) For any Part 1 application received pursuant to paragraph (a)(2) of this section, the Department shall review the final and legally effective case-by-case MACT determination approved according to Sec. 63.43 of this subpart. If the Department determines that the emission limitations in that final and legally effective case-by-case MACT determination are substantially as effective as the emission limitations which the Department would otherwise adopt to effectuate section 112(j) for that source, then the Department shall retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j) by reopening the Regulation 30 permit for cause or amending the Regulation 2 permit following the procedures in paragraphs 12.4 through 12.6 of Regulation 2, as

applicable. If the Department determines that the emission limitations in that final and legally effective case-by-case MACT determination are not substantially as effective as the emission limitations which the Department would otherwise adopt to effectuate section 112(j) for that source, then the Department shall impose the requirements specified in paragraph (f)(3) of this section by reopening the Regulation 30 permit for cause or amending the Regulation 2 permit following the procedures in paragraphs 12.4 through 12.6 of Regulation 2, as applicable.

(3) In issuing any final and legally effective case-by-case MACT determination according to Sec. 63.43 of this subpart after the section 112(j) deadline (i.e., according to paragraph (b)(4) or (c)(2)(ii) of this section), the Department shall specify in that determination that the associated emission limitations effectuate both section 112(g) and section 112(j) requirements.

(e) Completion determination and application shield.

(1) Within 60 days of the receipt of the Part 2 and/or Part 3 MACT application(s), the Department shall notify the owner or operator in writing whether the application is complete or incomplete. The Part 2 and/or Part 3 MACT application(s) shall be deemed complete unless the Department notifies the owner or operator in writing within 60 days of the submittal that the application is incomplete.

(2) Following submittal of any application, the Department may request additional information from the owner or operator. The owner or operator shall respond to such requests in a timely manner.

(3) If the owner or operator has submitted timely and complete application(s) as required by this section, any failure to have a Regulation 30 permit addressing the section 112(j) requirements shall not be a violation of section 112(j), unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application. Once complete application(s) are submitted, the owner or operator shall not be in violation of the requirement to have a Regulation 30 permit addressing the section 112(j) requirements.

(f) Permit issuance and content.

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

(2) For each Part 2 application received according to paragraph (b) or (c) of this section, the

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

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

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

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

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

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

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

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

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

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

(I) The owner or operator of an ~~major~~ affected 112(j) source subject to paragraphs (a), (b)

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

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

(g) Permit issuance dates.

The Department shall issue all permits that address the requirements of this subpart in accordance with the requirements of Regulation 2, 25, and/or 30 of the State of Delaware "Regulations Governing the Control of Air Pollution", as is applicable.

(h) MACT emission limitations.

(1) Owners or operators of affected 112(j) sources subject to paragraph (a), (b) or (c)(2) of this section shall comply with all requirements of Secs. 63.50 through 56 of this subpart that are applicable to affected 112(j) sources, including the compliance date for affected 112(j) sources established in paragraph (f)(3)(v)(C)(I) of this section.

(2) Owners or operators of new affected 112(j) sources subject to paragraph (c)(1) of this section shall comply with all requirements of Secs. 63.50 through 56 of this subpart that are applicable to new affected 112(j) sources, including the compliance date for new affected 112(j) sources established in paragraph (f)(3)(v)(C)(II) of this section.

Sec. 63.53 Application content for case-by-case MACT determinations.

(a) Part 1 MACT Application.

The Part 1 application for a MACT determination shall contain the information in paragraphs (a)(1) through (4) of this section.

(1) The name and address (physical location) of the major source.

(2) A brief description of the major source and an identification of the relevant source category.

(3) An identification of the types of sources belonging to the relevant source category.

(4) An identification of any affected 112(j) sources for which an application has been made for a final and legally effective case-by-case MACT determination under section 112(g) according to Secs. 63.40 through 44 of this subpart.

(b) Part 2 MACT Application.

The Part 2 application for a MACT determination shall contain the information in paragraphs (b)(1) through (5)

6) of this section.

(1) For an affected 112(j) source subject to construction, reconstruction or modification, the expected commencement date of installation, the expected completion date of installation and the anticipated date of startup of the affected 112(j) source.

(2) The hazardous air pollutants emitted by each affected 112(j) source in the relevant source category and an estimated total uncontrolled and controlled emission rate for hazardous air pollutants from the affected 112(j) source.

(3) Any existing Federal, State or local limitations or requirements applicable to the affected 112(j) source.

(4) For each piece of equipment, activity or source, an identification of control technology in place.

(5) Information relevant to establishing the MACT floors.

(6) The certification by a responsible official of truth, accuracy, and completeness. This certification shall be signed by a responsible official and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

(c) Part 3 MACT Application.

The Part 3 application for a MACT determination shall contain the information in paragraphs (c)(1) through (3) of this section.

(1) Recommended MACT floors, an emission standard or emission limitation that is equivalent to existing source MACT requirements and an emission standard or emission limitation that is equivalent to new source MACT requirements for the affected 112(j) source, and supporting information consistent with paragraph 63.52(f) of this subpart. The owner or operator may recommend a specific design, equipment, work practice, operational standard or combination thereof, as an emission limitation.

(2) Proposed control technology that, if properly operated and maintained, will meet, at minimum, the existing source and new source MACT requirements, including identification of the affected 112(j) sources to which the control technology shall be applied.

(3) Relevant parameters to be monitored and frequency of monitoring to demonstrate continuous compliance with the MACT emission limitation over the applicable reporting period.

(4) The certification by a responsible official of truth, accuracy, and completeness. This certification shall be signed by a responsible official and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

Sec. 63.54 Pre-construction review procedures for

affected 112(j) sources.

The owner or operator who constructs, reconstructs or modifies an affected 112(j) source after the section 112(j) deadline shall follow the procedures established under Regulations 2, 25 and/or 30 before commencing construction, reconstruction, or modification of the affected 112(j) source.

Sec. 63.55 Maximum achievable control technology (MACT) determinations for affected 112(j) sources subject to case-by-case determination of equivalent emission limitations.

(a) Determination of case-by-case MACT requirements.

The Department shall issue final and legally effective case-by-case MACT determinations for affected 112(j) and new affected 112(j) sources that are consistent with the existing source MACT and the new source MACT requirements, as defined in Sec. 63.51 of this subpart.

(b) Reporting to the Administrator.

The owner or operator shall submit copies of the Part 1, Part 2 and Part 3 MACT applications to the Administrator at the same time these applications are submitted to the Department.

Sec. 63.56 Requirements for case-by-case determination of equivalent emission limitations after promulgation of subsequent MACT standard.

(a) If the Administrator promulgates a relevant emission standard that is applicable to one or more affected 112(j) sources that are located at a major source before the date that the Department has issued a final and legally effective case-by-case MACT determinations according to paragraph 63.55(a) of this subpart, the Regulation 30 permit shall contain the promulgated standard rather than the emission limitation determined under Sec. 63.52 of this subpart, and the owner or operator shall comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates a relevant emission standard that is applicable to one or more affected 112(j) sources that are located at a major source on or after the date that the Department has issued a final and legally effective case-by-case MACT determinations according to paragraph 63.55(a) of this subpart, the Department shall incorporate requirements of that standard in the Regulation 30 permit upon its next renewal. The Department shall establish a compliance date in the revised permit that assures that the owner or operator shall comply with the promulgated standard within a reasonable time, but not longer than 8 years after such standard is promulgated or 8 years after the issuance of the final and legally effective case-by-case MACT determinations according to paragraph 63.55(a) of this subpart, whichever is earlier. However, in no event shall the period for compliance for existing sources be shorter

than that provided for existing sources in the promulgated standard.

(c) Notwithstanding the requirements of paragraph (a) or (b) of this section, the requirements of paragraphs (c)(1) and (2) of this section shall apply.

(1) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to an affected 112(j) source after the date a final and legally effective case-by-case MACT determination is issued according to paragraph 63.55(a) of this subpart, the Department is not required to change the emission limitation in the permit to reflect the promulgated standard if the Department determines that the level of control required in that prior case-by-case MACT determinations is substantially as effective as that required by the promulgated standard according to Sec. 63.1(e) of subpart A of this regulation.

(2) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to an affected 112(j) source after the date a final and legally effective case-by-case MACT determination is issued according to paragraph 63.55(a) of this subpart and the level of control required by the promulgated emission standard is less stringent than the level of control required by that prior case-by-case MACT determination, the Department may, but is not required to incorporate any less stringent emission limitation of the promulgated standard in the Regulation 30 permit applicable to such source(s) and shall consider any more stringent provisions of that prior case-by-case MACT determination to be applicable legal requirements when issuing or revising such a Regulation 30 permit.

---

**DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

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

**REGISTER NOTICE**

**SAN # 2002-17**

**1. TITLE OF THE REGULATION:**

Regulation 38 - "Emission Standards For Hazardous Air Pollutants For Source Categories"

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

The Department is proposing to amend Regulation 38 by adopting by reference the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum

Production found at 40 CFR Part 63 Subpart RRR.

Subpart RRR addresses the emissions of hazardous air pollutants (HAPs) emitted by secondary aluminum production facilities; establishes emission limitations and work practice standards; and defines the compliance, notification, monitoring, record keeping and reporting requirements. Owners or operators of a facility which performs one or more of the following processes may be affected: scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations (i.e., melting, holding, sweating, refining, fluxing, or alloying), recovering aluminum from dross, inline fluxing, or dross cooling.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Delaware Code, Chapter 60

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

None

**6. NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed amendment will extend through March 31, 2003. Interested parties may submit comments in writing during this time frame to: Mark A. Prettyman, Air Quality Management Section, 156 S. State St., Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, March 27, 2003, beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE.

**7. PREPARED BY:**

Mark A. Prettyman (302) 739-4791 February 6, 2003  
Name/Phone # Date

The Department is amending Regulation 38 by adding Subpart RRR, which follows. Subpart RRR does not change any of the existing subparts of Regulation 38 and shall be placed following Subpart T.

5/11/2003

Subpart RRR Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

The provisions of Subpart RRR - National Emission Standards for Secondary Aluminum Production, of Title 40, Part 63 of the Code of Federal Regulations, dated July 1, 2002 and as amended on Sept. 24, 2002 and Dec. 30, 2002.

are hereby adopted by reference with the following changes:

(a) "Department" shall replace all instances of "permitting authority", "permitting agency", "responsible permitting authority", and "applicable permitting agency".

(b) Paragraph 63.1500(e) shall be replaced with the following language: "The owner or operator of a secondary aluminum production facility subject to the provisions of this **subpart**, is subject to the title V permitting requirements under Regulation 30. The Department defers the affected facility from the title V permitting requirements until December 9, 2004, if the secondary aluminum production facility is not a major source and is not located at a major source as defined in subpart A of this regulation, and is not otherwise required to obtain a title V permit. All sources receiving a deferral under this section shall submit a title V permit application by December 9, 2005. The affected facility shall comply with the provisions of this **subpart** applicable to area sources if a deferral from title V permitting requirements has been granted to the facility by the Department."

(c) Add the following language after Section 63.1500: "[65 FR 15710, March 23, 2000; as amended at 67 FR 79815, Dec. 30, 2002]".

(d) Except in paragraph 63.1502(a), the following dates shall be replaced by the date May 11, 2003:

(i) March 23, 2000;

(ii) March 24, 2003.

(e) Add the following language after Section 63.1501: "[65 FR 15710, March 23, 2000; as amended at 67 FR 59791, Sept. 24, 2002]".

(f) The entire paragraph 63.1502(a) shall be replaced with the following language: "The following material is incorporated by reference in the corresponding sections noted. This material is incorporated as it exists on March 23, 2000:

(1) Chapters 3 and 5 of "Industrial Ventilation: A Manual of Recommended Practice," American Conference of Governmental Industrial Hygienists, (23rd edition, 1998), IBR approved for Sec. 63.1506(c);

(2) "Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update" (EPA/625/3-89/016); and

(3) "Fabric Filter Bag Leak Detection Guidance," (September 1997)."

(g) Paragraph 63.1502(b)(1) shall be replaced with the following language: "Customer Service Department, American Conference of Governmental Industrial Hygienists (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, OH 45240-1634, telephone number (513) 742-2020;"

(h) Paragraph 63.1502(b)(2) shall be replaced with the following language: "The National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA,

NTIS no. PB 90-145756; and"

(i) Paragraph 63.1502(b)(3) shall be added with the following language: "U.S. Environmental Protection Agency; Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Emission Measurement Center (MD-19), Research Triangle Park, NC 27711."

(j) The opening sentence of Section 63.1503 shall be replaced with the following language: "Unless defined below, all terms in this subpart have the meanings given them in the Act or in subpart A of this regulation:"

(k) The definition of Cover flux in Section 63.1503 shall be replaced with the following language: "Cover flux means salt(s) added to the surface of molten aluminum in a group 1 or group 2 furnace, without agitation of the molten aluminum, for the purpose of preventing oxidation."

(l) The definition of HCl in Section 63.1503 shall be replaced with the following language: "HCl means, for the purposes of this **subpart**, emissions of hydrogen chloride that serve as a surrogate measure of the total emissions of hydrogen chloride, hydrogen fluoride, and chlorine."

(m) The definition of Sweat furnace in Section 63.1503 shall be replaced with the following language: "Sweat furnace means a furnace used exclusively to reclaim aluminum from scrap that contains substantial quantities of metal by using heat to separate the low-melting point aluminum from the scrap while the higher melting-point metal remains in solid form. These units are also commonly known as dry hearth furnaces."

(n) The definition of TEQ in Section 63.1503 shall be replaced with the following language: "TEQ means the international method of expressing toxicity equivalents for dioxins and furans as defined in "Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update" (EPA-625/3-89-016)."

(o) Add the following language after Section 63.1503: "[65 FR 15710, March 23, 2000; as amended at 67 FR 79815, Dec. 30, 2002]".

(p) Paragraph 63.1505(a) shall be replaced with the following language: "Summary. The owner or operator of a new or existing affected source must comply with each applicable limit in this section. Table 1505-1 of this **subpart** summarizes the emission standards for each type of source."

(q) Paragraph 63.1505(e) shall be replaced with the following language: "Scrap dryer/delacquering kiln/decoating kiln: alternative limits. The owner or operator of a scrap dryer/delacquering kiln/decoating kiln may choose to comply with the emission limits in this paragraph (e) as an alternative to the limits in paragraph (d) of this section if the scrap dryer/delacquering kiln/decoating kiln is equipped with an afterburner having a design residence time of at least 1 second and the afterburner is operated at a temperature of at least 760 deg.C (1400 deg.F) at all times. On and after the



compliance date established by Sec. 63.1501.”.

(r) Paragraph 63.1505(f)(1) shall be replaced with the following language: “The owner or operator is not required to conduct a performance test to demonstrate compliance with the emission standard of paragraph (f)(2) of this section, provided that, on and after the compliance date of this rule, the owner or operator operates and maintains an afterburner with a design residence time of 0.8 seconds or greater and an operating temperature of 872 deg.C (1600 deg.F) or greater.”

(s) Paragraph 63.1505(j)(1) shall be replaced with the following language: “0.02 kg of HCl per Mg (0.04 lb of HCl per ton) of feed/charge, and”.

(t) Replace the definition of T<sub>ti</sub> in paragraph 63.1505(k)(1) with the following language: “T<sub>ti</sub> = The feed/charge rate, for an operating cycle, for individual emission unit i; and”.

(u) Replace the definition of L<sub>tiHCl</sub> in paragraph 63.1505(k)(2) with the following language: “L<sub>tiHCl</sub> = The HCl emission limit for individual emission unit i in paragraph (i)(4) of this section for a group 1 furnace or in paragraph (j)(1) of this section for an in-line fluxer and”.

(v) Paragraph 63.1505(k)(6) shall be replaced with the following language: “With the prior approval of the Department, an owner or operator may redesignate any existing group 1 furnace or in-line fluxer at a secondary aluminum production facility as a new emission unit. Any emission unit so redesignated may thereafter be included in a new SAPU at that facility. Any such redesignation will be solely for the purpose of this regulation and will be irreversible.”

(w) Add the following language after Section 63.1505: “[65 FR 15710, March 23, 2000; as amended at 67 FR 59791, Sept. 24, 2002; 67 FR 79815, Dec. 30, 2002]”.

(x) Paragraph 63.1506(a)(4) shall be replaced with the following language: “Operating requirements are summarized in Table 1506-1 of this **subpart**.”

(y) Paragraph 63.1506(b) shall be replaced with the following language: “Labeling. The owner or operator must provide and maintain easily visible labels posted at each sweat furnace, group 1 furnace, group 2 furnace, in-line fluxer and scrap dryer/delacquering kiln/decoating kiln that identifies the applicable emission limits and means of compliance, including:”.

(z) Paragraph 63.1506(b)(1) shall be replaced with the following language: “The type of affected source or emission unit (e.g., scrap dryer/delacquering kiln/decoating kiln, sweat furnace, group 1 furnace, group 2 furnace, in-line fluxer).”

(aa) Paragraph 63.1506(b)(3) shall be replaced with the following language: “The afterburner operating temperature and design residence time for a scrap dryer/delacquering kiln/decoating kiln or sweat furnace.”

(bb) Paragraph 63.1506(d)(1) shall be replaced with the following language: “Except as provided in paragraph (d)(3) of this section, install and operate a device that measures and records or otherwise determines the weight of feed/charge (or throughput) for each operating cycle or time period used in the performance test.”

(cc) Paragraph 63.1506(e)(3) shall be replaced with the following language: “If visible emission observations are used to meet the monitoring requirements in Sec. 63.1510, the owner or operator must initiate corrective action within 1-hour of any observation of visible emissions in excess of 10 percent opacity during a daily visible emissions test and complete the corrective action procedures in accordance with the OM&M plan.”

(dd) Paragraph 63.1506(h)(1)(ii) shall be replaced with the following language: “872 deg.C (1600 deg.F) if a performance test was not conducted, and the afterburner meets the specifications of Sec. 63.1505(f)(1).”

(ee) Add the following language after Section 63.1506: “[65 FR 15710, March 23, 2000; as amended at 67 FR 59791, Sept. 24, 2002; 67 FR 79815, Dec. 30, 2002]”.

(ff) Paragraph 63.1510(a) shall be replaced with the following language: “Summary. On and after the compliance date established by Sec. 63.1501, the owner or operator of a new or existing affected source or emission unit must monitor all control equipment and processes according to the requirements in this section. Monitoring requirements for each type of affected source and emission unit are summarized in Table 1510-1 of this **subpart**.”

(gg) Paragraph 63.1510(b) shall be replaced with the following language: “Operation, maintenance, and monitoring (OM&M) plan. The owner or operator must prepare and implement for each new or existing affected source and emission unit, a written OM&M plan. The owner or operator of an existing affected source must submit the OM&M plan to the Department no later than the compliance date established by Sec. 63.1501(a). The owner or operator of any new affected source must submit the OM&M plan to the Department within 90 days after a successful initial performance test under Sec. 63.1511(b), or within 90 days after the compliance date established by Sec. 63.1501(b) if no initial performance test is required. The plan must be accompanied by a written certification by the owner or operator that the OM&M plan satisfies all requirements of this section and is otherwise consistent with the requirements of this subpart. The owner or operator must comply with all of the provisions of the OM&M plan as submitted to the Department, unless and until the plan is revised in accordance with the following procedures. If the Department determines at any time after receipt of the OM&M plan that any revisions of the plan are necessary to satisfy the requirements of this section or this subpart, the owner or operator must promptly make all necessary revisions and resubmit the revised plan. If the owner or

operator determines that any other revisions of the OM&M plan are necessary, such revisions will not become effective until the owner or operator submits a description of the changes and a revised plan incorporating them to the Department. Each plan must contain the following information:"

(hh) Paragraph 63.1510(b)(4)(ii) shall be replaced with the following language: "Procedures for the quality control and quality assurance of continuous emission or opacity monitoring systems as required by the general provisions in **Subpart A** of this regulation."

(ii) Paragraph 63.1510(b)(6)(i) shall be replaced with the following language: "Procedures to determine and record the cause of a deviation or excursion, and the time the deviation or excursion began and ended; and"

(jj) Paragraph 63.1510(c) shall be replaced with the following language: "Labeling. The owner or operator must inspect the labels for each group 1 furnace, group 2 furnace, in-line fluxer, sweat furnace, and scrap dryer/delacquering kiln/decoating kiln at least once per calendar month to confirm that posted labels as required by the operational standard in Sec. 63.1506(b) are intact and legible."

(kk) Paragraphs 63.1510(e)(2) and 63.1510(j)(1)(iii) shall be replaced with the following language: "The owner or operator must verify the calibration of the weight measurement device in accordance with the schedule specified by the manufacturer, which shall not exceed 6 months, or if no calibration schedule is specified, at least once every 6 months."

(ll) Paragraph 63.1510(f)(1)(ii) shall be replaced with the following language: "Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the "Fabric Filter Bag Leak Detection Guidance," (September 1997). Other bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations."

(mm) Paragraph 63.1510(g)(1) shall be replaced with the following language: "The owner or operator must install, calibrate, maintain, and operate a device to continuously monitor and record the operating temperature of the afterburner consistent with the requirements for continuous monitoring systems in **subpart A** of this regulation."

(nn) Paragraph 63.1510(h)(1) shall be replaced with the following language: "The owner or operator must install, calibrate, maintain, and operate a device to continuously monitor and record the temperature of the fabric filter inlet gases consistent with the requirements for continuous monitoring systems in **subpart A** of this regulation."

(oo) Paragraph 63.1510(i)(1)(ii) shall be replaced with the following language: "Subject to the approval of the Department, installing, operating and maintaining a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system or other system to confirm that lime is

free-flowing. If lime is found not to be free-flowing, the owner or operator must promptly initiate and complete corrective action; or"

(pp) Paragraph 63.1510(j)(5) shall be replaced with the following language: "The owner or operator of a group 1 furnace or in-line fluxer performing reactive fluxing may apply to the Administrator for approval of an alternative method for monitoring and recording the total reactive flux addition rate based on monitoring the weight or quantity of reactive flux per ton of feed/charge for each operating cycle or time period used in the performance test. The Administrator will not approve the alternative monitoring method unless the owner or operator provides assurance through data and information that the affected source will meet the relevant emission standards on a continuous basis."

(qq) Paragraph 63.1510(n)(2) shall be replaced with the following language: "Submit a certification of compliance with the operational standards in Sec. 63.1506(m)(6) for each 6-month reporting period. Each certification must contain the information in Sec. 63.1516(b)(2)(iii)."

(rr) Paragraph 63.1510(o)(1)(i) shall be replaced with the following language: "The owner or operator of an existing affected source must submit the site-specific monitoring plan to the Department for review at least 6 months prior to the compliance date, but no earlier than May 11, 2003."

(ss) Paragraph 63.1510(o)(5) shall be replaced with the following language: "If a continuous emission monitoring system is included in a site-specific monitoring plan, the plan must include provisions for the installation, operation, and maintenance of the system to provide quality-assured measurements in accordance with all applicable requirements of the general provisions in **subpart A** of this regulation."

(tt) Paragraph 63.1510(s)(1)(iv) shall be replaced with the following language: "Information and data demonstrating compliance for each emission unit with all applicable design, equipment, work practice, or operational standards of this **subpart**; and"

(uu) Paragraph 63.1510(s)(2)(i) shall be replaced with the following language: "Any averaging among emissions of differing pollutants;"

(vv) Replace the definition of n in paragraph 63.1510(t)(4) with the following language: "n = The number of emission units in the secondary aluminum processing unit."

(ww) Paragraph 63.1510(v) shall be replaced with the following language: "Alternative monitoring method for lime addition. The owner or operator of a lime-coated fabric filter that employs intermittent or noncontinuous lime addition may apply to the Administrator for approval of an alternative method for monitoring the lime addition schedule and rate based on monitoring the weight of lime added per ton of feed/charge for each operating cycle or time period

used in the performance test. The Administrator will not approve the alternative monitoring method unless the owner or operator provides assurance through data and information that the affected source will meet the relevant emission standards on a continuous basis.”

(xx) Paragraph 63.1510(w) shall be replaced with the following language: “Alternative monitoring methods. If an owner or operator wishes to use an alternative monitoring method to demonstrate compliance with any emission standard in this subpart, other than those alternative monitoring methods which may be authorized pursuant to Sec. 63.1510(j)(5) and Sec. 63.1510(v), the owner or operator may submit an application to the Administrator (with a copy sent to the Department). Any such application will be processed according to the criteria and procedures set forth in paragraphs (w)(1) through (6) of this section.”

(yy) Paragraph 63.1510(w)(2) shall be replaced with the following language: “The owner or operator must continue to use the original monitoring requirement until necessary data are submitted, approval is received from the Administrator to use another monitoring procedure, and the Department has been provided a copy of such approval by the owner or operator.”

(zz) Paragraph 63.1510(w)(4)(i) shall be replaced with the following language: “Notice of the information and findings upon which the intended disapproval is based and”.

(aaa) Add the following language after Section 63.1510: “[65 FR 15710, March 23, 2000; as amended at 67 FR 59791, Sept. 24, 2002; 67 FR 79815, Dec. 30, 2002]”.

(bbb) Paragraph 63.1511(b) shall be replaced with the following language: “Initial performance test. Following approval of the site-specific test plan, the owner or operator must demonstrate initial compliance with each applicable emission, equipment, work practice, or operational standard for each affected source and emission unit, and report the results in the notification of compliance status report as described in Sec. 63.1515(b). The owner or operator of any existing affected source for which an initial performance test is required to demonstrate compliance must conduct this initial performance test no later than the date for compliance established by Sec. 63.1501(a). The owner or operator of any new affected source for which an initial performance test is required must conduct this initial performance test within 90 days after the date for compliance established by Sec. 63.1501(b). Except for the date by which the performance test must be conducted, the owner or operator must conduct each performance test in accordance with the requirements and procedures set forth in Sec. 63.7(e). Owners or operators of affected sources located at facilities which are area sources are subject only to those performance testing requirements pertaining to D/ F. Owners or operators of sweat furnaces meeting the specifications of Sec. 63.1505(f)(1) are not required to conduct a performance test.”

(ccc) Add the following language after Section 63.1511: “[65 FR 15710, March 23, 2000; as amended at 67 FR 59791, Sept. 24, 2002; 67 FR 79815, Dec. 30, 2002]”.

(ddd) Paragraph 63.1512(e) shall be replaced with the following language: “Group 1 furnace (including melting/holding furnaces) without add-on air pollution control devices. In the site-specific monitoring plan required by Sec. 63.1510(o), the owner or operator of a group 1 furnace (including melting/holding furnaces) without add-on air pollution control devices must include data and information demonstrating compliance with the applicable emission limits.”

(eee) Paragraph 63.1512(m)(1) shall be replaced with the following language: “Prior to the initial performance test, the owner or operator must conduct a performance evaluation for the temperature monitoring device according to the requirements of Sec. 63.8 of this regulation.”

(fff) Replace the definition of  $W_1$  in paragraph 63.1512(o)(3) with the following language: “ $W_1$  = Weight of reactive flux gas or liquid injected;”.

(ggg) Replace the definition of  $F_2$  in paragraph 63.1512(o)(3) with the following language: “ $F_2$  = Fraction of solid reactive chloride flux that is chlorine (e.g.,  $F = 0.75$  for magnesium chloride); and”.

(hhh) Paragraph 63.1512(o)(5) shall be replaced with the following language: “If a solid reactive flux other than magnesium chloride is used, the owner or operator must derive the appropriate proportion factor ( $F_1$  or  $F_2$ ) subject to approval by the Department.”

(iii) Paragraph 63.1512(r) shall be replaced with the following language: “Labeling. The owner or operator of each scrap dryer/delacquering kiln/decoating kiln, group 1 furnace, group 2 furnace, sweat furnace, and in-line fluxer must submit the information described in Sec. 63.1515(b)(3) as part of the notification of compliance status report to document conformance with the operational standard in Sec. 63.1506(b).”

(jii) Paragraph 63.1512(s) shall be replaced with the following language: “Capture/collection system. The owner or operator of a new or existing affected source or emission unit with an add-on control device must submit the information described in Sec. 63.1515(b)(5) as part of the notification of compliance status report to document conformance with the operational standard in Sec. 63.1506(c).”

(kkk) Add the following language after Section 63.1512: “[65 FR 15710, March 23, 2000; as amended at 67 FR 79815, Dec. 30, 2002]”.

(lll) Paragraph 63.1513(d) shall be replaced with the following language: “Conversion of D/F measurements to TEQ units. To convert D/F measurements to TEQ units, the owner or operator must use the procedures and equations in “Interim Procedures for Estimating Risks Associated with

Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update” (EPA-625/3-89-016).”

(mmm)The opening of Paragraph 63.1513(e)(3) shall be replaced with the following language: “Use Equation 11 to compute the aluminum mass-weighted D/F emissions for the secondary aluminum processing unit. Compliance is achieved if the mass-weighted emissions for the secondary aluminum processing unit ( $E_{D/F}$ ) is less than or equal to the emission limit for the secondary aluminum processing unit ( $L_{D/F}$ ) calculated using Equation 3 in Sec. 63.1505(k).”

(nnn)Paragraph 63.1515(a)(3) shall be replaced with the following language: “As required by Sec. 63.9(b)(4), the owner or operator of a new or reconstructed major affected source or of a source that has been reconstructed such that the source becomes a major affected source, that has an initial startup after the effective date of this **subpart** and for which an application for approval of construction or reconstruction is required by Sec. 63.5(d) must provide the following notifications:”.

(ooo)Paragraph 63.1515(a)(3)(i) shall be replaced with the following language: “Intention to construct a new major affected source, reconstruct a major source, or reconstruct a source such that the source becomes a major affected source:”.

(ppp)Paragraph 63.1515(a)(4)(i) shall be replaced with the following language: “[Reserved].”

(qqq)Paragraph 63.1515(a)(4)(ii) shall be replaced with the following language: “[Reserved].”

(rrr)Paragraph 63.1515(a)(6) shall be replaced with the following language: “As required by Sec. 63.9(e) and (f), the owner or operator must provide notification of the anticipated date for conducting performance tests and visible emission observations. The owner or operator must notify the Department of the intent to conduct a performance test at least 60 days before the performance test is scheduled; notification of opacity or visible emission observations for a performance test must be provided at least 30 days before the observations are scheduled to take place.”

(sss)Paragraph 63.1515(b) shall be replaced with the following language: “Notification of compliance status report. Each owner or operator of an existing affected source must submit a notification of compliance status report within 60 days after the compliance dates specified in Sec. 63.1501(a). Each owner or operator of a new affected source must submit a notification of compliance status report within 90 days after conducting the initial performance test required by Sec. 63.1511(b), or within 90 days after the compliance date established by Sec. 63.1501(b) if no initial performance test is required. The notification must be signed by the responsible official who must certify its accuracy. A complete notification of compliance status report must include the information specified in paragraphs (b)(1)

through (10) of this section and shall be submitted to the Department (with a copy sent to the Administrator). The required information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination. If an owner or operator submits the information specified in this section at different times or in different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the information previously submitted. A complete notification of compliance status report must include:”

(ttt) Paragraph 63.1515(b)(8) shall be replaced with the following language: “Manufacturer’s specification or analysis documenting the design residence time of no less than 0.8 seconds and design operating temperature of no less than 872 deg.C (1600 deg.F) for each afterburner used to control emissions from a sweat furnace that is not subject to a performance test.”

(uuu)Paragraph 63.1515(b)(10) shall be replaced with the following language: “Startup, shutdown, and malfunction (SSM) plan, with revisions.”

(vvv)Add the following language after Section 63.1511: “[65 FR 15710, March 23, 2000; as amended at 67 FR 59791, Sept. 24, 2002; 67 FR 79815, Dec. 30, 2002]”.

(www)Paragraph 63.1516(a) shall be replaced with the following language: “Startup, shutdown, and malfunction plan/reports. The owner or operator must develop and implement a written plan as described in Sec. 63.6(e)(3) that contains specific procedures to be followed for operating and maintaining the source during periods of startup, shutdown, and malfunction, and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the standard. The owner or operator shall also keep records of each event as required by Sec. 63.10(b) and record and report if an action taken during a startup, shutdown, or malfunction is not consistent with the procedures in the plan as described in Sec. 63.6(e)(3) and Sec. 63.10(d)(5). In addition to the information required in Sec. 63.6(e)(3), the plan must include:”

(xxx)Paragraph 63.1516(b)(1)(v) shall be replaced with the following language: “An action taken during a startup, shutdown, or malfunction was not consistent with the procedures in the SSM plan as described in Sec. 63.6(e)(3).”

(yyy)Paragraph 63.1516(b)(2)(vi) shall be replaced with the following language: “For each in-line fluxer using no reactive flux: “Only nonreactive, non-HAP-containing/non-HAP-generating flux gases, agents, or materials were used at any time during this reporting period.””

(zzz)Paragraph 63.1516(c) shall be replaced with the following language: “Annual compliance certifications. For the purpose of annual certifications of compliance required by Regulation 30, the owner or operator must certify continuing compliance based upon, but not limited to, the following conditions:”.

(aaaa)Paragraph 63.1516(d) shall be added with the following language: “Submittals. The owner or operator shall submit all reports, notifications, and/or certifications required by this subpart to the Department (with a copy sent to the EPA Region 3 office, to the attention of Judith Katz (3AP00), Director, Air Protection Division, US EPA Region III, 1650 Arch Street, Philadelphia, PA 19103).”

(bbbb)Paragraph 63.1517(a) shall be replaced with the following language: “As required by Sec. 63.10(b), the owner or operator shall maintain files of all information (including all reports and notifications) required by Sec. 63.10 and this **subpart**.”

(cccc)Paragraph 63.1517(a)(2) shall be replaced with the following language: “The owner or operator may retain records on microfilm, computer disks, magnetic tape, or microfiche.”

(dddd)Paragraph 63.1517(b)(4)(i) shall be replaced with the following language: “Records of inspections at least once every 8-hour period verifying that lime is present in the feeder hopper or silo and flowing, including any inspection where blockage is found, with a brief explanation of the cause of the blockage and the corrective action taken, and records of inspections at least once every 4-hour period for the subsequent 3 days. If flow monitors, pressure drop sensors or load cells are used to verify that lime is present in the hopper and flowing, records of all monitor or sensor output including any event where blockage was found, with a brief explanation of the cause of the blockage and the corrective action taken.”

(eeee)Add the following language after Section 63.1511: “[65 FR 15710, March 23, 2000; as amended at 67 FR 79815, Dec. 30, 2002].”

(ffff)Section 63.1518 shall be replaced with the following language: “Owners or operators of affected sources subject to the provisions of this subpart must also comply with the requirements of subpart A of this regulation, according to the applicability of subpart A of this regulation to such sources as identified in Table 1 of this subpart.”

(gggg)Section 63.1519 shall be renamed with the following language: “[Reserved].”

(hhhh)The entire content of Paragraph 63.1519(a) as promulgated shall be deleted and its heading shall be replaced with the following language: “(a) [Reserved].”

(iiii)The entire content of Paragraph 63.1519(b) as promulgated shall be deleted and its heading shall be replaced with the following language: “(a) [Reserved].”

(jjjj)Replace the title of Table 1 following Section 63.1520 with the following title: “Table 1505-1 of Subpart RRR – Emission Standards for New and Existing Affected Sources”.

(kkkk)Replace the definition of  $L_{TiD/F}$  in Table 1505-1 of Subpart RRR with the following language: “ $L_{TiD/F} =$  the

D/F emission limit for individual emission unit  $i$  in the secondary aluminum processing unit [ $\mu\text{g TEQ/Mg (gr TEQ/ton)$  of feed].”

(llll)Replace the title of Table 2 following Section 63.1520 with the following title: “Table 1506-1 of Subpart RRR.—Summary of Operating Requirements for New and Existing Affected Sources and Emission Units”.

(mmmm)In Table 1506-1 of Subpart RRR, the third entry in the “Affected source/emission unit” column is replaced with the following language: “Group 1 furnace, group 2 furnace, in-line fluxer, sweat furnace, and scrap dryer/delacquering kiln/decoating kiln.”

(nnnn)In Table 1506-1 of Subpart RRR, the third entry in the “Operating requirements” column is replaced with the following language: “Identification, operating parameter ranges and operating requirements posted at affected sources and emission units; control device temperature and residence time requirements posted at scrap dryer/delacquering kiln/decoating kiln or sweat furnace.”

(oooo)Replace the title of Table 3 following Section 63.1520 with the following title: “Table 1510-1 of Subpart RRR.—Summary of Monitoring Requirements for New and Existing Affected Sources and Emission Units”.

(pppp)In Table 1510-1 of Subpart RRR, the third entry in the “Affected source/Emission unit” column is replaced with the following language: “Group 1 furnace, group 2 furnace, in-line fluxer, sweat furnace, and scrap dryer/delacquering kiln/decoating kiln.”

(qqqq)In Table 1510-1 of Subpart RRR, all entries in the “Monitoring requirements” column of “40 CFR part 63” are replaced with “this regulation”.

(rrrr)In Table 1510-1 of Subpart RRR, the fourteenth entry in the “Monitoring requirements” column is replaced with the following language: “For continuous injection systems, inspect each feed hopper or silo every 8 hrs to verify that lime is free-flowing; record results of each inspection. If blockage occurs, inspect every 4 hrs for 3 days; return to 8-hr inspections if corrective action results in no further blockage during 3-day period; record feeder setting daily.”

(ssss)In Table 1510-1 of Subpart RRR, the thirty-seventh entry in the “Monitoring requirements” column is replaced with the following language: “Record type of permissible feed/charge material; certify charge materials every 6 months.”

(tttt)Replace the title of Appendix A following Section 63.1520 with the following title: “Table 1 of **Subpart RRR of Regulation 38**—Subpart A (General Provisions) Applicability to **Subpart RRR**”.

(uuuu)In Table 1 of Subpart RRR, the comment for Section 63.1(c)(2) under “Citation” shall be replaced with the following language: “States have option to defer area sources from title V permit program.”

(vvvv)In Table 1 of Subpart RRR, Section 63.7(a)-(h)

under "Citation" shall be replaced with the following language: "63.7(a)".

(www)In Table 1 of Subpart RRR, Section 63.10(c)(15) shall be added under "Citation", next to which shall be added "Yes." under "Applies to RRR."

(xxxx)Add the following language after Table 1 of Subpart RRR: "[65 FR 15710, March 23, 2000; as amended at 67 FR 59791, Sept. 24, 2002]".

### **DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 903(e)(2)a, (7 Del.C. §903(e)(2)a)

### **REGISTER NOTICE SAN# 2003-4**

#### **1. TITLE OF THE REGULATIONS:**

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

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

To comply with the recreational size limits, daily creel or bag limits and seasons included in Amendment #6 to the Interstate Fishery Management Plan for Striped Bass as adopted by the Atlantic States Marine Fisheries Commission on February 24, 2003, Delaware must select from among the following options:

Option 1: Maintain existing minimum size limits, and possession limits (one striped bass between 24 and 28 inches total length and one greater than or equal to 28 inches total length).

Option 2: Establish a new minimum size limit of 28 inches total length, and a two fish daily possession limit.

Option 3: Maintain existing size and possession limits (one striped bass between 24 and 28 inches total length and one greater than or equal to 28 inches total length) with a closed season to be defined that is in compliance with Amendment #6 of the Interstate Fishery Management Plan for Striped Bass.

#### **3. POSSIBLE TERMS OF THE AGENCY ACTION:**

Until changed

#### **4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Delaware Code, 903(e)(2)a

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

None

#### **6. NOTICE OF PUBLIC COMMENT:**

Individuals may present their opinions and evidence and/or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment will be held at the Department of Natural Resources and Environmental Control Auditorium 89 Kings Highway, Dover DE at 7:30 PM on Friday March 21, 2003. The record will remain open for written comments until 4:30 PM on March 31, 2003.

#### **TIDAL FINFISH REGULATION 7. STRIPED BASS POSSESSION SIZE LIMIT; EXCEPTIONS.**

a) Notwithstanding, the provisions of §929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession more than two (2) striped bass from the tidal waters of this State in one day provided ~~one measures no less than twenty-four (24) inches in total length or more than twenty-eight in total length and one measures no less than twenty-eight (28) inches in total length.~~ (Note: minimum size limits for recreational fishermen will be chosen from among the following options):

Option 1. (Note: This option represents the status quo with present regulations): one measures no less than twenty-four (24) inches in total length or more than twenty-eight (28) inches in total length and one measures no less than twenty-eight (28) inches in total length.

Option 2. two fish that measure no less than twenty-eight (28) inches, total length (TL)

Option 3. (Note: This option represents the status quo with present regulations): one measures no less than twenty-four (24) inches in total length or more than twenty-eight inches in total length and one measures no less than twenty-eight (28) inches in total length, except that the season will be approved by the Atlantic States Marine Fisheries Commission as being consistent with the most recent amendment to the Interstate Fishery Management Plan for Atlantic Striped Bass.

b) Notwithstanding, the provisions of §929(b)(1), Chapter 9, Title 7, Delaware code or unless otherwise authorized, it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass from the tidal waters of this State that measure less than twenty (20) inches in total length.

c) Unless otherwise authorized, it shall be unlawful for any person to possess a striped bass that measures less than ~~24 inches~~, total length, unless said striped bass is in one or more of the following categories: (Note: minimum size limit



for recreational fishermen will be chosen from among the above three size limit options)

- 1) It has affixed, a valid strap tag issued by the Department to a commercial food fisherman; or
- 2) It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or
- 3) It is packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or
- 4) It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or
- 5) It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.

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

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

f) It shall be unlawful for any person, except a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery, to land any striped bass that measures less than ~~twenty four (24)~~ inches in total length. (Note: minimum size limit for recreational fishermen will be chosen from among the above three size limit options)

g) It shall be unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.

---

**DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Section 903(e)(2)a, (7 Del.C. §903(e)(2)a)

**REGISTER NOTICE**  
**SAN# 2002-25**

**1. TITLE OF THE REGULATIONS:**

Tidal Finfish Regulation 10. WEAKFISH SIZE LIMITS; POSSESSION LIMITS; SEASONS

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

To comply with the recreational size and possession limits included in Amendment #4 to the Interstate Fishery Management Plan for Weakfish as adopted by the Atlantic States Marine Fisheries Commission (ASMFC) at its annual meeting held November 21, 2002, Delaware must select from among the following minimum size and daily harvest limit options for recreational fishermen: option 1) 7 weakfish/day at 12 inches, option 2) 8 at 13 inches, option 3) 9 at 14 inches or option 4) 10 weakfish at any minimum size equal to or greater than 15 inches.

For commercial fishing, closure days shall be in effect each year as in previous years as required in the ASMFC Interstate Fishery Management Plan for Weakfish. On the closure days it shall be unlawful to fish with any gill net or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than hook and line: The closure dates shall include the following: every weekend day (defined as 12:01 AM on Friday through midnight Sunday) in both May and June, plus contiguous weekdays (defined as 12:01 AM Monday through midnight Thursday) at the beginning of May and the end of June, such that the total number of closure days add up to 34 days. The exact dates of the closures shall be distributed in advance to all holders of gill net permits and published annually in the Delaware Fishing Guide.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**  
Until changed

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**  
7 Delaware Code, 903(e)(2)a.

**5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:**  
None

**6. NOTICE OF PUBLIC COMMENT:**

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment will be held at the Department of Natural Resources and Environmental Control Auditorium 89 Kings Highway, Dover DE at 7:30 PM on Friday March 21, 2003. The record will remain open for written comments until 4:30 PM on March 31, 2003.

## TIDAL FINFISH REGULATION 10. WEAKFISH SIZE LIMITS; POSSESSION LIMITS; SEASONS.

a) It shall be unlawful for any person to possess weakfish *Cynoscion regalis* taken with a hook and line, that measure less than ~~fourteen (14)~~ inches, total length. (Note: size limit to be determined in combination with creel limit).

b) It shall be unlawful for any person to whom the Department has issued a commercial food fishing license and a food fishing equipment permit for hook and line to have more than ~~fourteen (14)~~ weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line. (Note: creel limit to be determined in combination with size limit).

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

d) It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than fourteen (14) weakfish, not to include weakfish in one's personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of ~~fourteen (14)~~ if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale. (Note: creel limit to be determined in combination with size limit).

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

Beginning at 12:01 AM on May 1, 2002 and ending at midnight on May 12, 2001;

Beginning at 12:01 AM on May 17, 2002 and ending at midnight on May 19, 2002;

Beginning at 12:01 AM on May 24, 2002 and ending at midnight on May 26;

Beginning at 12:01 AM on May 31, 2002 and ending at midnight on June 2, 2002;

Beginning at 12:01 AM on June 7, 2002 and ending at midnight on June 9, 2002;

Beginning at 12:01 AM on June 14, 2002 and ending at midnight on June 16, 2002;

and beginning at 12:01 AM on June 24, 2002 and ending at midnight on June 30, 2002.

Every weekend day (defined as 12:01 AM on Friday through midnight Sunday) in both May and June, plus contiguous weekdays (defined as 12:01 AM Monday through midnight Thursday) at the beginning of May and the end of June, such that the total number of closure days add up to thirty four (34) days. The exact dates of closures each year shall be mailed in advance to the affected public and published annually in the Delaware Fishing Guide.

f) The Department shall indicate on a person's food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of ~~fourteen (14)~~ weakfish per day. These four days of the week shall not be changed at any time during the remainder of the calendar year. (Note: creel limit to be determined in combination with size limit).

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

b)

c) Note: Proposed options for hook and line minimum size limits and daily creel or bag limits:

d)

e) Option	Minimum size in inches total length	Daily Creel or Bag Limit
f) 1.	12	7
g) 2.	13	8
h) 3.	14	9
i) 4.	15	10
j) 5.	Any size greater than 15 inches	10



**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

**Final Regulations**

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

---

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

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

**ORDER****Nature Of The Proceedings**

On June 25, 2002, the Governor signed into law Senate Bill No. 356 of the 141<sup>st</sup> General Assembly which provided for limited dispensing by Licensed Practical Nurses (LPNs) only as permitted in the Rules and Regulations of the Board of Nursing.

Pursuant to 24 *Del. C.* § 1906(1) the Board of Nursing is empowered to adopt, and from time to time revise rules, regulations and standards and the Board has proposed to adopt amendments to the Rules and Regulations which expressly govern and limit dispensing of medications by LPNs, as more specifically set forth in the Notice appearing in the Delaware *Register of Regulations* published December 1, 2002.

Pursuant to 29 *Del. C.* § 10115, notice was given to the public that a hearing would be held on January 15, 2003 at 9:00 a.m. in Conference A, of the Cannon Building, 861

Silver Lake Boulevard, Dover, Delaware to consider such proposed Rules and Regulation changes. The notice invited all interested persons to submit comments orally or in writing regarding the proposed Regulations. The hearing was held on January 15, 2003 and a quorum of the Board of Nursing was present. This is the Order of the Board as a result of that hearing which repeals the present subsection 7.6 of the Regulations of the Board and replaces it with a revised subsection 7.6 establishing limited dispensing authority for LPNs as contemplated by the above mentioned legislation [73 Del. Laws, c 316].

**Evidence And Information Submitted**

There were both written and oral comments submitted by the public at the public hearing which are summarized below.

Written comments were submitted on two occasions by the State Council for Persons With Disabilities. Both submissions contained the same comments and both endorsed the regulations authorizing LPNs to dispense medication as well as the clarification of the definition of the term "dispense". The Council noted that any requirement that nurses assure compliance with state generic substitution laws may be overly broad and that it may be imprudent to impose a regulatory requirement that the nurse be responsible for questioning whether a generic or a name-brand drug should have been prescribed.

In her sworn testimony, Iva Boardman, R.N., M.S.N., the Executive Director for the Board of Nursing explained the history of the proposed change to the prior prohibition against LPNs dispensing medications. The changes began when, at the request of several nursing employers, the Board of Nursing reviewed the LPN dispensing prohibition. The nursing employers cited specific situations where elements of dispensing (as opposed to full dispensing authority) were needed in specific employment settings. For example, in prenatal clinics, the pre-natal vitamins are packaged and labeled, except for the client's name. In methadone clinics, a machine is used to fill the bottle and separately generate the completed label requiring the application of the label to the bottle. The Nursing Practice Committee of the Board reviewed the requests and recommended to the Board that limited elements of dispensing be recognized for LPNs. The Board approved the recommendation of its Nursing Practice Committee and sought legislative approval to permit limited dispensing authority for LPNs. The legislature favorably considered the Board's recommendations and on June 25, 2002, the Governor signed into law Senate Bill No. 356 of the 141<sup>st</sup> General Assembly which provided for limited dispensing by Licensed Practical Nurses (LPNs) but only as permitted in the Rules and Regulations of the Board of Nursing. Section 7.6 of the Board's Regulations has been modified to allow limited elements of dispensing by LPNs to be recognized.

Regarding the comments of the State Council for Persons With Disabilities, Ms. Boardman noted that she has discussed the Council's observation concerning the requirement that nurses assure compliance with state generic substitution laws with David Dryden of the Board of Pharmacy and they have determined that responsibility belongs with the individual prescribing rather than the individual dispensing.

#### Findings Of Fact And Conclusions

The Board finds the proposed repeal of Subsection 7.6 and the re-enactment of the proposed revised Subsection 7.6 serves to establish Regulations which meet a defined need and permit reasonable and necessary limited dispensing activities by Licensed Practical Nurses in certain limited circumstances. The Board finds it has the specific authority to enact such Regulations pursuant to the legislative revision to the Nurse Practice Act permitting LPN dispensing as allowed by the Regulations of the Board.

Concerning the Comments of the State Council the Board notes that Section 7.3.1.6 states that the dispensing nurse must assure compliance to the state generic substitution laws when selecting the product to be dispensed. (Emphasis added). This situation would normally not apply to those situations where an LPN would be

authorized to engage in limited dispensing activities permitted under the proposed Regulations because the LPN would not be selecting the product to be dispensed.

Under the Regulations the authority for Licensed Practical Nurses to engage in "dispensing" is limited to three situations:

1. Licensed Practical Nurses may provide to a patient pre-packaged medication in accordance with the order of a practitioner duly licensed to prescribe medication where such medications have been pre-packaged by a person with lawful authority to dispense drugs.
2. Licensed Practical Nurses, per written order of a physician, dentist podiatrist, advanced practice nurse or other practitioner duly licensed to prescribe medication, may add the name of the client to a preprinted label on a pre-packaged medication.
3. Licensed Practical Nurses in a licensed methadone clinic may apply a preprinted label to a pre-packaged medication.

#### Decision And Order Adopting Regulations

Pursuant to the authority of the Board of Nursing to promulgate, adopt and revise rules and regulations pursuant to 24 *Del. C.* § 1906(1), it is the decision of the Board of Nursing to repeal the present subsection 7.6 regarding "Dispensing" and to adopt the proposed Rules and Regulations subsection 7.6 -Dispensing, a copy of which are attached hereto as Exhibit "A" and incorporated herein. The effective date of the new subsection 7.6 shall be the later of March 11, 2003 or ten (10) days after the publication of this Order in the Register of Regulations.

**IT IS SO ORDERED** this 12th day of February 2003.

#### THE BOARD OF NURSING

(As authenticated by a quorum of the Board):

Janet M. West, RN MSN, President/Vice-President  
 James Vanderwall  
 Jan Monihan, RN, M.Ed.  
 Robert Lawson\_  
 Margaret Ingram, LPN  
 Til Purnell  
 Lucille Gambardella, Ph.D., RN, CS, APN  
 Gwen Hines, LPN  
 Sheila A. McMahon, MSN, RN

#### 7.0 Standards of Nursing Practice

7.1 Authority "Standards of nursing practice" means those standards of practice adopted by the Board that interpret the legal definitions of nursing, as well as provide criteria against which violations of the law can be

determined. Such standards of nursing practice shall not be used to directly or indirectly affect the employment practices and deployment of personnel by duly licensed or accredited hospitals and other duly licensed or accredited health care facilities and organizations. In addition, such standards shall not be assumed the only evidence in civil malpractice litigation, nor shall they be given a different weight than any other evidence.

7.2 Purpose The purpose of standards is to establish minimal acceptable levels of safe practice for the Registered and Licensed Practical Nurse, and to serve as a guide for the Board to evaluate safe and effective nursing care.

7.3 Standards of Practice for the Registered and Licensed Practical Nurse

7.3.1 Standards related to the Registered Nurse.

7.3.1.1 The Registered Nurse shall conduct and document nursing assessments of the health status of individuals and groups by:

7.3.1.1.1 Collecting objective and subjective data from observations, examinations, interviews and written records in an accurate and timely manner. The data include but are not limited to:

7.3.1.1.1.1 Biophysical and emotional status and observed changes;

7.3.1.1.1.2 Growth and development;

7.3.1.1.1.3 Ethno-cultural, spiritual, socio-economic and ecological background;

7.3.1.1.1.4 Family health history;

7.3.1.1.1.5 Information collected by other health team members;

7.3.1.1.1.6 Ability to perform activities of daily living;

7.3.1.1.1.7 Consideration of client's health goals;

7.3.1.1.1.8 Client knowledge and perception about health status and potential, or maintaining health status;

7.3.1.1.1.9 Available and accessible human and material resources;

7.3.1.1.1.10 Patterns of coping and interaction.

7.3.1.1.2 Sorting, selecting, reporting, and recording the data.

7.3.1.1.3 Analyzing data.

7.3.1.1.4 Validating, refining and modifying the data by using available resources including interactions with the client, family, significant others, and health team members.

7.3.1.1.5 Evaluating data.

7.3.1.2 Registered Nurses shall establish and document nursing diagnoses that serve as the basis for the strategy of care.

7.3.1.3 Registered Nurses shall develop

strategies of care based on assessment and nursing diagnoses. This includes, but is not limited to:

7.3.1.3.1 Prescribing nursing intervention(s) based on the nursing diagnosis.

7.3.1.3.2 Initiating nursing interventions through

7.3.1.3.2.1 Giving care.

7.3.1.3.2.2 Assisting with care.

7.3.1.3.2.3 Delegating care.

7.3.1.3.3 Identifying to the identification of priorities in the strategies of care.

7.3.1.3.4 Setting realistic and measurable goals for implementation.

7.3.1.3.5 Identifying measures to maintain comfort, to support human functions and responses, to maintain an environment conducive to well being, and to provide health teaching and counseling.

7.3.1.3.6 Supervising the caregiver to whom care is delegated.

7.3.1.4 Registered Nurses shall participate in the implementation of the strategy of care by:

7.3.1.4.1 Providing care for clients whose conditions are stabilized or predictable.

7.3.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the direction and supervision of a recognized authority.

7.3.1.4.3 Providing an environment conducive to safety and health.

7.3.1.4.4 Documenting nursing interventions and client outcomes.

7.3.1.4.5 Communicating nursing interventions and client outcomes to health team members.

7.3.1.5 Registered Nurses shall evaluate outcomes, which shall include the client, family, significant others and health team members.

7.3.1.5.1 Evaluation data shall be appropriately documented; and

7.3.1.5.1.1 Be communicated to the client, family, significant others and appropriate members of the health care team; and

7.3.1.5.1.2 Used as a basis for modifying outcomes by reassessing client health status, modifying nursing diagnoses, revising strategies of care or prescribing changes in nursing interventions.

7.4 Standards of Practice for the Licensed Practical Nurse

7.4.1 Standards related to the Licensed Practical Nurse's contributions to the nursing process.

7.4.1.1 The Licensed Practical Nurse shall contribute to and document nursing assessments of the health status of individuals and groups by:

7.4.1.1.1 Sorting, selecting, reporting, and recording the data.

7.4.1.1.2 Collecting objective and

subjective data from observations, examinations, interview and written records in an accurate and timely manner. The data include but are not limited to:

7.4.1.1.2.1 Biophysical and emotional status and observed changes;  
 7.4.1.1.2.2 Growth and development;  
 7.4.1.1.2.3 Ethno-cultural, spiritual, socio-economic, and ecological background;  
 7.4.1.1.2.4 Family health history;  
 7.4.1.1.2.5 Information collected by other health team members;  
 7.4.1.1.2.6 Ability to perform activities of daily living;  
 7.4.1.1.2.7 Consideration of client's health goals;

7.4.1.2 Licensed Practical Nurses shall participate in establishing and documenting nursing diagnoses that serve as the basis for the strategy of care.

7.4.1.3 Licensed Practical Nurses shall participate in developing strategies of care based on assessment and nursing diagnoses.

7.4.1.3.1 Contributing to setting realistic and measurable goals for implementation.

7.4.1.3.2 Participating in identifying measures to maintain comfort, to support human functions and responses to maintain an environment conducive to well-being, and to provide health teaching and counseling.

7.4.1.3.3 Contributing to setting client priorities.

7.4.1.4 Licensed Practical Nurses shall participate in the implementation of the strategy of care by:

7.4.1.4.1 Providing care for clients whose conditions are stabilized or predictable.

7.4.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the directions and supervision of a recognized licensed authority.

7.4.1.4.3 Providing an environment conducive to safety and health.

7.4.1.4.4 Documenting nursing interventions and client outcomes.

7.4.1.4.5 Communicating nursing interventions and client outcomes to health team members.

7.4.1.5 Licensed Practical Nurses shall contribute to evaluating outcomes by appropriately documenting and communicating to the client, family, significant others and the health care team members.

7.5 Standards Related to the Registered and Licensed Practical Nurse's Competencies and Responsibilities.

7.5.1 Registered and Licensed Practical Nurses shall:

7.5.1.1 Have knowledge of the statutes and

regulations governing nursing and function within the legal boundaries of professional and practical nursing practice.

7.5.1.2 Accept responsibility for competent nursing practice.

7.5.1.3 Function as a member of the health team:

7.5.1.3.1 By collaborating with other members of the health team to provide optimum care, or

7.5.1.3.2 As an LPN under the direction and supervision of a recognized licensed authority.

7.5.1.4 Consult with nurses, other health team members and community agencies for continuity of care and seek guidance as necessary.

7.5.1.5 Obtain instruction and supervision as necessary when implementing nursing techniques.

7.5.1.6 Contribute to the formulation, interpreting, implementing and evaluating of the objectives and policies related to professional and practical nursing practice within the employment setting.

7.5.1.7 Participate in evaluating nurses through peer review.

7.5.1.8 Report unsafe nursing practice to the Board and unsafe practice conditions to recognized legal authorities.

7.5.1.9 Practice without discrimination as to age, race, religion, sex, sexual orientation, national origin, or disability.

7.5.1.10 Respect the dignity and rights of clients regardless of social or economic status, personal attributes or nature of health problems.

7.5.1.11 Respect the client's right to privacy by protecting confidentiality unless obligated by law to disclose the information.

7.5.1.12 Respect the property of clients, their families and significant others. In addition to the proceeding, the Registered Nurse shall:

7.5.1.13 Delegate to others only those nursing interventions that those persons are prepared or qualified to perform.

7.5.1.14 Supervise others to whom nursing interventions are delegated.

7.5.1.15 Retain professional accountability for care when delegating.

7.5.1.16 Teach safe practice to other health care workers as appropriate.

7.6 Dispensing

7.6.1 Definitions

7.6.1.1 ~~"Dispense" - To deliver a medication pursuant to a standing order.~~ "Dispensing" means providing medication according to an order of a practitioner duly licensed to prescribe medication. The term shall include both the repackaging and labeling of medication from bulk to individual dosages.

7.6.1.2 "Prescription label" - a label affixed

to every prescription or drug order which contains the following information at to a minimum.

7.6.1.2.1 A unique number for that specific drug order.

7.6.1.2.2 The date the drug was dispensed.

7.6.1.2.3 The patient's full name.

7.6.1.2.4 The brand or established name and manufacturer and the strength of the drug to the extent it can be measured.

7.6.1.2.5 The practitioner's directions as found on the prescription order.

7.6.1.2.6 The practitioner's name.

7.6.1.2.7 The initials of the dispensing nurse.

7.6.1.2.8 The name and address of the facility or practitioner from which the drug is dispensed.

7.6.1.2.9 Expiration date.

7.6.1.3 "Standing order" - An order written by the practitioner which authorizes a designated registered nurse or nurses to dispense prescription drugs to his/her patients) according to the standards listed below.

#### 7.6.2 Standards:

~~7.6.2.1 Only registered nurses may assume the responsibility of dispensing as defined in the Nurse Practice Act. and delineated below.~~

~~7.6.2.2 The medication must be prepackaged by a pharmaceutical company or prepared by a registered pharmacist.~~

~~7.6.2.3 The nurse shall be responsible for proper drug storage of the medication prior to dispensing.~~

~~7.6.2.4 The practitioner who originated the prescription or drug order must be on the premises or he/she or their designated coverage shall be available by telephone during the act of dispensing.~~

~~7.6.2.5 Once a drug has been dispensed it shall not be returned for reuse by another or the same patient in an institutional setting.~~

~~7.6.2.6 The nurse may not designate any part of the dispensing function to any other individual who is not licensed to dispense.~~

~~7.6.2.7 The dispensing nurse must assure compliance to the state generic substitution laws when selecting the product to be dispensed.~~

~~7.6.2.8 The nurse dispensed prescription may not be refillable; it requires the authority of the prescriber with each dispensing.~~

~~7.6.2.9 A usage review process must be established for the medicines dispensed to assure proper patient usage.~~

~~7.6.2.10 All dispensed drugs must be labeled as defined above and dispensed in proper safety closure containers that meet the standards established by the United States Pharmacopoeia for stability.~~

~~7.6.2.11 Record keeping must include the maintenance of the original written prescription of drug order for at least three years, allow retrospective review of accountability, and provide an audit trail. All dispensing records must be maintained on site, and available for inspection by authorized agents of the Board of Health, Pharmacy, and Nursing.~~

~~7.6.2.12 The dispensing nurse shall assume the responsibility of patient counseling of drug effects, side-effects, desired outcome, precautions, proper storage, unique dosing criteria, drug interactions, and other pertinent data, and record evidence of patient education.~~

~~7.6.2.13 Conformance to paragraphs G through L are not necessary if the original prescription was dispensed by a pharmacist for that specific patient.~~

#### 7.6.3 Medication modifications

~~7.6.3.1 A nurse may accept a change in the dosage of a medication from a pharmacist who is acting as an agent of the physician.~~

#### 7.6.2 Authority to Dispense

7.6.2.1 Registered Nurses may assume the responsibility of dispensing as defined in the Nurse Practice Act.

7.6.2.2 Licensed Practice Nurses may assume the responsibility of dispensing as authorized by the Nurse Practice Act and defined in these Regulations, Section 7.6.2.2.1., 7.6.2.2.2, and 7.6.2.2.3

7.6.2.2.1 Licensed Practical Nurses may provide to a patient pre-packaged medications in accordance with the order of a practitioner duly licensed to prescribe medication where such medications have been pre-packaged by a person with lawful authority to dispense drugs.

7.6.2.2.2 Licensed Practical Nurses, per written order of a physician, dentist, podiatrist, advanced practice nurse, or other practitioner duly licensed to prescribe medication, may add the name of the client to a preprinted label on a pre-packaged medication.

7.6.2.2.3 Licensed Practical Nurses in a licensed methadone clinic may apply a preprinted label to a pre-packaged medication.

#### 7.6.3 Standards for Dispensing

7.6.3.1 All licensed nurses engaged in dispensing shall adhere to these standards.

7.6.3.1.1 The medication must be prepackaged by a pharmaceutical company or prepared by a registered pharmacist.

7.6.3.1.2 The nurse shall be responsible for proper drug storage of the medication prior to dispensing.

7.6.3.1.3 The practitioner who originated the prescription or drug order must be on the premises or he/she or their designated coverage shall be available by telephone during the act of dispensing.

7.6.3.1.4 Once a drug has been

dispensed it shall not be returned for reuse by another or the same patient in an institutional setting.

7.6.3.1.5 The nurse may not delegate any part of the dispensing function to any other individual who is not licensed to dispense.

7.6.3.1.6 The dispensing nurse must assure compliance to the state generic substitution laws when selecting the product to be dispensed.

7.6.3.1.7 The nurse-dispensed prescription may not be refillable; it requires the authority of the prescriber with each dispensing.

7.6.3.1.8 A usage review process must be established for the medicines dispensed to assure proper patient usage.

7.6.3.1.9 All dispensed drugs must be labeled as defined above and dispensed in proper safety closure containers that meet the standards established by the United States Pharmacopoeia for stability.

7.6.3.1.10 Record keeping must include the maintenance of the original written prescription of drug order for at least three years, allow retrospective review of accountability, and provide an audit trail. All dispensing records must be maintained on site, and available for inspection by authorized agents of the Board of Health, Pharmacy, and Nursing.

7.6.3.1.11 The dispensing nurse shall assume the responsibility of patient counseling of drug effects, side-effects, desired outcome, precautions, proper storage, unique dosing criteria, drug interactions, and other pertinent data, and record evidence of patient education.

7.6.3.1.12 Conformance to paragraphs 6 through 11 are not necessary if the original prescription was dispensed by a pharmacist for that specific patient.

## 7.7 Delegation

### 7.7.1 Definitions

7.7.1.1 "Unlicensed Assistive Personnel" - Individuals not licensed to perform nursing tasks that are employed to assist in the delivery of client care. The term "unlicensed assistive personnel" does not include members of the client's immediate family, guardians, or friends; these individuals may perform incidental care of the sick in private homes without specific authority from a licensed nurse (as established in 24 Del.C. §1921(a)(4) of the Nurse Practice Act).

7.7.1.2 "Delegation" - Entrusting the performance of selected nursing duties to individuals qualified, competent and legally able to perform such duties while retaining the accountability for such act.

7.7.1.3 "Supervision" - The guidance by a registered nurse (RN) for the accomplishment of a function or activity. The guidance consists of the activities included in monitoring as well as establishing the initial direction, delegating, setting expectations, directing activities and courses of action, critical watching, overseeing, evaluating,

and changing a course of action.

7.7.1.4 "Accountability" - The state of being accountable, answerable, or legally liable for actions and decisions, including supervision.

### 7.7.2 Conditions

7.7.2.1 The following conditions are relevant to delegation:

7.7.2.1.1 Only RNs may delegate.

7.7.2.1.2 The RN must be knowledgeable regarding the unlicensed assistive personnel's education and training and have opportunity to periodically verify the individual's ability to perform the specific tasks.

7.7.2.1.3 The RN maintains accountability for determining the appropriateness of all delegated nursing duties and responsibility for the delivery of safe and competent care. Unlicensed assistive personnel may not reassign a delegated act.

### See 1 DE Reg. 1888 (6/1/98)

### 7.7.3 Criteria

7.7.3.1 The RN may delegate only tasks that are within the scope of sound professional nursing judgment to delegate.

7.7.3.2 Determination of appropriate factors include, but are not limited to:

7.7.3.2.1 stability of the client's condition

7.7.3.2.2 educational background, skill level, or preparation of the individual

7.7.3.2.3 nature of the nursing act that meets the following:

7.7.3.2.3.1 task is performed frequently in the daily care of a client

7.7.3.2.3.2 task is performed according to an established sequence of steps

7.7.3.2.3.3 task may be performed with a predictable outcome

7.7.3.2.3.4 task does not involve ongoing assessment, interpretation or decision making that cannot be logically separated from the task itself.

7.7.3.3 The RN must be readily available in person or by telecommunication.

### 7.7.4 Exclusions

7.7.4.1 The following activities require nursing knowledge, judgment, and skill and may not be delegated by the RN to an unlicensed assistive person. These exclusions do not apply to Advanced Practice Nurses.

### See 1 DE Reg. 1888 (6/1/98)

7.7.4.2 Physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or follow-up;

7.7.4.3 Development of nursing diagnosis and care goals;

7.7.4.4 Formulation of the plan of nursing care and evaluation of the effectiveness of the nursing care

provided;

7.7.4.5 Specific tasks involved in the implementation of the plan of care which require nursing judgment, skill, or intervention, that include, but are not limited to: performance of sterile invasive procedures involving a wound or anatomical site; nasogastric, newly established gastrostomy and jejunostomy tube feeding; nasogastric, jejunostomy and gastrostomy tube insertion or removal; suprapubic catheter insertion and removal; (phlebotomy is not considered a sterile, invasive procedure);

7.7.4.6 Administration of medications, including prescription topical medications; and

7.7.4.7 Receiving or transmitting verbal orders.

**\* PLEASE NOTE: AS THE REST OF THE REGULATION WAS NOT AFFECTED IT IS NOT BEING REPRODUCED HERE.**

---

## **DEPARTMENT OF AGRICULTURE**

### **DELAWARE FOREST SERVICE**

Statutory Authority: 3 Delaware Code  
Sections 1008 & 1011 (2 Del.C. §§1008, 1011)

#### **ORDER**

##### **Nature Of Proceedings**

Pursuant to its authority under 3 **Del.C.** §1008,1011, the Department proposed to issue regulations concerning legal forms of recreation on the State Forests of Delaware. The regulations were developed to ensure that these publicly owned lands are conserved, protected, and maintained for the benefit of all.

Notice of the public hearing on the Department's proposed regulations was published in the Delaware Register of Regulations for November 1, 2002 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, January 10, 2003 before the Department's designee, E. Austin Short, and at which time, no public comments either written or oral having been received, Mr. Short resolved to recommend to the Secretary of the Department that the proposed regulations be adopted. This is the Department's Decision and Order adopting the proposed regulations.

##### **Evidence Submitted At Public Hearing**

The Department received no written comments in response to the notice of intention adopt the proposed

amended regulations. No public comments were received at the January 10, 2003 public hearing.

##### **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 plan. 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, it is now free adopt them.

**NOW THEREFORE**, it is hereby ordered that:

1. The Department's proposed State Forest regulations are adopted;
2. The text of the regulations shall be in the form attached hereto as Exhibit A;
3. The effective date of this Order is ten days from the date of its publication in the Delaware Register of Regulations in accordance with 29 Del.C. § 10118(e);and
4. The Department reserves unto itself the authority to issue such other and further orders in this matter as may be just and proper.

Michael T. Scuse, Secretary

Delaware Department of Agriculture, January 22, 2003

##### **State Forest Regulations**

The Department proposes these regulations pursuant to 3 Del.C. § 1008 and § 1011. The State Forests of Delaware are open to the public for all legal forms of recreation and enjoyment. The following rules and regulations were developed to ensure that these publicly owned lands are conserved, protected, and maintained for the benefit of all. These regulations are a total rewrite of those regulations proposed at 2 DE Reg. 348, (9/1/98).

The proposed regulations will be considered at a public hearing scheduled for December 6, 2002 at 1:00 p.m. at the Delaware Department of Agriculture Building Conference Room. Copies of the proposed regulations may be obtained from the State Forester's Office. Public comments may be submitted in writing to E. Austin Short, III on or before December 6, 2002 and/or in person at the public hearing. The Delaware Department of Agriculture is located at 2320 South DuPont Highway, Dover, Delaware and the telephone number is (302) 698-4500.

##### **1.0 AUTHORITY**

These regulations are promulgated pursuant to the delegation of authority to the Department of Agriculture by

the General Assembly found in Sections 1008 and 1011 of Title 3 of the Delaware Code.

## **2.0 PURPOSE**

The State Forests of Delaware are open to the public for all legal forms of recreation and enjoyment. The following regulations were developed to ensure that these publicly owned lands are conserved, protected, and maintained for the benefit of all.

## **3.0 DEFINITIONS**

3.1 "Department" is the Delaware Department of Agriculture

3.2 "DFS" is the Delaware Forest Service

3.3 "DNREC" is the Delaware Department of Natural Resources and Environmental Control

## **4.0 GENERAL RULES AND REGULATIONS**

4.1 No living trees, shrubs, or other vegetation may be cut, felled, uprooted, removed, or otherwise injured or destroyed, unless written permission has first been obtained from the forest officer in charge.

4.2 Fires are prohibited for any purpose on State Forest lands other than in designated areas. Written permission must be obtained in advance for fires on State Forest lands outside of designated areas. Any such authorized fire must, at all times, be under the direct supervision and care of a competent adult, and must be thoroughly extinguished before the fire site is abandoned.

4.3 The dumping or depositing of rubbish, trash, household items, or other debris, and the placing of advertisement signs within State Forests are prohibited.

4.4 For the sake of sanitation and attractiveness, persons using public camp and picnic sites are required to deposit all waste paper, tin cans and other refuse in the containers, if provided. Where containers are not provided, users must properly dispose of all refuse off State Forest lands.

4.5 Writing upon, mutilating, carving, and otherwise defacing trees, buildings, structures, signs, and official notices is prohibited.

4.6 All State Forest boundaries are well marked with metal signs, yellow paint on boundary line trees, brushed-out paths or with a combination of all three features. Therefore, boundary lines should be easy to identify. State Forest visitors should avoid trespass or encroachment upon adjoining private lands by staying within boundaries of State Forest lands.

4.7 Many State Forest access roads are closed to vehicular travel to improve the quality of recreation and to reduce littering. These roads and trails are open to pedestrian and non-vehicular travel only. Non-pedestrian traffic (e.g. horseback riding, mountain biking) is restricted to access roads and trails, unless otherwise noted. In addition, vehicle use of tax ditches is unlawful.

Furthermore, no off-highway vehicles or all-terrain vehicles, either registered or non-registered, are permitted. The only exception to this rule applies to those off-highway vehicles owned, operated, and/or authorized by the Delaware Forest Service (DFS). Violators will be prosecuted for trespassing.

4.8 With the exception of animals permitted under lawful hunting regulations, all animals must be under the continuous control of the owner(s) unless otherwise authorized in writing by the Forestry Administrator. All dogs must be leashed, unless covered by the exception above. State Forest visitors are responsible for the conduct and any damages, either personal or property, caused by their animals.

4.9 Entry to State Forest lands is prohibited from sunset to sunrise, except for lawful hunting, permitted camping, permitted Redden Lodge use, or as otherwise permitted in writing by the DFS.

4.10 Fishing on State Forest lands is limited to catch and release only.

## **5.0 CAMPING RULES AND REGULATIONS**

5.1 A forest use permit is required for all camping on State Forest lands. Camping is free of charge, year round, but restricted to map-designated campsites. Permits are available at the State Forest office during office hours or from the information box.

5.2 Campsites are on a first-come/ first serve basis. Reservations may be accepted for special occasions.

5.3 Campsites are of a primitive type, and are to be used ONLY for tent, van or pickup campers. Travel trailers and /or self-propelled motor homes are excluded due to access and parking limitations, unless otherwise noted.

5.4 There are a limited number of campsites, each is large enough to accommodate large families. These are equipped with tables, fire pits, charcoal grills and a trash barrel. Campsites are limited to a maximum number of 25 people per site, with a maximum stay of three nights per week.

5.5 Camping is at your own risk. State Forests are a public use area and there is no after-hours, nighttime or weekend security. Law enforcement is provided by the Delaware State Police should the need arise.

5.6 State forests are "multiple-use" facilities, which means other activities will continue while you camp. These activities include: hunting, picnicking, hiking, orienteering, nature study, horseback riding, firewood cutting (by permit only), and timber harvesting. The DFS reserves the right to limit or deny permits during times of conflicting use.

5.7 Firewood for camp use is available at the campsites. If more firewood is needed, it may be gathered locally from dead and downed trees. No standing trees or shrubs are to be cut. Using firewood located at the office complex is prohibited. Campfires are to be in established fire rings only.



5.8 Campsites are to be left clean for the next users, and all fires are to be extinguished before departing from the area.

## **6.0 REDDEN STATE FOREST LODGE**

6.1 Maximum Lodge capacity is 45 persons (overnight use).

6.2 The organization or individual renting the Lodge must be at least 21 years of age and provide a minimum of one adult supervisor per ten youths. Youth are defined as persons under 18 years of age and adults as having reached the age of 21.

6.3 The use or possession of illegal drugs is strictly prohibited. Additionally, alcoholic beverages are prohibited (unless approved in writing by the DFS). Smoking and the use of other tobacco products are prohibited inside the Lodge.

6.4 Unauthorized heating equipment is prohibited in the Lodge. The fire alarm system is designed for the protection of all those who use the Lodge and the structure itself. Any misuse or intentional activation of this and other alarms is strictly prohibited and legal action(s) will be taken pursuant to Delaware Code.

6.5 The use or possession of firearms or other weapons (except as permitted for legal hunting outside the safety zone, or as approved in writing by the Delaware Forest Service), etc., is strictly prohibited.

6.6 No outside fires may be started at any time in the vicinity of the Lodge, except in the permanent grills installed on site and the fire pit area, or as approved in writing by the Delaware Forest Service.

6.7 Service dogs are permitted; no other pets shall be permitted within or near the Lodge.

6.8 An adequate supply of firewood will be provided and placed on the back porch. Please do not retrieve additional wood from the shed/storage area. No charcoal, wax logs, or other materials shall be used in the fireplaces.

6.9 No sleeping facilities are provided at the Lodge. There are cooking facilities and tables and chairs for eating. There are no pots, pans, dishes, or serving articles. Do not move any furniture or fixtures. Folding tables and chairs are not permitted outside the Lodge.

6.10 The telephone at the Lodge is provided for emergencies, local calls, and credit card or collect long distance calls and are only for use by adults, except in emergencies. You must dial 9 before placing any call. The number for the Lodge phone is (302) 856-5939, and incoming calls can be received. Please remember this telephone is only to be used when necessary and are not for social calls. It is the responsibility of the applicant to honor these restrictions and inform all lodge users of the telephone restrictions. If the telephone restrictions are not honored, the Delaware Forest Service reserves the right to remove the telephone at any time.

6.11 Lodge Rental Fees, Reservations, Deposits, and Cancellations

6.11.1 Reservations shall be made on a first-come, first-served basis. To secure a reservation, a completed application and the full Lodge user fee must be received at least 120 days prior to the desired reservation date.

6.11.2A security-damage deposit in the amount of \$100.00 must be received at the time of check-in. If the security-damage deposit is not paid prior to check-in, the person/group/organization will not be permitted use of the lodge. The security-damage deposit will be returned within 5 days after check-out, if the lodge is found in good condition. If the lodge is not found in good condition, an itemized list of charges will be provided to the person/group/organization.

6.11.3 Cancellation policy: Reservations must be canceled at least fifteen (15) working days prior to the arrival date. If this cancellation policy is not followed, the reservation deposit will be forfeited. The security-damage deposit will be refunded for all cancellations.

### 6.11.4 Types of Use

6.11.4.1 Daily: 9:00 a.m. - 3:00 p.m.

6.11.4.2 Evening: 4 p.m. - 10 p.m.

6.11.4.3 Weekend: Friday 4 p.m. - Sunday 10 p.m.

6.11.4.4 Weekday Overnight: 4 p.m. - 8 a.m.

6.11.5 Lodge Rental Fees: Lodge user fees shall be as follows:

(Amounts in parentheses indicate proposed increases in fees)

6.11.5.1 May 1 to September 30

6.11.5.1.1 \$7 Daily, Evening Use, and Weekday Overnight

6.11.5.1.2 \$200 Weekend Use

6.11.5.2 October 1 to April 30 (Increased fees due to heating expenses)

6.11.5.2.1 \$85 Daily, Evening Use, and Weekday Overnight

6.11.5.2.2 \$225 Weekend Use

6.11.5.3 Checks should be made payable to: Department of Agriculture.

6.11.5.4 Payments and application should be mailed to:

Redden State Forest

18074 Redden Forest Drive

Georgetown, DE 19947

(302)856-2893

Weekdays 8:00 a.m. - 4:30 p.m.

## **7.0 HUNTING RULES AND REGULATIONS**

7.1 State Forests are year-round multiple use areas. Hunters share the use of State Forest lands with other public users such as hikers, campers, horseback riders, firewood cutters, and loggers.

7.2 No special permits are required to hunt on State Forest lands, except as specified in the DNREC, Division of Fish and Wildlife annual hunting manual. Properly licensed hunters may hunt during any open season except on areas designated, such as those marked with Wildlife Sanctuary, NO HUNTING, or Safety Zone signs.

7.3 Parking is available on all State Forest tracts.

7.4 No permanent deer stands, platforms, ladders, or blinds may be constructed. No screw-in tree steps, spikes, screws, or nails are allowed.

7.5 Deer drives by any person or persons are not permitted on any State Forest land at any time.

7.6 Small game hunting is closed on State Forest lands during firearm deer seasons.

7.7 The DFS reserves the right to close to hunting specific State Forest tracts during specific hunting seasons. Therefore, it is important to consult the current hunting guide for a listing of these closures.

7.8 Trapping rights may be leased for State Forest lands. No other trapping is permitted on State Forest lands.

7.9 Target shooting is prohibited. Firearms are allowed for legal hunting only, and are prohibited on State Forest lands from March 1 through August 31.

7.10 Waterfowl hunting is not permitted on State Forest land or waters.

7.11 The following hunting restrictions apply to several tracts of Blackbird State Forest. Maps delineating these areas are available at Blackbird State Forest headquarters or by calling (302)653-6505.

7.11.1 All deer hunting is limited to numbered stands.

7.11.2 For shotgun season stands will be chosen in a pre-season lottery. To apply for a stand during the shotgun season fill out the application in the Delaware Hunting and Trapping Guide. For leftover stands there will be a daily lottery held at Blackbird State Forest Headquarters, located on the Tybout tract on Blackbird Forest Rd. (Rd. 471), 1 2 hours before legal hunting time.

7.11.3 For Muzzleloader season there will be a daily lottery held at Blackbird State Forest Headquarters, located on the Tybout tract on Blackbird Forest Rd. (Rd. 471), 1 2 hours before legal hunting time.

7.11.4 All hunters on these tracts, during shotgun and muzzleloader season, must hunt from the stand only, as walk around hunting is not permitted.

7.11.5 During Archery season bowhunters must be within 50 yards of their designated stand.

7.11.6 Stands will be available during Archery season on a first come first serve basis.

7.11.7 No more than one hunter may hunt from a stand at any one time.

7.12 These special hunting restrictions apply to the Tybout tract of Blackbird State Forest:

7.12.1 Squirrel hunting is not allowed with rifle or muzzleloading rifle, shotgun squirrel hunting is permitted.

7.12.2 Dog training is prohibited at all times.

## **8.0 FOREST USE PERMITS**

8.1 Forest use permits on State Forests are issued on a first-come first-served basis and are required for camping, firewood cutting, lodge rental (Redden State Forest), organized special events, and pavilion reservation (Blackbird State Forest only). Upon arrival at the facility users are required to fill out a Forest Use Permit (Doc. No. 65-04-02/87/10/03). Under special circumstances facilities may be applied for in advance.

8.2 Items to be filled out by all applicants include:

8.2.1 Date of application

8.2.2 Time of application submission

8.2.3 Applicants= name

8.2.4 Applicants= address, city, state, zip code

8.3 Camping:

8.3.1 Individual or group permit

8.3.2 Number of persons camping

8.3.3 The name of organization (if applicable)

8.3.4 Vehicle make, model, color, and license

number

8.3.5 Permit effective date & termination date

8.3.6 Applicants= signature

8.4 Group Users/Special Events:

8.4.1 The name of the person in charge

8.4.2 The name of organization

8.4.3 Number in the group

8.4.4 Permit effective date

8.4.5 Permit termination date

8.4.6 Facility used:

8.4.6.1 Camping

8.4.6.2 Picnic shelter

8.4.6.3 Nature study area

8.4.6.4 Other

8.4.6.5 Applicants= signature

8.5 Firewood Permits:

Firewood permits are required to harvest firewood on State Forest lands and are issued at the discretion of the State Forest staff. When available, these permits are issued on a first come first serve basis. There is a fee of \$20 for firewood permits, which allows the holder to cut two standard pickup loads of firewood. No trees are to be felled; only downed wood may be cut. Designated firewood cutting areas will be delineated by State Forest employees and posted as such.

## **9.0 DEPARTMENT ENFORCEMENT REGULATIONS**

9.1 Whoever violates any of the foregoing regulations shall be deemed to have committed an unclassified misdemeanor and fined not less than \$25 nor more than \$250

and pay the court costs for each violation. For each subsequent violation, within three years of the previous conviction, the violator shall be fined not less than \$50 nor more than \$500 and pay court costs. In addition to such fines and court costs, a violator who is convicted of damaging, destroying, or removing property owned and maintained by the State Forest Service, shall be required to make restitution to the Department for the replacement or restoration of such property.

9.2 Justices of the Peace throughout the State shall have jurisdiction over alleged violations of these State Forest Regulations; however, any violator shall, upon arrest, be taken to the nearest available Justice of the Peace in the county where such violation is alleged to have occurred, or in lieu thereof, be provided with an assessment form for the voluntary payment of fines.

9.3 Notwithstanding the immediate preceding subsection, a forest service officer making an arrest for a violation of these regulations may issue a summons requiring the violator to appear in person at a subsequent date at the Justice of the Peace Court nearest to the place of arrest and during the regularly scheduled hours of the Court.

9.4 After payment for fines and costs, if any, is received by the Department of Justice or Justice of the Peace Court, the Department or the Court shall mail a receipt indicating payment for such fine if the violator paying such fine makes a written request for a receipt and encloses a self-addressed envelope with proper postage affixed thereon.

Delaware Forest Service  
Forest Use Permit Application

Date(s) of use \_\_\_\_\_ Permit No. \_\_\_\_\_  
Application For: Firewood Camping Other (explain) \_\_\_\_\_  
Drivers license No. \_\_\_\_\_ Expiration Date \_\_\_\_\_ Issuing State \_\_\_\_\_  
Location Blackbird State Forest No. in group \_\_\_\_\_  
\_\_\_\_\_ Redden State Forest  
\_\_\_\_\_ Taber State Forest  
Name \_\_\_\_\_  
First MI Last  
Address \_\_\_\_\_  
Street/P.O. Box \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
Phone No. ( ) \_\_\_\_\_ Phone No. ( ) \_\_\_\_\_  
Home Work  
Vehicle Information \_\_\_\_\_  
Year/Make/Mode/Color/Tag No. \_\_\_\_\_  
Effective Date \_\_\_\_\_ Expiration Date \_\_\_\_\_ Fee \$ \_\_\_\_\_  
Comments \_\_\_\_\_

In exercising the above-described use, I agree to abide by all of the regulations of the Delaware Forest Service (DFS), including but not limited to, those attached to this application, as well as the instructions of the undersigned DFS personnel. I fully understand that the State has neither

commercially-procured insurance nor self-insurance to cover any injury, risk or loss which occurs in the State Forest and that the State is immune from any and all liability from any such injury, risk or loss.

In consideration of the granting of the permit, I agree to waive any and all claims arising out of the above-described use which may accrue to myself and/or to anyone else in my custody and control, and I further agree to indemnify the State and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damages to property arising out of any occurrence in the State Forest.

APPROVED: SIGNATURE OF DFS PERSONNEL \_\_\_\_\_ Date \_\_\_\_\_

SIGNATURE OF APPLICANT \_\_\_\_\_ Date \_\_\_\_\_

Note: Any violation of the State Forest rules and regulations will result not only cancellation of this permit, but may also result in possible arrest and fines. This permit is to be kept in applicant's vehicle or on his/her person and must be produced at the request of any forest officer. This permit is subject to cancellation by the state forester at any time for just cause. Authority: Title 3, Chapter 10, Sections 1008 and 1011.

---

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

**ORDER**

Pursuant to 29 Del. C. §10113(b) and 3 Del. C. §10103, the Delaware Thoroughbred Racing Commission ("the Commission") hereby issues this Order adopting amendments to Rules 13.01 and 13.16, and adopting a new Rule 15.13. Following notice and a public hearing held on January 6, 2003, the Commission makes the following findings and conclusions:

**Summary Of Evidence And Information Submitted**

The Commission posted public notice of the proposed rule amendments to Rules 13.01 and 13.16 in the December 1, 2002 Register of Regulations and in the Delaware Capital Review and the Delaware State News. The Commission posted public notice of the proposed new Rule 15.13 in the November 1, 2002 Register of Regulations and in the Delaware Capital Review and in the Delaware State News. The Commission proposed to amend Rule 13.01 to provide that owners who are stabled on the licensee's grounds and

who have started a horse may claim, and that an owner shipping in a horse may claim a horse to replace a claimed horse, and to set forth the procedure to obtain an open claiming license. The Commission proposed to amend Rule 13.16 to add a provision that a stable will lose its claiming rights eliminated by sale of horses or removal from the grounds, and that an owner who claims a horse under the rule is required to reinstate his eligibility to claim under the rules. The Commission proposed to enact a new Rule 15.13 to provide as follows: 1)prohibit possession of an instrument used for shock wave therapy on the licensee's race track; 2)provide that no horse may be treated with any form of shock wave therapy within ten days of racing; 3)provide that the administration of shock wave therapy may only be performed by a licensed veterinarian who must document treatment in the daily medication report; and 4)impose penalties on trainers and veterinarians for violations.

The Commission received no written public comments prior to the public hearing. The Commission received comments at the public hearing on January 6, 2003. Sam Abbey, Racing Secretary of Delaware Park stated that many tracks are banning shockwave therapy. Mr. Abbey stated that Rule 13.01 would permit an owner who ships in and has a horse claimed to have until the end of the meet to claim one horse. Robin Metz of the Delaware Thoroughbred Horsemen's Association agreed with Mr. Abbey's interpretation of Rule 13.01.

#### Findings Of Fact And Conclusions

The public was given notice and an opportunity to provide the Commission with comments in writing and at a public hearing.

The Commission finds that the proposed amendments to the Commission's Rules are in the best interests of racing and will be beneficial for the horsemen and the race track. The proposed rules are necessary and proper under 3 Del. C. §10103(b) for the effective regulation of thoroughbred racing in Delaware. The Commission proposed these rules after extensive study. The proposed amendments to the claiming rules were the product of review by representatives from Delaware Park, the Stewards, and the Delaware Thoroughbred Horsemen's Association. The Commission concludes that the proposed Rules should be adopted in their proposed form.

This Order will be published in the next issue of the Register of Regulations which is expected to be the March 1, 2003 Register of Regulations. The effective date of the Order will be ten days after publication in the Register of Regulations.

**IT IS SO ORDERED** this 28th day of January, 2003

Bernard Daney, Chairman  
Duncan Patterson, Commissioner  
H. James Decker, Commissioner

Carolyn Wilson, Commissioner  
Edward J. Stegemeier, Commissioner

#### Part 13-Claiming Races

##### 13.01 Owners Entitled:

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

In claiming races, any horse is subject to claim for its entered price by any Owner in good standing, who has horses stabled on the Licensee's grounds, and who has started a horse at the race meeting at which the claim is made. An Owner may claim out of the race in which he first starts a horse. Owners shipping in from other stable areas who have a horse claimed shall be allowed one claim to replace the horse lost via claiming.

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

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

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

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

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

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

##### 13.02 Claim by Agent:

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

##### 13.03 Claiming Own Horse Prohibited:

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

**13.04 Limits on claims:**

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

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

**13.05 Thirty Day Prohibition -- Racing Claimed Horse:**

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

See 5 DE Reg. 1710 (3/1/02)

**13.06 Thirty Day Prohibition -- Sale of Claimed Horse:**

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

Revised: 7/16/86

**13.07 Form of Claim:**

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

detail.

**13.08 Procedure for Claim:**

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

Revised: 8/15/95

**13.09 Stewards' Duties:**

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

**13.10 Conflicting claims:**

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

**13.11 Delivery of Claimed Horse:**

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

**13.12 Nature and Effect of a Claim:**

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

**13.13 Prohibited Practices:**

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

Rule 13.06 Rev. March 1976.

**13.14 Invalidation of Claim:**

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

**13.15 Necessity to Record Lien:**

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

**13.16 Claiming Privileges-Eliminated Stable:**

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

Should a stable at a meeting be eliminated by sale or removal from the grounds, the right to claim is void. After claiming a horse under the conditions of this Rule, the Owner shall be required to reinstate his eligibility to claim pursuant to these Rules before being eligible to make another claim.

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

**13.17 Claim Embraces Horse's Prior Engagements:**

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

**13.18 Caveat Emptor:**

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

**13.19 Racing Claimed Horse:**

Repealed

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

See 5 DE Reg. 1710 (3/1/02)

**15.13 Shock Wave Therapy/Instruments**

(a) No person may possess on a licensee's race track

an instrument used for shock wave therapy.

(b) No horse may be treated with any form of shock wave therapy within ten (10) days of racing (the day of the treatment shall be considered the first day in counting the number of days).

(c) The administration of shock wave therapy may only be performed by a licensed veterinarian. A veterinarian using shock wave therapy shall document and report each treatment on his daily medication report.

(d) A Trainer or Veterinarian who has been found to have violated any of the above provisions of this Rule shall be subject to appropriate disciplinary action by the stewards and/or Commission including but not limited to a maximum suspension of ninety (90) days.

**PLEASE NOTE: AS THE REMAINDER OF THE RULE IS NOT BEING MODIFIED IT IS NOT BEING PUBLISHED.**

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF LONG TERM CARE RESIDENTS  
PROTECTION**

Statutory Authority: 16 Delaware Code,  
Sections 1145(f) and 1146(f)  
(16 Del.C. §§1145(f),1146(g))

**ORDER**

**Regulations for Criminal History Checks and Drug  
Testing for Home Health Agencies**

**Nature of the Proceedings:**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with 29 Delaware Code, Chapter 101 to adopt Regulations for Criminal History Checks and Drug Testing for Home Health Agencies. On January 10, 2003, following public hearings in December, DHSS adopted as final regulations all of the proposed regulations with the exception of eight regulations.

The eight regulations withheld from publication as final regulations were Regulations 72.0, 72.101, 72.104, 72.306, 72.307, 72.308, 72.401 and 72.404. Those eight regulations were revised and published as proposed regulations in the January Register of Regulations. A public hearing on the eight revised regulations was held on February 6, 2003.

The regulations are attached and are being promulgated as final regulations. A discussion of the comments received

regarding the attached final regulations is in the accompanying Summary of Evidence.

#### **Findings of Fact:**

The Department of Health and Social Services finds that the proposed regulations, as set forth in the attached copy, should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations for Criminal History Checks and Drug Testing for Home Health Agencies are adopted effective March 10, 2003.

Vincent P. Meconi, Secretary, DHSS, 2/14/2003

#### **Summary of Evidence:**

Comments on the regulations have been received and evaluated as follows:

One comment called attention to the recent statutory change in the definition of a home health agency. Although that definition was not a subject of the public hearing, DLTCRP will change the definition in the regulations to accord with the amended statutory language. That change does not require a further public hearing.

A comment was received repeating an earlier comment applicable to the portion of the regulations which, after the public hearings in December, became final prior to the most recent public hearing. That comment, therefore, is not relevant to these eight regulations.

Two comments were received acknowledging revisions in some of the eight regulations after the earlier public hearings. Neither comment proposed any further change.

A comment objected to the revision of Regulation 72.308 which limits access to confidential information available to a person in need of care. It should be noted that in its original version, Regulation 72.308 would have exceeded the statutory restrictions on the dissemination of confidential information. Therefore, the revised regulation now reflects the limits set forth in the statute.

#### **Regulations for Criminal History Record Checks and Drug Testing for Home Health Agencies**

##### **72.0 Purpose**

The purpose of these regulations is to ensure the safety and well-being of residents in this State who use the services of home health agencies licensed pursuant to 16 Delaware Code, §122(3)o, and/or self-employed healthcare givers in the resident's own home or home of residence. To this end, persons selected for employment by home health agencies shall be subject to pre-employment criminal history checks and pre-employment drug testing; persons selected for employment by private individuals may be subject to pre-employment criminal history checks and pre-employment

drug testing at the discretion of the private individual selecting the person for employment.

##### **72.1 Definitions**

72.101 "Conditional Employment" pertains to the period of time during which an applicant is working while his/her employer has not received the results of (a) the state criminal history record, (b) the federal criminal history record, and (c) the results of the testing for illegal drugs. Conditional employment must end immediately if either the state or federal criminal history record contains disqualifying crime(s) as delineated in Section 72.201 of these regulations.

72.102 "**Department or DHSS**" means Department of Health and Social Services.

72.103 "**Employer**" is any person, business entity, management company, home health agency, temporary agency, or other organization that hires persons or that places persons in a private residence for the purposes of providing licensed nursing services, home health aide services, physical therapy, speech pathology, occupational therapy or social services.

72.104 "**Final Employment**" means employment upon the employer's receipt of the State Bureau of Identification criminal history record containing evidence of no disqualifying convictions, a report by the Department that there are no disqualifying convictions in such person's federal criminal record, and the results of the testing for illegal drugs.

72.105 "**Hire**" means to begin employment of an applicant, or to pay wages for the services of a person who has not worked for the employer during the preceding three-month period, or to refer a caregiver to a private residence in return for a finder or placement fee.

72.106 "**Home Health Agency**" is any business entity, public or private, which provides directly or through contract arrangements, to individuals in their home or private residence, either (a) two or more of the following services: licensed nursing, home health aide, physical therapy, speech pathology, occupational therapy, or social services where at least one of these services is licensed nursing or home health aide services or (b) home health aide services exclusively, provided under appropriate supervision.

72.107 "**Illegal drug**" for purposes of these regulations means marijuana/cannabis, cocaine, opiates including heroin, phencyclidine (PCP), amphetamines, barbiturates, benzodiazepene, methadone, methaqualone and propoxyphene.

72.108 "**Promotion**" means any change in job classification that results in additional responsibility and/or an increase in wages. It does not include a change in job status from part-time to full-time.

**72.2 Criteria For Unsuitability For Employment**

72.201 The following types of criminal convictions (or convictions in another jurisdiction which are comparable under Delaware law) automatically disqualify a person from providing home health services when such conviction occurred within the time periods specified:

a. Conviction of any act causing death as defined in 11 Delaware Code, Chapter 5, Subchapter II, Subpart B with no time limit;

b. Conviction of any sexual offense designated as a felony in 11 Delaware Code, Chapter 5, Subchapter II, Subpart D with no time limit;

c. Conviction of any violent felony as specified in 11 Delaware Code, Section 4201(c) within the last ten years;

d. Conviction of any felony involving a controlled substance, a counterfeit controlled substance, or a designer drug as specified in 16 Delaware Code, Chapter 47 within the last ten years;

e. Conviction of any felony other than those specified above within the last five years;

f. Conviction of any misdemeanor involving a controlled substance, a counterfeit controlled substance, or a designer drug as specified in 16 Delaware Code, Chapter 47 within the last five years;

g. Conviction of any Class A misdemeanor included in 11 Delaware Code, Chapter 5, Subchapter II, Subpart A within the last five years;

h. Conviction of any attempt to commit a crime, as defined in 11 Delaware Code, Section 531, with respect to any of the above listed offenses.

72.202 For other criminal convictions, the following criteria are to be used by the employer in determining whether a person is suitable for employment in home health care:

- a. Type of conviction(s);
- b. Frequency of conviction(s);
- c. Length of time since conviction(s) occurred;
- d. Age at the time of the conviction(s);
- e. Record since the conviction(s);
- f. Relationship of conviction(s) to type of job assignment.

**72.3 Employer Responsibilities**

72.301 The employer shall ensure that a *Criminal History Record Request Form* has been completed and that the employer copy is maintained in the employer's files.

72.302 The employer shall maintain a signed copy of the *Receipt/Verification of Providing Fingerprints Form* from the Delaware State Police.

72.303 If an employer wishes to have a criminal history record check conducted on an applicant who has been the subject of a qualifying State and Federal background check within the previous 5 years, the costs shall be borne by the employer. Payment shall be made directly to

the Delaware State Police. The Department shall, at no cost, provide the results of the Federal Bureau of Investigation information to the employer in the same manner as for any other applicant.

72.304 If a person is fingerprinted under the auspices of these regulations more than once during a five-year period, the costs shall not be borne by the State. If the State is billed for such fingerprinting costs, payment shall be obtained from the employer specified on the *Criminal History Record Request Form*. Such employer may obtain payment from the applicant.

72.305 If an applicant who has been conditionally hired is separated from employment for any reason prior to completion of the criminal history check process, the employer shall notify the Department upon such separation.

72.306 Upon receipt of the results of the criminal history record check and the results of the testing for illegal drugs, the employer shall determine the suitability of an applicant for final employment using the criteria in Section 72.202 unless the state or federal criminal history record check has identified a conviction of one or more automatically disqualifying crimes. An applicant for final employment with a conviction of an automatically disqualifying crime shall be terminated immediately.

72.307 The employer shall notify the applicant of the findings of the criminal history record check and the testing for illegal drugs.

72.308 The employer may provide to the individual in need of care a statement that the applicant has satisfactorily completed the criminal history record check and the testing for illegal drugs.

72.309 The Department reserves the right to obtain data from employers on the employment status of applicants covered under these regulations.

**72.4 Applicants' Responsibilities**

72.401 Applicants are responsible for completing all information accurately and completely on the *Criminal History Record Request Form* and any form provided by the employer for use in obtaining mandatory pre-employment testing for illegal drugs. Any applicant who refuses to complete one or more of these forms shall be deemed to have voluntarily withdrawn his/her application.

72.402 The applicant is responsible for having his/her fingerprints taken and for returning a *Receipt/Verification of Providing Fingerprints to the Delaware State Police Form* to the employer.

72.403 The applicant is responsible for informing any potential employer if he/she has already been fingerprinted in accordance with these regulations. The cost of additional fingerprinting, exceeding the one fingerprinting per five-year period required by these regulations, shall not be borne by the State.

72.404 The applicant is responsible for submitting to



the required testing for illegal drugs and providing verification of the testing to the employer.

### **72.5 Department's Responsibilities**

72.501 When the Department has received all necessary documentation, it shall perform a review and ensure that the employer receives a copy of the applicant's state criminal history report and issue a written summary of the federal criminal history report. If conviction of a disqualifying crime is included on the state or federal criminal history report, the Department shall notify the employer immediately, prohibiting either the hire or continued conditional employment of the applicant.

72.502 Upon notification that an employer intends to hire a person who has previously had the criminal history check conducted by the Department, the Department shall review the criminal history on file and shall review the applicant's criminal history via the Criminal Justice Information System for any subsequent criminal information. If the review reveals a disqualifying conviction subsequent to the original review, the applicant shall be disqualified from employment with the new employer and the previously listed employers shall be notified of the recent conviction and encouraged to make personnel decisions based on the new information.

### **72.6 Confidentiality**

72.601 In accordance with 11 Delaware Code, Section 8513(c), the Department shall receive information from the State Bureau of Identification pertaining to the identification and conviction data of any person for whom the Bureau has a record solely for the purpose of determining suitability for employment of the person whose record is received.

72.602 The Department shall store written and electronically recorded criminal history record information in a secure manner to provide for the confidentiality of records and to protect against any possible threats to their security and integrity.

72.603 The Department shall not release to employers, as defined in Section 72.103 of these regulations, copies of actual written reports of criminal history records prepared by the Federal Bureau of Investigation.

72.604 The following procedure shall be used to permit the review of criminal history record files by any applicant:

a. An applicant shall submit a request in writing to the Department for the on-site review of his/her criminal history record file.

b. An applicant shall make an appointment to review the record at the Department in the presence of a Department employee. The applicant shall present photo identification at the time of the review.

c. Written documentation of the date and time of the review and the names of those present shall be filed in

the criminal history record file of the applicant.

d. Upon completion of such a review, the Department shall return criminal history records (written or electronic) to secure storage.

72.605 Criminal history record information shall not be disseminated to any person(s) other than the applicant, his/her employer or subsequent employer(s) as defined in Section 72.103 of these regulations, or the Department.

72.606 All employers shall store criminal history record information in a secure manner to provide for the confidentiality of records and to protect against any possible threats to their security and integrity.

72.607 Employers shall limit the use of criminal history record information to the sole purpose of determining suitability for employment.

---

## **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 203 (16 Del.C. §203)

### **ORDER**

### **Adoption Of The State Of Delaware Birth Defect Surveillance and Registry Program Regulations**

#### **Nature Of The Proceedings:**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt State of Delaware Birth Defect Surveillance and Registry 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 2.

On December 1, 2002 (Volume 6, Issue 6), 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 January 10, 2003, or be presented at a public hearing on January 10, 2003, 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 December 1, 2002, Register of Regulations, based on comments received during the public comment period. These modifications are deemed not to be substantive in nature.

**THEREFORE, IT IS ORDERED** that the proposed State of Delaware Birth Defect Surveillance and Registry Program Regulations are adopted and shall become effective March 10, 2003, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary, DHSS, 2/14/2003

**Summary Of Evidence**

A public hearing was held January 10, 2003 at 1:00 p.m., in the Third Floor Conference Room of the Jesse Cooper Building, Federal and Water Streets, Dover, Delaware before David P. Walton, Hearing Officer, to discuss the proposed Department of Health and Social Services (DHSS) Birth Defect Surveillance and Registry 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 the 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 all sections of the proposed regulations. Although there was no testimony given at the public hearing, four letters were received commenting on the proposed regulations during the public comment period (December 1, 2002 through January 10, 2003). Organizations that commented on the proposed regulations included:

- Delaware Healthcare Association
- State Council for Persons with Disabilities
- Delaware Developmental Disabilities Council
- March of Dimes Delaware Chapter

All comments and the DHSS (Agency) responses are as follows:

**Sections 3.4.1 & Section 3.4.3, Reporting Requirements.** These sections state that those responsible for diagnosis or treatment, or both for a child or children under the age 5 with birth defects shall be

required to report required information to the registry. To have every health care provider who is treating the patient report the defect to the registry would duplicate information being provided to the registry. It is suggested that the physician, surgeon, dentist, podiatrist, certified nurse midwife, or other health care provider who initially diagnosis the birth defect should be the one to report the information to the registry.

*Agency Response:* After careful review of the law (16 Del.C., Chapt. 2, §203), the Department has determined that the law requires reporting of every occurrence of a birth defect by those who diagnose or treat, or both, any child under age 5. Section 3.4.1 of the regulation has language ("who is not known to be previously reported") that will lessen the possibility of duplicative birth defect reporting and based on this comment, Section 3.4.3 was amended to also include such language.

**Section 2.0, Definitions; Section 3.0 Reporting Requirements.** Defects discovered prior to birth are included in the Section 2.0 definition of "birth defect". Section 3.4 would require reporting of such prenatal defects within 30 days. However, Section 3.1 contemplates that the registry only includes information on "all births after viability". There is some "tension" between the regulations suggesting inclusion of prenatal birth defects in the registry versus those suggesting inclusion only after viable birth. The Division may wish to clarify its intent.

*Agency Response:* As a result of this comment, Section 3.1 was amended for clarification purposes.

**Reporting Requirements in Section 3.4 may benefit from a specific recital that providers treating through spiritual means alone are not covered by the reporting requirements [please refer to Title 16 Del.C. Sec. 203(b)].** Otherwise, a mental, spiritual or alternative health provider is literally required to comply with reporting requirements under Section 3.4.1.

*Agency Response:* As a result of this comment and after careful review of the law, the Department added Subsection 3.4.4 to the regulations citing this reporting exemption.

**The statute requires covered providers to submit follow-up information at least once annually [please refer to Title 16 Del.C. Sec. 203(a)(4)].** The regulations do not address this requirement. It is recommended that the Division insert a conforming regulation.

*Agency Response:* As result of this comment and after careful review of the law, the Department added Section 3.7 to the regulations citing this requirement.

The statute ostensibly authorizes a parent to withhold a child's name and identifying information based on religious tenets or practices [please refer to Title 16 Del.C., Sec. 203(c)]. The regulations contemplate that all reporting will not include the identity of the child or family [Section 4.1]. However, the second sentence in Section 4.1 suggests that the patient-identifying information will be compiled and shared under certain circumstances. The regulations do not address the parental right to not have personally identifying information collected/reported based on religious tenets or practices.

*Agency Response:* As a result of this comment and after careful review of the law, the Department added Section 4.2 citing this part of the law.

**General Comment.** There were concerns raised regarding the quantity of reportable diagnoses, and the necessity of reporting some of them. The concerns were centered around the possible effect of the quantity of reportable diagnoses impacting negatively on the quality of the reporting.

*Agency Response:* The law requires the Department to collect birth defect information in accordance with recommendations from the Centers for Disease Control and Prevention (CDC). The reportable diagnoses list included as part of the regulation is recommended by CDC.

Additionally, minor corrections were made to the proposed regulations due to formatting errors.

The public comment period was open from December 1, 2002 to January 10, 2003.

Verifying documents are attached to the Hearing Officer's record. The regulations have been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

**BIRTH DEFECT SURVEILLANCE AND REGISTRY PROGRAM REGULATIONS**

**Authority:** 16 Delaware Code, Chapter 2, Section 203

**1.0 Purpose**

1.1 Birth defects are one of the causes of infant mortality and disabilities in Delaware. A Birth Defects Surveillance System, or Birth Defects Registry, will enable the Department of Health & Social Services (DHSS), Division of Public Health (DPH) to collect birth defects data,

to create a statewide registry, and to link surveillance with tracking of individual children for the provision of services.

1.2 The purpose of the Birth Defects Registry is to provide information to Public Health officials as to the existence of previously unrecognized health and environmental hazards, help prevent certain birth defects and ultimately decrease the infant mortality rate. The Birth Defects Registry will gather data to assist with identification of risk factors, including environmental and hereditary, assist in the investigation of causes and prevalence; assist in the development of strategies to reduce the occurrence of, or prevent such defects; and track and follow-up abnormal newborn hearing screening results.

1.3 The usefulness of the data collected in the Birth Defects Registry will depend upon the full and accurate reporting of such defects by health care practitioners, health care facilities, clinics and laboratories.

1.4 The Birth Defects Registry will be a component of the Newborn Screening Case Management System, including metabolic and hearing screening. All results of metabolic and hearing screens will become part of the screening record. Tracking and follow-up of incomplete and abnormal cases will be followed by the Division of Public Health Newborn Screening Program.

**2.0 Definitions** The following words shall have the meanings indicated:

"BIRTH DEFECT" means any structural or biochemical abnormality, regardless of cause, diagnosed at any time before or after birth, that requires medical or surgical intervention or that interferes with normal growth or development. This includes abnormal newborn hearing screening. Reportable birth defects are listed in Appendix A of these Regulations.

"DIVISION" refers to the Division of Public Health under the Department of Health and Social Services.

"REGISTRY" means a central data bank containing collected, classified, coded, and sorted data relating to defects in children under age 5, reported by health care providers.

"SURVEILLANCE" means the process of identifying and investigating birth defects in children under age 5.

**3.0 Reporting Requirements**

The provisions of this section shall apply to the Delaware Health and Social Services, Division of Public Health, Birth Defect Registry:

3.1 The registry shall collect information on ~~all~~ [any] birth~~s~~ [defect diagnosed in utero and postpartum ~~after viability and~~ on anyone ~~any child under the age five (5)~~ who is a resident of the state of Delaware, or whose parent is a resident of Delaware, and who is diagnosed at any time prior to age five (5) as having a birth defect. For the purposes related to the registry the Division shall have

access to any medical record of the child that pertains to a diagnosed or suspected birth defect. Prenatal information on the birth mother may be obtained with prior consent.

3.2 Any diagnosed birth defects shall be reported for all infants and children up to age 5, including those who have since died (if the data is still available).

3.3 For purposes of these reporting requirements, reportable diagnoses are those diagnoses, from the International Classification of Diseases (ICD), as listed in Appendix A of these regulations. The reportable diagnoses listed in Appendix A may be revised, upon notice, to reflect changes in publications accepted for use by the Centers for Disease Control and Prevention or State.

3.4 The following persons and organizations are required to report occurrences of birth defects within 30 days of diagnosis to the Division of Public Health.

3.4.1 Any physician, surgeon, dentist, podiatrist, certified nurse midwife, or other health care practitioner who diagnoses or provides treatment, or both, for a child under age 5 with birth defects who is not known to be previously reported;

3.4.2 The designated representative of any clinical laboratory that performs any test which identifies a child or children under age 5 with birth defects not known to be previously reported; and

3.4.3 The designated representative of any hospital, dispensary, clinic, or other similar public or private institution that diagnoses or provides treatment, or both, for a child or children under age 5 with birth defects [who is not known to be previously reported].

[3.4.4 This section of the regulations shall not apply to any person or private institution that, as an exercise of religious freedom, treats the sick or suffering by spiritual means through prayer alone.]

3.5 The administrative officer of every health care facility shall be responsible for establishing reporting procedures at that facility, using the identified Birth Defect Registry reporting form. Reporting procedures must ensure that each infant initially diagnosed as having a birth defect shall be reported to the Division. Any presumptive or actual diagnosis in a child up to the age of 5 must be reported to the Division.

3.6 Reporting sources shall complete the Division of Public Health Birth Defects Surveillance Form for each reported case, and forward the completed form to the Division of Public Health Director or designee.

[3.7 Reporting sources are required to submit annual follow-up information as requested through Birth Defect Program.]

#### 4.0 Confidentiality of Reports

4.1 No report of a diagnosis or treatment of a birth defect shall be disclosed in such a way as to identify the child who is the subject of the report, or as to identify the

child's family. However, patient-identifying information may be exchanged among authorized agencies as approved by the Department and upon receipt by the Department of satisfactory assurances by those agencies of the preservation of the confidentiality of such information. Agencies will maintain the confidentiality of any information exchanged for the purpose of delivery of program services, evaluation, early intervention and epidemiological investigation.

[4.2 Any parent, custodian or guardian of any infant having any birth defect may refuse disclosure to the surveillance system and registry of the infant's name and identifying information on the grounds that such birth defect identification is contrary to the religious tenets and practices of the infant's parent, custodian or guardian.]

[4.3] No individual or organization providing information pursuant to these regulations shall be held liable for divulging such information to the Division.

#### 5.0 Penalties

Any person or organization required to report the diagnosis or treatment of a birth defect pursuant to these regulations, and who violates these regulations, shall be subject to a fine of up to \$100 for each violation, pursuant to 16 Del.C. Sec. 206. Justices of the Peace Courts have jurisdiction over such violations.

#### 6.0 Severability

In the event any particular clause or section of the regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effective.

### APPENDIX A October 2002

#### DELAWARE BIRTH DEFECTS REGISTRY REPORTABLE DIAGNOSES

Broad Categories	Specific Categories	ICD-9 Codes
<u>Congenital Infections</u>		
	<u>Congenital syphilis</u>	<u>090.0-090.3</u>
	<u>Congenital rubella</u>	<u>771.0</u>
	<u>Congenital cytomegalovirus</u>	<u>771.1</u>
	<u>Congenital toxoplasmosis</u>	
	<u>(not specific code)</u>	<u>771.2</u>
	<u>Other infections specific</u>	
	<u>to perinatal period</u>	<u>771.80</u>
	<u>Other congenital infections</u>	<u>771.x</u>
<u>Neoplasms</u>		
	<u>Neurofibromatosis</u>	<u>237.70</u>

Endocrine, Nutritional, Metabolic, Immunological Diseases

<u>Congenital hypothyroidism</u>	<u>243.00</u>
<u>Phenylketonuria</u>	<u>270.10</u>
<u>Galactosemia</u>	<u>271.1</u>
<u>Cystic Fibrosis</u>	<u>277.00.01</u>
<u>Other Metabolic diseases</u>	

Diseases of Blood

<u>Sickle Cell Disease</u>	<u>282.60</u>
<u>Other hemoglobinopathies</u>	<u>282.63, 282.69,</u> <u>282.4</u>

Developmental Disorders

<u>Developmental Language</u>	
<u>Disorder</u>	<u>315.31-315.39</u>
<u>Coordination Disorder</u>	<u>315.40</u>
<u>Mental Retardation</u>	<u>317 – 319</u>

Congenital Anomalies of Central Nervous System

<u>Anencephalus</u>	<u>740.0-740.1</u>
<u>Spina bifida without</u>	
<u>anencephalus</u>	<u>741.0,741.9w/o</u> <u>740.0-740.10</u>
<u>Hydrocephalus without</u>	
<u>spina bifida</u>	<u>742.3 w/o</u> <u>741.0, 741.9</u>
<u>Encephalocele</u>	<u>742.0</u>
<u>Microcephalus</u>	<u>742.1</u>
<u>Holoprosencephaly/</u>	
<u>Porencephaly</u>	<u>742.2</u>
<u>Other Congenital Anomalies</u>	
<u>of Nervous System</u>	<u>742.4 - 742.9</u>

Congenital Anomalies of the Eye

<u>Anophthalmia/microphthalmia</u>	<u>743.0,743.1</u>
<u>Congenital cataract</u>	<u>743.30-743.34</u>
<u>Aniridia</u>	<u>743.45</u>
<u>Glaucoma</u>	<u>743.20-743.22</u>
<u>Coloboma</u>	<u>743.46*</u>

Congenital Anomalies of the Ear

<u>Anotia/microtia</u>	<u>744.01,744.23</u>
------------------------	----------------------

Congenital Anomalies of the Cardiovascular System

<u>Common truncus</u>	<u>745.0</u>
<u>Transposition of great</u>	
<u>arteries</u>	<u>745.10,745.11,</u> <u>745.12, 745.19</u>
<u>Tetralogy of Falot</u>	<u>745.2</u>
<u>Ventricular septal defect</u>	<u>745.4</u>
<u>Atrial Septal Defect</u>	<u>745.5</u>
<u>Endocardial cushion defect</u>	<u>745.60,745.61,</u> <u>745.69</u>
<u>Single Ventricle</u>	<u>745.3</u>
<u>Pulmonary valve atresia</u>	

and stenosis 746.01,746.02

<u>Tricuspid valve atresia and</u>	
<u>stenosis</u>	<u>746.1</u>
<u>Ebstein's anomaly</u>	<u>746.2</u>
<u>Aortic valve stenosis</u>	<u>746.3</u>
<u>Hypoplastic left heart syndrome</u>	<u>746.7</u>
<u>Patent ductus arteriosus</u>	
<u>&gt;2500 gms</u>	<u>747.0</u>
<u>Coarctation of aorta</u>	<u>747.10</u>
<u>Pulmonary artery anomalies</u>	<u>747.3</u>

Congenital anomalies of the Respiratory System

<u>Anomalies of larynx/trachea/</u>	
<u>bronchus</u>	<u>748.30</u>
<u>Lung agenesis/hypoplasia</u>	<u>748.5</u>
<u>Other respiratory anomalies</u>	

Congenital Anomalies of the Orofacial Area

<u>Cleft palate without cleft</u>	
<u>lip</u>	<u>749.00-749.04</u>
<u>Cleft lip with or without</u>	
<u>cleft palate</u>	<u>749.1,749.2</u>
<u>Choanal atresia</u>	<u>748.0</u>

Congenital Anomalies of the Gastrointestinal Tract

<u>Esophageal atresia/</u>	
<u>tracheoesophageal fistula</u>	<u>750.3</u>
<u>Atresia/stenosis of intestine</u>	
<u>and rectum</u>	<u>751.10,751.2</u>
<u>Hirschsprung's disease</u>	
<u>(congenital megacolon)</u>	<u>751.3</u>
<u>Anomalies of internal fixation</u>	
<u>of bowel</u>	<u>751.40</u>
<u>Biliary atresia</u>	<u>751.61</u>
<u>Malrotation of intestine</u>	<u>751.4*</u>
<u>Pyloric stenosis</u>	<u>750.5</u>
<u>Anorectal malformation</u>	<u>751.4*</u>

Congenital Anomalies of the Genitourinary System

<u>Renal Agenesis/hypoplasia</u>	<u>753.0</u>
<u>Bladder exstrophy</u>	<u>753.5</u>
<u>Cloacal exstrophy</u>	<u>*</u>
<u>Cystic/dysplastic kidneys</u>	<u>753.10,753.15</u>
<u>Obstructive genitourinary</u>	
<u>defect</u>	<u>753.2,753.6</u>
<u>Hypospadias and Epispadias</u>	<u>752.6</u>
<u>Ambiguous genitalia</u>	<u>752.9*</u>
<u>Polycystic kidneys</u>	<u>753.12-753.14</u>

Congenital Anomalies of the Musculoskeletal Regions

<u>Reduction defect, upper</u>	
<u>limbs</u>	<u>755.20-755.29</u>
<u>Polydactyly/Syndactyly/</u>	
<u>Adactyly</u>	<u>755.00-755.02</u>

755.10-755.14755.4\*Reduction defect, lower limbs755.30-755.39Arthrogryposis multiplex congenital754.89\*Achondroplasia756.4Osteogenesis imperfecta756.51Other skeletal dysplasiaGastroschisis756.7Omphalocele756.7Diaphragmatic hernia(moved up)756.6Scoliosis/Lordosis/Kyphosis754.0, 756.19Congenital hip dysplasia754.30, 754.31754.35\*Club Foot754.50, 51, 53,60, 70, 79Craniosynostosis756.0\*Chromosomal DisordersTrisomy 21 (Down syndrome)758.0Trisomy 13758.1Trisomy 18758.2Autosomal deletion syndromes758.30Other conditions due to autosomal anomalies758.50Gonadal dysgenesis (Turner's syndrome)758.60Klinefelter's syndrome758.70Other conditions due to sexchromosome anomalies758.80Conditions due to anomaly ofunspecified Chromosome758.90Fragile X Syndrome759.83Other Congenital MalformationsAmniotic bank disruption complexno codeEmbryopathy from Toxic Exposure in UteroFetal Alcohol syndrome760.71Phenytoin760.79\*Isotretinoin760.79\*Warfarin760.79\*Other toxic exposures760.7xConductive hearing loss, external ear389.01Conductive hearing loss, middle ear389.03Ear disorder, unspecified388.9Hearing loss, noise-induced388.12Hearing loss, sudden, unspecified388.2Hearing loss, unspecified388.9Sensorineural hearing loss, unspecified389.10**DIVISION OF PUBLIC HEALTH**Statutory Authority: 16 Delaware Code,  
Section 2906(b) (16 Del.C. §2906(b))**ORDER****Adoption Of The State Of Delaware  
Clean Indoor Air Act Regulations****Nature Of The Proceedings**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt State of Delaware Clean Indoor Air Act 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 29.

On January 1, 2003 (Volume 6, Issue 7), 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 January 31, 2003, or be presented at a public hearing on January 30, 2003, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations. Due to inclement weather, the January 30 public hearing was rescheduled to February 6 and the public comment period was extended to February 7, 2003.

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.

No modifications were made to the proposed regulations as a result of public comment.

**THEREFORE, IT IS ORDERED**, that the proposed State of Delaware Clean Indoor Air Act Regulations are adopted and shall become effective March 10, 2003, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary, DHSS, 2/13/2003

**Summary Of Evidence**

A public hearing was held on February 6, 2003 at 7:00 p.m. in the Downes Lecture Hall, Delaware Technical and

Community College, Terry Campus, Denney's Road, 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) Clean Indoor Air Act 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. Mr. Kevin Charles from Health Systems Protection (HSP) 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 amendments to the regulations. Public testimony was given at the hearing and fourteen letters were received commenting mostly on the Clean Indoor Air Act. Some of the comments were directed at the proposed regulations and were received during the public comment period (January 1 through February 7, 2003). Organizations that commented included:

- Park Place of Milford
- Delaware United Smokers Association
- Coach House Restaurant
- Extreme Nite Club of Dover
- Dover Elks Club #1903
- American Way Fraternal Benefit Society
- Bulldozers Saloon of Smryna

All public comments and the DHSS (Agency) responses are as follows:

**Section 99.107.5a: Under criteria for private clubs, there was comment that the state should not be dictating how private clubs must screen their members, set entry standards, or dictate the only acceptable reasons members can chose to join a club. Specifically by determining the private club must screen applicants for membership on subjective rather than objective factors. To set the standards on whom a private club must, or must not admit would only encourage exclusive clubs as opposed to inclusive clubs. This is unacceptable and the proposed 99.107.5a regulation must be deleted.**

*Agency Response:* Based on the recommendation in the attorney general's review and opinion, the Department included screening potential applicants on subjective rather than objective factors as one of the criteria that distinguishes a private club from a club open to the general public. By their very nature, private clubs may be exclusive when it comes to membership criteria.

**Section 99.107.6: There was a comment against the deletion of the definition of "Private social function" as proposed by the Department.**

*Agency Response:* After careful review of pages 837-840 of the January 1, 2003, edition of the Register of Regulations, it was determined that the Register of Regulations mistakenly deleted the definition of "Private social function" from the Clean Indoor Air Act regulations. The Department's proposed version sent to the Register that was also published on the Department's website and handed out at the public hearing was correct and did not reflect deletion of the definition of "Private social function". Subsequently, in the final regulation published in this edition of the Register of Regulations, the definition of "Private social function" was added back into the regulation. Reference to this technical correction can be found in the "errata" section of the March, 2003 Register.

**Section 99.201A: An independent contractor who operates a business out of his home asked if under Section 99.201a of the regulations if smoking would be prohibited in his home?**

*Agency Response:* Based on this comment at the public hearing, the Department recommended this person contact the Department of Labor for clarification under the Clean Indoor Air Act rules for places of employment.

**Section 99.301F: Why is a Fraternal Benefit Society such as a Veterans of Foreign Wars (VFW) post allowed to smoke even if sponsoring an event where kids are invited?**

*Agency Response:* The law provides for an exemption for any fund raising activity or function sponsored by a fraternal benefit society as defined by 18 Delaware Code, Section 6201; provided, however, that the fund raising activity or function takes place upon property owned or leased by said organization. While the Department would not recommend allowing smoking at an event where children are present, under the Clean Indoor Air Act is not unlawful to do so.

**Section 99.107.5a: Would a cigar club (smoker) be considered a subjective factor under private club membership criteria?**

*Agency Response:* A cigar smoker could be considered one subjective screening factor under private club membership.

**There was a general comment made that the private club rules in the proposed regulations are too onerous and are meant to be "unpalatable" to any business owner. A club owner would not only have to meet private club criteria spelled out in these regulations, but**

**also private club requirements under the Alcohol Beverage and Control Commission.**

**Agency Response:** The definition of private club in the proposed regulations mirrors criteria recommended by the attorney general's opinion on this matter. In regards to smoking, these regulations apply to any private club, whether it sells alcohol or not. The Department also recognizes that clubs that hold a liquor license issued under the State Liquor Control Act may need to also meet private club requirements in regards to the sale of liquor.

**There was a recommendation that one of the criteria for a private club should be there is no profit motive.**

**Agency Response:** The Department considered this factor when developing the definition for private club, but the attorney general's opinion did not recommend such a criteria.

Although the public hearing was about the regulatory changes, there were many general comments against the law. For instance, there were comments from bar and tavern owners who insisted their businesses had seen a significant decline since the Clean Indoor Air Act went into effect on November 27, 2002. Additionally, there were negative comments about enforcement of the Clean Indoor Air Act. There was general consensus among facility owners at the hearing that the Clean Indoor Air Act unfairly discriminates against smokers.

There were also many written comments received from people in favor of the law and how it protects the health of the public as well as employees from the damaging effects of second-hand smoke. Some people also requested nothing be done to weaken the law. Some insisted that private clubs not be exempted from the law and that the only exemptions should be for residential dwellings and outdoors areas that are not stadiums or other large facilities where large numbers of people congregate.

The public comment period was open from January 1, 2003 to February 7, 2003.

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.

**State Of Delaware  
Clean Indoor Air Act Regulations**

**Section 99.1 GENERAL PROVISIONS**

**99.101 Preamble**

These Regulations are adopted in accordance with the authority vested in the Secretary, Department of Health and Social Services, by 16 Delaware Code Chapter 29

§2906(b). These Regulations establish standards for the enforcement of the Clean Indoor Air Act as it relates to most indoor enclosed areas to which the general public is invited or in which the general public is permitted. Regulations establishing standards for the enforcement of the Clean Indoor Air Act affecting employers, employees and the workplace are adopted by the Department of Labor.

**99.102 Purpose**

These regulations shall be construed and applied to protect the nonsmoker from involuntary exposure to environmental tobacco smoke in most enclosed indoor areas to which the public is invited or in which the general public is permitted. The purpose of the Clean Indoor Air Act is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke.

**99.103 Severability**

In the event any particular clause or section of the regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

**99.104 Date of Effect**

These regulations shall be effective November 27, 2002

**99.105 Inspections**

The Secretary, DHSS, or authorized designee shall have right of entry into any enclosed indoor area subject to 16 Delaware Code Chapter 29.

**99.106 Waiver**

The Department of Health and Social Services may upon written request waive the provisions of these Regulations if the Department determines there are compelling reasons to do so, and such waiver will not significantly affect the health and comfort of non-consumers of tobacco products.

**99.107 Definitions**

The following words, terms, and phrases when used in these regulations, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

For the purposes of these Regulations:

**99.107.1** "Department" means the Delaware Health and Social Services (DHSS) as defined in 29 Del Code, Section 7901.

**99.107.2** "Environmental tobacco smoke" (ETS), or "secondhand smoke" is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as sidestream smoke) and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as "passive smoking" or "involuntary smoking."

**99.107.3** "Enclosed Indoor Area" means an indoor area that is neither open nor partially enclosed, except for normal means of access and egress through doors or passageways.



**99.107.4** “Fraternal Benefit Society” means any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of 18 Del Code 6237(a)(2) of this title, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government and which provides benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society.

**99.107.5** “Private Club” means any club or organization that does not permit the general public to access its facilities or activities. Access is denied to anyone who does not agree or adhere to the rules of membership. In order to be considered a private club or organization for purposes of the Clean Indoor Air Act, the establishment must adhere to all of, but not limited to, the following criteria:

a. Have a permanent mechanism to carefully screen applicants for membership on subjective rather than objective factors;

b. Limits access and use of facilities, services and activities of the organization to members and guests of the members;

c. Is controlled by its membership and operates solely for the benefit and pleasure of its members; Advertises exclusively and only to its members, excluding membership drives.

d. Advises exclusively and only to its members, excluding membership drives.

**99.107.5 6** “Private social function” means a function to which the public is neither invited nor generally permitted access and which is held in a separate indoor enclosed indoor area.

[PLEASE NOTE: THE DEFINITION OF “PRIVATE SOCIAL FUNCTION” SHOULD NOT HAVE BEEN SHOWN AS BEING DELETED. INSTEAD IT SHOULD HAVE SHOWN THAT IS WAS BEING RENUMBERED AS SECTION 99.107.6 WITH SUBSEQUENT SECTIONS ALSO BEING RENUMBERED.]

**99.107.6 7** Public transportation of children” means transportation which involves the transportation of children by a vehicle under the control of a daycare, school or other organizations.

**99.107.7 8** “Secretary” means the Administrator of the Delaware Department of Health and Social Services (DHSS) of the State of Delaware, who shall hereafter in this document be referred to as: Secretary; The Secretary; or, Secretary, DHSS.

**99.107.8 9** “Smoking” means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

**99.107.9 10** “Volunteer fire company” means a fire, ambulance, or rescue company recognized as such by the Delaware State Fire Prevention Commission.

## **99.2 SMOKING PROHIBITIONS**

**99.201** Except as is provided in 99.301 of these regulations, and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any of the following areas:

A. Any enclosed indoor area, including, but not limited to, those listed in 16 Del Code, Section 2903, to which the general public is invited or in which the general public is permitted. This shall apply to any organization, business or establishment which caters to or offers goods or services or facilities to, or solicits patronage from the general public.

Organizations or businesses that maintain lists and/or that charge nominal “membership fees” or cover charges to the general public prior to admission are not considered private clubs and will not be exempt from the Clean Indoor Air Act.

B. Government owned and/or operated means of mass transportation including buses, vans, trains, taxicabs and limousines.

C. Functions or activities of private clubs or organizations, as defined by Section 99.107.5 of these regulations, when access by the general public is allowed or solicited.

D. Any private vehicle used for the public transportation of children or as part of health care or day care transportation.

E. In private homes or private residences when such homes or residences are being used for childcare or day care.

**99.202** No owner of any indoor enclosed area subject to 16 Del Code Chapter 29 and/or person(s) responsible for the management of such area or employee thereof, shall permit or authorize smoking by any person(s) in areas not designated specifically for the smoking of tobacco products as permitted by Section 99.301.

## **99.3 SMOKING PROHIBITIONS INAPPLICABLE**

**99.301** Smoking prohibitions shall not apply in the following:

A. Private homes, private residences and private automobiles,

B. Any indoor area where private social functions are being held when seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager or person in charge of such indoor area;

C. Limousines under private hire

D. A hotel or motel room rented to one or more guests provided that the total percentage of such hotel or motel rooms does not exceed twenty-five percent (25%).

E. Any fund raising activity or function sponsored by a volunteer fire company, auxiliary of a fire company, or a volunteer ambulance or volunteer rescue company; provided, however, that the fund raising activity or function takes place upon property owned or leased by the volunteer fire, rescue or ambulance company.

F. Any fund raising activity or function sponsored by a fraternal benefit society as defined by 18 Del Code §6201; provided, however, that the fund raising activity or function takes place upon property owned or leased by said organization.

G. Any enclosed indoor area operated or in use exclusively by a private club as defined in 99.107.5 of these regulations.

#### 99.4 POSTING OF SIGNS

##### 99.401 Failure to Properly Post and Maintain Signs

Owners, operators, managers or other person(s) having control of enclosed indoor areas subject to the regulations of 16 Del Code Chapter 29 shall post signs which indicate **“Warning: Smoking Permitted”** prominently to indicate those locations where smoking is permitted pursuant to Regulation 99.301, B and D. Failure to prominently post properly maintained signs with letters at least one (1) inch in height and in accord with the CLEAN INDOOR AIR ACT shall be a violation subject to administrative penalties as set forth in Regulation 99.501 of the Clean Indoor Air Act Regulations.

#### 99.5 COMPLIANCE AND ENFORCEMENT PROCEDURES

##### 99.501 Administrative Penalties

Whoever violates any provision of these regulations shall be subject to an administrative penalty of \$100.00 for the first violation and not less than \$250.00 for each subsequent violation.

##### 99.502 Right to Administrative Hearing

Upon due notice that the Department intends to assess an administrative penalty, as indicated in 99.501, the entity may submit to the Division, within thirty (30) days of the date of such notice of intent, a written request for an administrative hearing.

##### 99.503 Orders of the Department

Whoever refuses, fails or neglects to perform the duties required under these regulations or violates, neglects or fails to comply with the duly adopted regulations or orders of the Department of Health and Social Services, shall be ~~fin~~ fined not less than \$100.00 and not more than \$1,000.00, together with cost, unless otherwise provided by law.

### DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,  
Section 122(1), (3)(a), (f) & (j)  
(16 Del.C. §122(1), (3)(a), (f) & (j))

### ORDER

### Adoption Of The State Of Delaware Regulations Governing The Production And Sale Of Milk And Milk Products

#### Nature Of The Proceedings

The Department of Health and Social Services (“DHSS”) initiated proceedings to adopt Rules and Regulations Governing the Production and Sale of Milk and Milk Products. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code, Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 1, Section 122(1), (3)(a), (f) & (j).

On January 1, 2003 (Volume 6, Issue 7), 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 January 31, 2003, or be presented at a public hearing on January 29, 2003, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

#### Findings Of Fact

No verbal comments were received during the public hearing and no written comments were received during the official public comment period. The public comment period was open from January 1 to January 31, 2003. Verifying documents are attached to the Hearing Officer’s record. The regulation has been reviewed and approved by the Delaware Attorney General’s office.

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.

**THEREFORE, IT IS ORDERED**, that the State of Delaware Regulations Governing the Production and Sale of Milk and Milk Products are adopted and shall become effective March 10, 2003, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary, DHSS, 2/14/2003

**EDITOR'S NOTE ON INCORPORATION BY REFERENCE  
THE FOOD AND DRUG ADMINISTRATION (FDA)**

REGULATION "GRADE A PASTEURIZED MILK ORDINANCE 2001 REVISION" HAS BEEN DECLARED DOCUMENTS GENERALLY AVAILABLE TO THE PUBLIC AND APPROPRIATE FOR INCORPORATION BY REFERENCE. FOR THIS REASON, IT WILL NOT BE PRINTED IN THE DELAWARE REGISTER OF REGULATIONS OR THE DELAWARE ADMINISTRATIVE CODE. THIS DOCUMENT MAY BE INSPECTED AT THE REGISTRAR OF REGULATIONS OFFICE, LEGISLATIVE HALL, 411 LEGISLATIVE AVE, DOVER, DELAWARE OR IS AVAILABLE AT THE REGISTER WEBSITE.

[PDF Version of Regulations Governing the Production & Sale of Milk & Milk Products](#)  
(Acrobat Reader Required)

---

### **DIVISION OF SOCIAL SERVICES**

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

#### **ORDER**

#### **Revision Of The Regulations Of Delaware's Division Of Social Services Manual Sections 3002.5, 3024**

##### **Nature Of The Proceedings:**

Delaware Health and Social Services ("Department") / Division of Social Services / Temporary Assistance to Needy Families (TANF) Program initiated proceedings to implement changes to the Division of Social Services Manual (DSSM). The proposed changes amends the manual as it relates to assessment prior to termination of benefits and to add language allowing for two categories of eligible people. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the January 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

##### **Summary Of Proposed Changes**

###### **DSSM 3002.5:**

- Shifts to the client the responsibility to request a case review prior to terminating TANF due to time limit.

###### **DSSM 3024:**

- Adds language allowing for two categories of people to be able to receive cash benefits:
  - 1) Persons with 40 quarters work history; and
  - 2) Victims of severe trafficking pursuant to Public Law 106-386, Trafficking Victims Protection Act of 2000.

##### **Summary of Comments Received with Agency Response**

The Governor's Advisory Council For Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following similar observations:

First, many recipients will not be sufficiently knowledgeable to affirmatively request the redetermination. Beneficiaries include children (e.g. "minor parents"). They also include refugees and aliens predictably characterized by limited English proficiency, education, and life skills. This is a safety net program designed to provide basic living support to disadvantaged persons. Protection from inappropriate eligibility terminations should be the cornerstone of the program.

Second, the change may undermine the administration of the program. DSS would ostensibly notify the beneficiary at least 10 days in advance of the impending determination date. The beneficiary could then appeal the decision, request benefit continuation, and request the reassessment. The beneficiary could request the hearing and benefit continuation up to the termination date. Instead of having 90 days to complete the assessment, DSS will be constrained to quickly perform the assessment under the pressure of an impending hearing deadline. Adopting standards with less notice and opportunity to complete assessments may simply result in more hearings and more stress on a system already "stretched thin" by personnel vacancies.

**Agency Response:** The Division of Social Services (DSS) notifies every TANF time limited family of their time remaining on TANF and instances in which the time period may be extended. There are three types of notices a time limited family receives to alert them to their time remaining on assistance. There is a quarterly notice that specifies if the family disagrees with the time remaining to call their worker for a review. There is a notice sent out two months prior to the end of their benefits and that too indicates that the family can request a review if they do not agree with the time remaining on assistance. The last notice is the notice that

says the case is being closed due to the time limit expiring. That notice also alerts families that they can request a hearing if they disagree with the agency. Furthermore, families have case redeterminations every six months. During these case reviews time remaining on assistance is reviewed with the family.

Delaware has had a time limit welfare program since October 1995. This is no longer a new program. The Personal Responsibility and Work Reconciliation Act (PRWORA) of 1996, which created TANF, promotes that families take personal responsibility for their lives. Delaware considers this another step in that process. DSS is always willing to review the TANF cases in a timely fashion as required by fair hearing rules.

### Findings Of Fact

The Department finds that the proposed changes as set forth in the January 2003 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulations of the TANF Program are adopted and shall be final effective March 10, 2003.

Vincent P. Meconi, Secretary, DHSS, 2/14.2003

### DSS FINAL ORDER REGULATIONS #03-08

#### REVISIONS:

#### DSSM 3002.5 Assessment Prior to Termination of Benefits

If requested by the client, At least 90 days prior to the end of the 36 or 48 cumulative month period in which a family has received assistance (through cash assistance and participation in pay-after-performance), the Division will complete another assessment of employability. If the Division determines that the adult caretaker is not employable, the Division will continue benefits under the Children's Program as described in Section 3003. If the Division determines that the adult caretaker is employable, DABC benefits will end to the family as of the last day of the 36 or 48 cumulative months.

(Break In Continuity of Sections)

#### DSSM 3024 Citizens and Aliens

Only U.S. citizens and qualified aliens, as defined in section 431 of PRWORA, are eligible to receive public assistance benefits.

Citizens are those persons born in the 50 states and the district of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, and Northern Mariana Islands. Children born

outside of the United States are citizens if both parents are citizens.

Qualified aliens who entered the United States prior to August 22, 1996 are treated as if they were United States citizens. Qualified aliens are defined as aliens who are:

1. An alien lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under section 208 of the INA;
3. A refugee admitted to the United States under section 207 of the INA;
4. An alien paroled into the United States under section 212(d)(5) of the INA for a period of at least 1 year;
5. An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is being withheld under section 241(b)(3) of the INA;
6. An alien granted conditional entry under section 203(a)(7) of the INA as in effect prior to April 1, 1980;
7. An alien who is a Cuban or Haitian entrant; or
8. An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

Qualified aliens admitted on or after August 22, 1996, are barred from receiving cash benefits for five (5) years, except for certain excepted groups described below who are not subject to the bar. The following excepted groups of aliens are exempt from the 5-year ban on benefits:

1. Qualified aliens lawfully residing in the State who are honorably discharged veterans and who fulfill minimum active-duty service requirements, or who are on non-training active duty in the U.S. Armed Forces, or who are the spouse, unmarried dependent child, or unremarried surviving spouse of such a veteran or active-duty personnel, provided that, in the latter case, the marriage satisfied the requirements of 38 U.S.C. § 1304;
2. Refugees, for a period of five years after the date they entered the U.S. as refugees;
3. Asylees, for a period of five years after obtaining such status;
4. Aliens whose deportation of removal has been withheld, for a period of five years after obtaining such status;
5. Cuban/Haitian entrants, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, for a period of five years after they obtain such status; and
6. Amerasian immigrants from Vietnam, admitted to the U.S. pursuant to section 84 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, for a period of five years after their admission.
7. Individuals who are eligible due to being lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work.
8. Victims of Severe Trafficking per Public Law 106-

**386 Trafficking Victims Protection Act of 2000:**

Severe forms of trafficking is defined as,

- sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or
- the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Adult victims of severe trafficking will be certified by the U.S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking are treated like refugees. Victims of trafficking do not have to hold a certain immigration status, but they need to be certified by HHS in order to cash assistance.

9. An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

**Documentation:**

1. Lawful permanent resident status is verified by:
  - INS Form I-551; or
  - Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94.
2. Refugee status is verified by:
  - INS Form I-94 annotated with stamp showing admission under section 207 of the INS;
  - INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(3);
  - INS Form I-766 (Employment Authorization Document) annotated "A3"; or
  - INS Form I-571 (Refugee travel Document).
3. Asylee status is verified by:
  - INS Form I-94 annotated with stamp showing grant of asylum under § 208 of the INA;
  - INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(5);
  - INS Form I-766 (Employment Authorization Document) annotated "A5";
  - Grant letter from the Asylum Office of INS; or
  - Order from an immigration judge granting asylum.
4. The status of an alien whose deportation is withheld

is verified by:

- INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(10);
- INS Form I-766 (Employment Authorization Document) annotated "A10"; or
- Order from an immigration judge showing

deportation withheld under §243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under §241(b)(3) of the INA.

5. Cuban/Haitian entrant status is verified by:
  - INS Form I-551 (Alien Registration Receipt Card) with the code CU6, CU7, or CH6;
  - An unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code CU6 or CU7;
  - INS Form I-94 with stamp showing parole as "Cuban/Haitian Entrant" (Status Pending);
  - INS Form I-94 showing parole into the United States on or after October 10, 1980; and
  - Cuban or Haitian passport, identity card, birth certificate, or other reasonable evidence of Cuban or Haitian nationality
6. Amerasian immigrant status is verified by:
  - INS Form I-551 with the code AM6, AM7, or AM8; or
  - Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code AM1, AM2, or AM3.

7. The 40 qualifying quarters of work is determined under Title II of the Social Security Act. This includes the quarters of work not covered by Title II of the Social Security Act. Quarters of work not covered by Title II of the Social Security Act is based on the sum of the following:

- quarters the alien worked;
- quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and
- quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased.

NOTE: A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At that time, eligibility is determined without crediting the alien with the former spouse's quarters of coverage. (Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40th quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);

8. When a victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees **except** DSS will:

- Accept the original certification letter or letter for children in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT SEND FOR SAVE VERIFICATION.)
- Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify the Office of Refugee Resettlement (ORR) of the benefits for which the individual has applied.
- Note the "entry date" for refugee benefit purposes. The individual's "entry date" for refugee benefits purposes is the certification date, which appears in the body of the certification letter or letter for children.
- Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria like income limits.
- Re-certification letters will be used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular recertification periods will apply to these individuals in the same manner that they apply to refugees.

9. For aliens who (or whose child or parent) is claiming that they have been battered or subjected to extreme cruelty in the United States and otherwise meets the requirements of 8 U.S.C. 1641(c) call PPDU to determine if the documentation provided is satisfactory.

Aliens admitted as temporary residents are not eligible for public assistance benefits. Included are visitors, tourists, diplomats, and students.

Citizenship and alien status are verified at the time of application.

---

### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

### ORDER

### Revision Of The Regulations Of Delaware's Division Of Social Services Manual Section 9007.1

#### Nature Of The Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services / Food Stamp Program initiated proceedings to implement changes to the Division of Social Services Manual (DSSM). The proposed changes amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to the restoration of food stamp benefits to certain qualified aliens. These mandatory provisions must be implemented on April 1, 2003, in accordance with Public Law 107-171 Farm Security and Rural Investment Act of 2002 and Public Law 106-386 Trafficking Victims Protection Act of 2000. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the January 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No comments were received.

#### Summary Of Proposed Changes

- Restores benefits to qualified aliens who have been in the U. S. for five years; and
- Makes certain victims of a severe form of trafficking in persons eligible for food stamps just like refugees.

#### Findings Of Fact

The Department finds that the proposed changes as set forth in the January 2003 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulations of the Food Stamp Program related to the restoration of benefits to certain qualified aliens are adopted and shall be final effective March 10, 2003.

Vincent P. Meconi, Secretary, DHSS, 2/14/2003

#### DSS FINAL ORDER REGULATION #03-05

#### REVISIONS:

#### DSSM 9007.1

Household members meeting citizenship or alien status requirements.

The following residents of the United States are eligible to participate in the Food Stamp Program without limitations

based on their citizenship/alienage status:

1. Persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands. Children born outside the United States are citizens if at least one of the parents is a citizen;

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

3. Individuals who are:

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

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

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

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

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

4. Individuals who are eligible indefinitely due to being:

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

any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40th quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);

(B) lawfully living in the U. S. for five (5) years as a qualified alien beginning on the date of entry;

Qualified aliens include lawfully admitted residents (holders of green cards), those granted asylum, refugees, victims of a severe form of trafficking, those paroled in the United States under section 212(d)(5) of the INA for at least one year, those whose deportation is being withheld, those granted conditional entry under section 501(e) of the Refugee Education Assistance Act of 1980, Cuban or Haitian entrants, and under certain circumstances, a battered spouse, battered child or parent or child or a battered person with a petition pending under 204(a)(1)(A) or (B) or 244(a)(3) of the INA.

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

~~(E D)~~ lawfully in US and is now receiving disability or blind (payments listed under DSSM 9013.1);

~~(D E)~~ lawfully in US and 65 or older on 8/22/96 (born on or before 8/22/31).

~~(E F)~~ An alien with one of the following military connections:

(i) A veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service;

(ii) A veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed forces of the U. S. or in the Philippine Scouts, as described in 38 U.S.C. 107;

(iii) An individual on active duty in the Armed Forces of the U.S. other than for training; or

(iv) The spouse and unmarried dependent children (legally adopted or biological) of a person described above in (i) through (iii), including the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried child for the purposes of this section is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran



prior to the child's 18th birthday.

5. The following aliens with a seven-year (7) time limit:

(A) refugees admitted under section 207 of the INA;

(B) asylees admitted and granted asylum under section 208 of the INA;

(C) aliens whose deportation or removal has been withheld under section 241(b)(3) and 243 (h) of the INA.

(D) Cuban and Haitians admitted under section 501(e) of the Refugee Education Act of 1980; and

(E) Amerasians admitted under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998.

(F) Immigrants who are victims of severe trafficking in persons per Public Law 106-386 Trafficking Victims Protection Act of 2000. Severe forms of trafficking in persons is defined as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Adults victims of severe trafficking will be certified by the U.S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking are treated like refugees for food stamp purposes. Victims of trafficking do not have to hold a certain immigration status, but they need to be certified by HHS in order to receive food stamps.

When a victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees except DSS will:

1. Accept the original certification letter or letter for children in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT CALL SAVE.)

2. Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify the Office of Refugee Resettlement (ORR) of the benefits for which the individual has applied.

3. Note the "entry date" for refugee benefit purposes. The individual's "entry date" for refugee benefits purposes is the certification date, which appears in the body of the certification letter or letter for children.

4. Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking

meets other program eligibility criteria like income limits.

5. Re-certification letters will used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular recertification periods will apply to these individuals in the same manner that they apply to refugees.

The seven-year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).

6. An alien who has been battered or subjected to extreme cruelty in the U. S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered.

Only eligible if a veteran or on active duty in U.S. armed forces (or spouse or unmarried dependent child of veteran or person on active duty) or lawfully in US on 8/22/96 and under 18 years of age; lawfully in US ~~on 8/22/96~~ and disabled or blind; or lawfully in US and 65 or older on 8/22/96.

## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,  
Section 507 (31 Del.C. §507)

### ORDER

**Revision Of The Regulations Of Delaware's  
Division Of Social Services Manual  
Sections 17500, 17520, 17550, 20210.7.1, 20620.1,  
20995.1, 20910.5**

### Nature Of The Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services / Medicaid/Medical Assistance Programs initiated proceedings to implement changes to the Division of Social Services Manual (DSSM) related to Qualifying Individuals 2, the counting of Veteran Administration pension payments, and the Food Stamp Program standard utility allowance. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the January 2003 Delaware Register of Regulations, requiring written materials and suggestions



from the public concerning the proposed regulations to be produced by January 31, 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### **Summary Of Proposed Changes**

#### **1) 17500, 17520, 17550 Qualifying Individuals**

First, the eligibility group Qualifying Individuals 2 (QI-2) expires on December 31, 2002. This group was authorized by Section 1933 of the Social Security Act, which provided 100% federal funding for the payment of all or part of the Medicare Part B premiums for Qualifying Individuals on an annual basis from 1998 through 2002. This provision sunsets on December 31, 2002.

#### **2) 20210.7.1, 20620.1, 20995.1 Veterans' Pension Payments, Personal Needs Allowance**

The second is a revision to the policy on Veterans' Administration (VA) pensions to comply with federal regulations. Certain veterans receive a VA Improved Pension that is limited to \$90. The regulation states that this pension is not counted for eligibility or post-eligibility purposes. The post-eligibility calculation determines the amount that a nursing home Medicaid recipient must contribute to the cost of care.

DSS has been correctly excluding the pension for eligibility, but incorrectly counting the pension in the post-eligibility calculation. Some veterans were required to contribute more to cost of care than the regulations allow.

#### **3) 20910.5 Excess Shelter Allowance**

And, third, DSS is revising the excess shelter allowance to align with the upcoming Food Stamp Program change to a standard utility allowance. DSS has been allowing the use of either the standard utility allowance or actual utility expenses. The excess shelter allowance is part of the spousal impoverishment post eligibility calculation that is used to provide income to the community spouse of a nursing home recipient. The community spouse may keep some of the nursing home recipient's income for his or her maintenance needs in the community.

### **Summary of Comments Received with Agency Response**

The Governor's Council For Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following comments:

The GACEC and SCPD endorse the amendment, which slightly increases the monthly personal needs allowance from \$44 to \$50 for nursing home residents who participate in a rehab/educational program or sheltered workshop.

*DSS Response:* During publication, the above-referenced section in DSSM 20620.1 - Personal Needs was inadvertently underlined. The \$50.00 per month is not new policy. This protected amount has been in place since the 1980s. DSS apologizes for any inconvenience this may have caused.

### **Findings Of Fact**

The Department finds that the proposed changes as set forth in the January 2003 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulations of the Medicaid/Medical Assistance Programs be adopted and shall be final effective March 10, 2003.

Vincent P. Meconi, Secretary, DHSS, 2/14/2003

### **DSS FINAL ORDER REGULATIONS #03-06**

#### **REVISIONS:**

##### **17500 Qualifying Individuals**

Section 4732 of the Balanced Budget Act of 1997 establishes a capped allocation for each of five years beginning January 1998, to states for payment of Medicare Part B premiums for two new mandatory eligibility groups of low-income Medicare beneficiaries, called Qualifying Individuals or QIs. This provision amends section 1902(a)(10)(E) of the Social Security Act concerning Medicare cost-sharing for Qualified Medicare Beneficiaries (QMBs) and Specified Low Income Medicare Beneficiaries (SLMBs). It also amends section 1905(b) of the Social Security Act concerning the Federal Medical Assistance Percentage (FMAP) by incorporating reference to and establishing a new section 1933, for QIs.

A Continuing Resolution (P.L. 107-229, as amended by P.L. Nos. 107-240 and 107-244) has been enacted that extends, at current funding levels, the QI-1 benefit through January 21, 2003. The Continuing Resolution did not extend the expiration date for QI-2s.

QIs are individuals who would be QMBs but for the fact that their income exceeds the income levels established for QMBs and SLMBs. This means that QIs must meet all the technical and financial eligibility requirements of the QMB program except for the income limits.

Unlike QMBs or SLMBs, who may be determined eligible for Medicaid benefits in addition to their QMB/SLMB benefits, QIs cannot be otherwise eligible for Medicaid.

(Break In Continuity of Sections)

**17520 Qualifying Individuals 2**

~~This eligibility group expired on December 31, 2002.~~

~~Individuals in the second group of QIs, called QI-2s, must have income that exceeds 135% of the FPL, but the income must be at or below 175% of the FPL. The benefit for QI-2s consists only of the portion of the Medicare Part B premium that is attributable to the shift of some home health benefits from Part A to Part B. The amount will increase by an additional 1/7 in each of the following years.~~

(Break In Continuity of Sections)

**17550 Capped Allocation**

This provision is effective for premiums payable beginning with January 1998 and ending with December 2002. Each state will receive a specific capped allocation for QIs.

~~A Continuing Resolution (P.L. 107-229, as amended by P.L. Nos. 107-240 and 107-244) has been enacted that extends, at current funding levels, the QI-1 benefit through January 21, 2003. The Continuing Resolution did not extend the expiration date for QI-2s.~~

Because of the capped allocation, we must limit the number of QIs selected in a calendar year so that the amount of benefits provided to these individuals does not exceed our state allocation. QIs will be selected on a first-come, first-served basis. This means the QIs are selected in the order in which they apply for benefits.

Once a QI is approved, the QI is entitled to receive assistance for the remainder of the calendar year, provided the individual meets the eligibility requirements. However, the fact that an individual receives assistance at any time during the year does not necessarily entitle the individual to continued assistance for any succeeding year. We will give preference to individuals who were QIs, QMBs, SLMBs, or QDWIs in the last month of the previous year.

(Break In Continuity of Sections)

**20210.7.1 VA Pensions**

Pension payments are unearned income based on a combination of service and a nonservice-connected disability or death. All VA pension payments (except those resulting from Aid and Attendance or Housebound Allowance, paid on the basis of a Medal of Honor or paid under a special act of Congress) are based on need and do not receive the \$20 general income exclusion.

The Veterans' Benefits Act of 1992 (Public Law 101-508) enacted October 1, 1992, limits VA Improved Pensions for a veteran and a surviving spouse (with no children) residing in Medicaid nursing facilities. The VA Improved Pension is limited to \$90 a month and is ~~excluded as income. The law prohibits any part of the \$90 pension~~

~~from being applied to the cost of care. The veteran or surviving spouse will receive a personal needs allowance of \$90 not counted as income in the eligibility or post-eligibility process. There is no interaction between the reduced pension and the personal needs allowance. If the veteran has income from other sources that is considered countable for the purposes of post-eligibility, perform the post-eligibility calculations to determine the amount of the veteran's liability to his or her cost of care.~~

(Break In Continuity of Sections)

**20620.1 Personal Needs**

[(a)] \$44.00 per month of available income is to be protected for the recipients direct personal needs, as defined by Form MAP-64; or

a) ~~If the recipient receives a reduced VA Improved Pension (not to exceed \$90) the personal needs amount will be \$90 or the amount of personal needs allowance in the state plan, whichever is greater; or~~

[(b)] If the recipient regularly attends a rehab/educational program off the grounds of his nursing facility, including employment for the purpose of rehabilitation in a sheltered workshop off the grounds of the facility, \$50.00 per month (rather than \$44) will be protected; or

[(c)] For nursing home residents who are participating in substantial gainful activity (SGA) (20 CFR 416.971), the following amounts, not to exceed the Adult Foster Care rate will be deducted from gross earned income:

Mandatory payroll deductions that are a condition of employment including, but not limited to:

- Federal, State and Local Taxes
- FICA
- Union Dues
- Insurance premiums
- Pension contributions
- Transportation costs as paid to & from work
- Clothing and personal needs allowance of \$75/month.

If earnings average more than \$700 a month in a calendar year, this is considered SGA and DSS can allow a personal needs allowance of up to the AFC rate. If earnings average less than \$300 a month in a calendar year, this is not ordinarily considered SGA and DSS can allow the \$44 or \$50 personal needs allowance. If average earnings are between \$300 and \$700, DSS must consider other factors to determine whether or not the work constitutes SGA. Other factors include considering if the work is comparable to unimpaired people in the community performing similar jobs.

(Break In Continuity of Sections)

**20995.1 Post-Eligibility Deductions**

Post-eligibility determination is revised to allow the following deductions from the income of the institutional spouse. The deductions must be taken in the following order.

a. Personal Needs Allowance for the institutional spouse

The personal needs allowance amount is \$30 per month for SSI recipients ~~up to \$90 per month for recipients of VA Improved Pensions~~, and \$44 per month for all others. If the institutionalized spouse is employed, personal needs may range from \$50 up to the Adult Foster Care rate per month. See Section 20620.1 Personal Needs.

b. Community Spouse Income Allowance

The community spouse monthly income allowance is the amount of income necessary to bring the spouse's monthly otherwise available income up to:

- the applicable percent of the FPL for two, plus
- an additional amount for excess shelter

The total amount available to the community spouse may not exceed "Cap for Minimum Monthly Maintenance Standard". This standard usually changes each January based on the Consumer Price Index for Urban Consumers.

c. Family Allowance.

d. Items for which protection of income has been approved by the Long Term Care Coordinator and/or incurred medical expenses of the institutionalized spouse.

(Break In Continuity of Sections)

**20910.5 Excess Shelter Allowance**

The amount by which the spouse's expenses for rent or mortgage payment, property taxes, and homeowner's insurance plus the Food Stamp standard utility allowance (SUA) exceeds 30% of the applicable percent of the FPL for two. ~~Effective 10/1/92 the basic SUA is \$164; the SUA plus heat is \$239. Actual utilities may be used [if the client requests.]~~

**Summary Of Evidence And Information**

Pursuant to due notice vol. 6, issue 6 DE Register of Regulations, 755-756 (12/1/02), The Department of Natural Resources and Environmental Control proposes to amend Tidal Finfish Regulation 11 pertaining to red drum size limits and creel limits and proposes a new Regulation 28, Atlantic Ocean American shad season and closure. For red drum the minimum size would increase from 18 inches to 20 inches total length, and the maximum size of a red drum that may be retained would become 27 inches long total length. The purpose of this amended regulation is to come into compliance with Amendment 2 to the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Red Drum.

Regulation 28 would set up a registration system for commercial gill netters intending to participate in the American shad fishery in the Atlantic Ocean in 2002 and 2004. If three or fewer Delaware licensed commercial gill netters register for this fishery, the season for American shad in the Atlantic Ocean shall open February 14 and close midnight April 21. If four or more commercial gill netters register for this fishery, the season for American shad will open later and close sooner. The exact dates of opening and closure in 2003 or 2004 will depend on the number of fishermen who register. Beginning January 1, 2005, it shall be illegal to take American shad from the Atlantic Ocean by means of gill net. The purpose of the regulation is to meet the intent of Amendment 1 of the Interstate Fishery Management Plan for Shad and River herring which requires all states to reduce American shad commercial fishing effort by 40% in the ocean in 2003 and close the ocean fishery for American shad by January 1, 2005.

A public hearing was held on December 30, 2002 to take comments on proposed amendments to Regulation 11 and on new Regulation 28. Comments were taken that evening and during the remainder of the comment period which remained open until January 10, 2003.

**Findings Of Fact**

There was no opposition to the proposed regulation changes for red drum. The two attendees at the public hearing both supported the proposed regulation change for red drum.

One comment was received subsequent to the hearing in regard to the proposed new regulation on American shad. This person was concerned that an open sign-up for American shad fishing in the ocean would encourage fishermen to sign up who had no intention of fishing in the ocean. The other suggestion from this fisherman was to reduce the allowable net yardage for American shad in the ocean from 1,000 yards to 600 yards. This suggestion which had been discussed at a workshop held on June 18, 2002

---

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Section 903(e)(2)(a) (7 **Del.C.** §903(e)(2)(a))

**ORDER****Adoption of Amendments to Tidal Finfish  
Regulation 11, and New Regulation 28**

would only be a paper reduction and would not meet the intent of reducing effort by 40% because not all gill netters use 1,000 yards of net each day of the season.

### Conclusions

I have reached the following conclusions:

Delaware's minimum size for red drum should be adjusted from 18 to 20 inches and the maximum size should be established at 27 inches total length.

Delaware should register participants in the ocean American shad commercial fishery and adjust the proposed ocean American shad commercial fishery opening and closing dates as proposed in draft Regulation 28 for 2003 and 2004, and that the ocean commercial fishery for American shad should close January 1, 2005 until changed by regulation.

### ORDER

It is hereby ordered this 6<sup>th</sup> day of February in the year 2003 that amendments to Tidal Finfish Regulation 11 and new Regulation 28, copies of which are attached hereto, are adopted pursuant to 7 Del. C. 903(e)(2)(a) and are supported by the Department's findings of evidence and testimony received. This Order shall become effective on March 10, 2003.

John A. Hughes, Secretary,

Department of Natural Resources And Environmental Control

#### **Tidal Finfish Regulation 11. Red Drum Size Limits; Creel Limits.**

(a) Unless otherwise authorized, it shall be unlawful for any person to possess any red drum, (*Sciaenops ocellatus*), that measures less than ~~eighteen (18) inches~~, twenty (20) inches total length or more than twenty-seven (27) inches, ~~total length,~~ except as otherwise provided in paragraph (b) in this regulation.

(b) Unless otherwise authorized, it shall be unlawful for any person to possess more than five (5) red drum, ~~one of which may exceed twenty-seven (27) inches, total length.~~

#### **Tidal Finfish Regulation No. 28. Atlantic Ocean American Shad Season And Closure**

(a) All Delaware licensed commercial gill netters who wish to harvest and land American shad, *Alosa sapidissima*, in the Atlantic Ocean must register with the Department their intent to participate in this Atlantic Ocean commercial shad fishery by February 1 each year during either or both of

2003 and 2004.

(b) If three or fewer licensed commercial gill netters register to participate in the Atlantic Ocean commercial Atlantic shad fishery in any given year in 2003 or 2004, then the season for that year shall open at 12:01 a.m. February 14 and shall close on or before midnight April 21. If more than three licensed commercial gill netters register to participate in the Atlantic Ocean commercial Atlantic shad fishery in any given year in 2003 or 2004, then the season start and end dates shall be adjusted according to the following table based on the number of registered Atlantic Ocean shad commercial gill net fishermen:

<u>Number of Registered</u>	<u>Season</u>	<u>Season Dates</u>
<u>Shad Fishermen</u>	<u>Length</u>	
<u>4</u>	<u>59 days</u>	<u>14 Feb. - 13 April</u>
<u>5</u>	<u>47 days</u>	<u>20 Feb. - 7 April</u>
<u>6</u>	<u>39 days</u>	<u>24 Feb. - 3 April</u>
<u>7</u>	<u>34 days</u>	<u>27 Feb. - 1 April</u>
<u>8</u>	<u>29 days</u>	<u>1 March - 29 March</u>
<u>9</u>	<u>26 days</u>	<u>2 March - 27 March</u>
<u>10</u>	<u>24 days</u>	<u>3 March - 26 March</u>
<u>11</u>	<u>21 days</u>	<u>4 March - 24 March</u>

If more than 11 fishermen register to participate in the Atlantic Ocean commercial Atlantic shad fishery in 2003 or 2004, the season length for that year shall be shortened one day for each additional registered fisherman and the season dates shall be adjusted accordingly.

(c) Beginning 12:01 a.m. on January 1, 2005, it shall be unlawful for any Delaware fisherman to take and reduce to possession any American shad caught by gill net from the waters of the Atlantic Ocean.

### **DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Section 6010, (7 Del.C. §6010)

**Order No. 2003-F-008**

### **Summary of Evidence and Information**

Pursuant to due notice 6, issue 6 DE REG 757-758 (12/1/2002), The Department of Natural Resources and Environmental Control proposes to amend Tidal Finfish Regulation No. 23 pertaining to black sea bass. Specifically the proposed regulation would allocate Delaware's commercial black sea bass quota to those individuals that meet qualifying criteria based on historical performance in the fishery. In order to qualify for quota in the commercial pot fishery individuals must be able to demonstrate that they

or their vessels landed at least 10,000 pounds of black sea bass by pot gear during the period 1994 through 2001. Landing information documented in either the state landing reports or the federal National Marine Fisheries Service databases shall be used to verify landings in the pot fishery. Those individuals participating in the commercial hook and line fishery for black sea bass must be able to demonstrate that they landed black sea bass by this gear type during the period 1994 through 2001. Landing information in the state or federal data base may be used for verification purposes.

Additional changes to Tidal Finfish Regulation No. 23 include requirements that participants in the pot fishery must have a current federal moratorium permit in conjunction with a state commercial food fish license. Those individuals with only federal landing data history must also have had a state commercial food fishing license for at least one year during the time frame 1994 through 2001. Participants in the commercial black sea bass fishery must pre-register with the Department 15 days after the regulation is signed by the Secretary. Ninety six percent of the quota will be allocated to the pot fishery and the remaining four- percent to the hook and line fishery. Shares of the quota will be evenly divided between those individuals who qualify for each of the two fisheries. Quota shares may not be transferred between fishermen and each fishermen is required to report landings to the Department within one hour of packing out each days catch.

A public hearing was held on the proposed amendments to Tidal Finfish Regulation No.23 on January 8, 2003. Comments were taken on the proposed quota allocation program and written testimony was received after the hearing.

### **Finding of Fact**

The majority of people (six) that testified at the hearing preferred Option 1 for the commercial pot fishery, which required history in the state database in order to qualify for the landing permit and quota.

Two people provided written comments that indicated verification of landings by pot gear in the federal database should also be a means for qualifying for the landing permit and quota. Comments from two people that testified at the hearing suggested that federal history on a vessel should be used as part of the qualifying process for the pot fishery.

There was no opposition to the pre-register requirement or the mandatory call in of landings via the Department's interactive voice reporting system.

Five of the seven people that testified at the hearing suggested a harvest threshold requirement should be incorporated into the qualifying criteria in order to show significant historical participation in the fishery. The participants at the public hearing discussed ten thousand pounds as a reasonable threshold level. One person

submitted written comments suggesting that a five thousand-pound threshold be included in the qualifying criteria.

The one person at the public hearing who participated in the commercial black sea bass hook and line fishery supported option 1 for the hook and line fishery. This person supported a requirement that some history in the fishery be required in order to qualify.

There was no opposition to the proposed requirement that quota could not be transferred between fishermen. In addition, there was no opposition regarding the requirement for paying back individual overages that may occur from year to year.

### **Conclusions**

I have reached the following conclusions:

A commercial black sea bass landing permit should be required for anyone landing black sea bass in Delaware for commercial purposes. The commercial pot and hook and line fisheries for black sea bass should have separate permits, quotas and qualifying criteria. As part of the pot fishery qualifications an individual or an individual's vessel must have a history of landing at least 10, 000 pounds of black sea bass during the period 1994 through 2001 as verified in either the state or federal landing data bases. Furthermore, a current federal moratorium permit and current state commercial food fishing license should also be required. Those individuals or owners of vessels with only federal database history should be required to have had a state commercial food fish license for at least one year during the period 1994 through 2001. In order to qualify for a landing permit and quota in the commercial hook and line fishery a person or a person's vessel must have history of landing black sea bass by commercial hook and line during the time frame 1994 through 2001. Landing history for the hook and line fishery can be verified through either the state or federal landing database.

Delaware's commercial quota for black sea bass should be allocated 96 percent to the pot fishery and 4 percent to the hook and line fishery. The number of individuals that qualify to participate will evenly divide shares of these allocations, by fishery. Individual quotas should not be transferred between fishermen and any overages of individual quotas will be deducted from the person's next year's quota and distributed to those who did not go over quota.

Individuals who qualify to participate in either the pot or hook and line commercial black sea bass fishery should pre-register with the Department by 4:30 PM on a date no later than 15 days after the regulation is signed by the Secretary. Participants should be required to notify the Department, via the interactive voice telephone reporting system, each days harvest within one hour after packing out their landings.

## ORDER

It is hereby ordered this 6th day of February 2003 that amendments to Tidal Finfish Regulation 23 and 4 copies of which are attached hereto, are adopted pursuant to 7 Del. C. § 903 (e)(2)(a) and are supported by the Department's findings of evidence and testimony received. This order should become effective on March 15, 2003.

John A. Hughes, Secretary,

Department of Natural Resources and Environmental Control

~~[Proposed~~ Final] Amendments To Tidal Finfish Regulations

**TIDAL FINFISH REGULATION NO. 23 BLACK SEA BASS SIZE LIMIT; ~~[TRIP LIMITS; LANDING PERMITS; QUALIFYING CRITERIA; SEASONS; QUOTAS]~~**

a) It shall be unlawful for any person to have in possession any black sea bass Centropristis striata that measures less than eleven (11) inches, total length.

b) It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than eleven and one-half (11.5) inches, total length. ~~[(Note the minimum size may have to be adjusted within the range of 11.5 12.5 inches pending action taken by the Atlantic States Marine Fisheries Commission in December of 2002).]~~

~~c) It shall be unlawful for any person to possess on board a vessel at any time or to land after one trip more than the quantity of black sea bass determined by the Atlantic States Marine Fisheries Commission for any quarter. The Department shall notify each individual licensed to land black sea bass for commercial purposes of the quarterly trip limits established by the Atlantic States Marine Fisheries Commission. It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.~~

"One trip" shall mean the time between a vessel leaving its home port and the next time said vessel returns to any port in Delaware."

d) It shall be unlawful for any person to fish for black sea bass for commercial purposes or to land any black sea bass for commercial purposes during any quarter after the

date in said quarter that the Atlantic States Marine Fisheries Commission determines that quarter's quota is filled." The Department shall notify each individual licensed in Delaware to land black sea bass for commercial purposes of any closure when a quarterly quota is filled. The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.

e) ~~Is omitted intentionally.~~ **[Option 1]** The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 and who had applied for and secured from the Department a commercial food fishing license [with a food fishing equipment permit for fish pots and submitted landings reports to the Department for black sea bass harvested during at least one year between 1994 and 2001. and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.]

f) It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging. ~~[Option 2] The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 and who has a current Delaware food fish license and a current food fishing equipment permit for fish pots.]~~

f) **[Option 1]** The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports [to the Department for black sea bass harvested at least one year during the period- in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 through and 2001.]

~~[Option 2] The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has a current Delaware commercial food fishing license and a current fishing equipment permit for hook and line.]~~

g) Any overage of the State's commercial quota will be subtracted [by the Atlantic States Marine Fisheries Commission] from the next year's commercial quota.

Any overage of an individual's allocation will be subtracted from that individual's allocation the next year [and distributed to those individuals in the appropriate fishery that did not exceed their quota.]

h) Each participant in a black sea bass fishery shall be assigned a equal share of the total pounds of black sea bass allotted by the Department for that [particular] fishery. A share shall be determined by dividing the number of pre-registered participants in [one of the two recognized fisheries that fishery] into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery by 4:30 PM on a date no later than 15 days after this regulation is signed by the Secretary of the Department.

i) It shall be unlawful for a commercial food fisherman to transfer quota allocation shares of black sea bass to another commercial food fishermen.

j) Each commercial food fishermen participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.

k) It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging. [(Note, the possession limit may vary between 10 and 25 black sea bass depending on action to be taken by the Atlantic States Marine Fisheries Commission in December of 2002).]

---

---



---

**GOVERNOR'S EXECUTIVE ORDERS**


---

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER THIRTY-FIVE**

**RE: RECOGNIZING AND RECONSTITUTING  
THE GOVERNOR'S TASK FORCE ON  
SCHOOL LIBRARIES**

**WHEREAS**, in or about January 1993, the State Librarian issued a report entitled "An Action Agenda for Delaware Libraries"; and

**WHEREAS**, partially in response to the State Librarian's report, former Governor Thomas R. Carper convened a Task Force on School Libraries; and

**WHEREAS**, since its formation, the Governor's Task Force on School Libraries has served the vital functions of advocating for improvement of school libraries throughout the State of Delaware, and serving as a clearinghouse for ideas to sustain school libraries and enhance the services school libraries provide; and

**WHEREAS**, it is in the best interests of the State that the Governor's Task Force on School Libraries be continued, and that its organization and functions be formally structured by executive order,

**NOW, THEREFORE, I, RUTH ANN MINNER**, by the power vested in me as Governor of the State of Delaware, hereby declare and order that:

1. The Governor's Task Force on School Libraries (hereinafter, the "Task Force") is continued.

2. The Task Force shall be composed of not more than twenty-four (24) members. The State Librarian and the Education Associate for Libraries/Media/Technology (or person holding a similar title within the State Department of Education) each shall serve as members *ex officio*. Up to twenty (20) of the remaining members of the Task Force shall be appointed by the Governor and shall serve at the pleasure of the Governor. The members appointed by the Governor shall be selected in a manner to ensure diverse representation of professional and educational background, and of the geographic areas of the State. The Governor's appointees shall include at least one teacher or administrator from each county of the State. One member of the Task Force shall be a member of the State Senate, and shall be appointed by and serve at the pleasure of the President Pro Tempore of the Senate. One member of the Task Force shall be a member of the State House of Representatives and shall be appointed by and serve at the pleasure of the Speaker of the House. A Chairperson of the Task Force shall be chosen by the membership.

3. The purposes of the Task Force shall be to improve

and extend school library services available to all Delaware students, kindergarten through twelfth grade, and to support curriculum reform efforts related to school libraries. In furtherance of these purposes, the Task Force shall be engaged in the following activities:

a. Close communication and shared activities with the Department of Education, through the Education Associate for Library/Media/Technology;

b. Developing collaboration among school and public libraries, as well as with college and university libraries, working through the Delaware Division of Libraries;

c. Encouraging the use of Standards For Library Media Centers, Delaware Public Schools by districts and schools to assess and improve their programs;

d. Conducting an annual survey to gather data about Delaware school libraries;

e. Involvement with literacy efforts throughout the State, especially reading initiatives in the schools; and

f. Support of the Exemplary School Library Project to showcase the effects on academic achievement of a quality elementary school library.

Approved and adopted this 15th day of January 2003.

Ruth Ann Minner  
Governor

Attest:  
Harriet Smith Windsor  
Secretary of State

---

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER THIRTY-SIX**

**RE: REALLOCATION OF STATE PRIVATE  
ACTIVITY BOND VOLUME CAP FOR  
CALENDAR YEAR 2002 AND INITIAL  
SUBALLOCATION OF STATE PRIVATE  
ACTIVITY BOND VOLUME CAP FOR  
CALENDAR YEAR 2003**

**WHEREAS**, pursuant to 29 Del. C. §5091, the State's private activity bond volume cap ("Volume Cap") for 2002 under §103 of the Internal Revenue Code of 1986 (the "Code") has been allocated among various state and local government issuers; and

**WHEREAS**, pursuant to Executive Order Number



Twenty-Seven, \$112,500,000 of the Volume Cap for 2002 which had been allocated to the State of Delaware was further sub-allocated between the Delaware Economic Development Authority and the Delaware State Housing Authority; and

**WHEREAS**, the allocation of Volume Cap in Executive Order Number Twenty-Seven is subject to modification by further Executive Order; and

**WHEREAS**, the State's Volume Cap for 2002 and 2003 is allocated among the various State and local government issuers by 29 Del. C. §5091(a); and

**WHEREAS**, Kent County has reassigned \$22,500,000 of its unallocated Volume Cap for 2002 to the State of Delaware; and

**WHEREAS**, the Delaware Economic Development Authority has \$56,250,000 of Volume Cap for 2002, previously allocated by Executive Order Number Twenty-Seven; and

**WHEREAS**, pursuant to 29 Del. C. §5091(b), the State's \$114,525,000 Volume Cap for 2003 is to be sub-allocated by the Governor between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

**WHEREAS**, the Secretary of Finance recommends (i) that the \$22,500,000 unallocated Volume Cap for 2002 reassigned to the State of Delaware by Kent County be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; and (ii) that the \$56,250,000 of Volume Cap for 2002 allocated to the Delaware Economic Development Authority pursuant to Executive Order Number Twenty-Seven be reallocated to the Delaware State Housing Authority for carry forward for use in future years; and (iii) that the State's Volume Cap for 2003 of \$114,525,000 be allocated equally between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

**WHEREAS**, the Chairperson of the Delaware Economic Development Authority and the Chairperson of the Delaware State Housing Authority concur in the recommendations of the Secretary of Finance.

**NOW, THEREFORE, I**, Ruth Ann Minner, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. The \$22,500,000 of unallocated Volume Cap for 2002 that has been reassigned by Kent County to the State of Delaware is hereby sub-allocated to the Delaware State Housing Authority for carry forward use, in addition to the \$56,250,000 previously sub-allocated to the Delaware State Housing Authority for 2002 under Executive Order Twenty-Seven. Additionally, the \$56,250,000 of Volume Cap for 2002 previously allocated to the Delaware Economic Development Authority is allocated to the Delaware State Housing Authority, providing the Delaware State Housing

Authority with a total carry forward amount of \$135,000,000.

2. The \$114,525,000 allocation to the State of Delaware of the 2003 Volume Cap is hereby sub-allocated: \$57,262,500 to the Delaware State Housing Authority and \$57,262,500 to the Delaware Economic Development Authority.

3. The aforesaid sub-allocations have been made with due regard to actions taken by other persons in reliance upon previous sub-allocations to bond issuers.

Approved and adopted this 29th day of January 2003.

Ruth Ann Minner  
Governor

Attest:  
Harriet Smith Windsor  
Secretary of State

---

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER THIRTY-SEVEN**

**RE: TERMINATING DROUGHT WARNING**

**WHEREAS**, on March 5, 2002, I issued Executive Order No. 29, declaring a statewide drought warning, pursuant to Title 20, Delaware Code, Section 3116, restricting certain non-essential uses of water by State agencies, and further recommending voluntary conservation measures to preserve limited water supply; and

**WHEREAS**, on August 2, 2002, due to the continued severity of dry conditions, I issued Executive Order No. 32, declaring a state of emergency and mandating water conservation measures for northern New Castle County; and

**WHEREAS**, on October 11, 2002, I issued Executive Order No. 34, terminating the previously-declared state of emergency in northern New Castle County, and discontinuing mandatory water conservation measures; and

**WHEREAS**, precipitation in the State of Delaware has been significantly above normal for the months of October, November, and December; and

**WHEREAS**, resulting stream flows and ground water levels are now at normal to above normal levels; and

**WHEREAS**, the Drought Advisory Committee has unanimously recommended that the drought warning be rescinded,

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as the Governor of the State of Delaware, DO HEREBY DECLARE AND ORDER on this 29th day of January, 2003:

1. The drought warning implemented by Executive Order No. 29, is terminated, effective immediately.

2. Citizens of the State are encouraged to continue to maintain sound and practical water conservation measures, and are commended for their efforts to reduce and control water demand during the recent drought.

Ruth Ann Minner  
Governor

Attest:  
Harriet Smith Windsor  
Secretary of State

---

---

---

**GOVERNOR'S APPOINTMENTS**

1237

---

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council to the Division of Substance Abuse and Mental Health	Mr. Gary A. Kresge	12/27/2005
Appalachian States Low-Level Radioactive Waste Commission	The Honorable John A. Hughes, Commissioner Harry Otto, Ph.D, Alternate Commissioner	Pleasure of the Governor Pleasure of the Governor
Architectural Accessibility Board	Ms. Ada M. Stokes	1/3/2007
Atlantic States Marine Fisheries	Timothy E. Targett, Ph.D.	1/16/2006
Board of Cosmetology & Barbering	Ms. Veronica L. Hopkins	10/20/2003
Board of Dental Examiners	Mr. William H. Daisey	12/27/2005
Board of Examiners of Speech/Language Pathology, Audiology & Hearing Aid Dispensers	Mr. Frank Divita Mr. Gary J. Marencin Ms. Cynthia L. Parker	1/3/2006 1/3/2006 1/3/2006
Board of Funeral Services	Ms. Kelly Anne Pepper Ms. Rose L. Pritchett	1/7/2006 1/7/2006
Board of Medical Practice	Ms. Mary E. Sherlock	12/27/2005
Child Death Review Commission	Garrett H. Colmorgen, Ph.D James J. Cosgrove, M.D. Mr. Allan J. Daul David A. Paul, M.D.	1/3/2006 1/3/2006 1/3/2006 1/3/2006
Child Placement Review Board for Kent County	Mr. David L. Miller Mr. Bruce K. Morris Ms. Jean J. Rothenburger Ms. Beverly S. Scott	12/27/2005 12/27/2005 12/27/2005 12/27/2005
Committee on Disposition of Unmarked Human Burials	Mr. Ronald A. Thomas	12/27/2003
Council on Apprenticeship and Training	Mr. David S. Harris	1/8/2006
Council on Development Finance	Mr. Steven Biener	5/6/2005
Council on Game and Fish	Mr. Garrett H. Arai Mr. J. Richard Berry Mr. David J. Healey Mr. Edward A. Montague Mr. Ted Palmer Ms. Verna Price Mr. John W. Stewart	12/27/2005 12/27/2005 12/27/2005 12/27/2005 12/27/2005 12/27/2005 12/27/2005
Council on Manufactured Housing	Mr. Kenneth S. Clark, Sr.	6/11/2004

---

# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
	Mr. Henry C. McCann	8/28/2004
	Mr. Janet L. Nasko	6/11/2004
Council on Real Estate Appraisers	Ms. Charlotte W. Dixon	1/3/2006
	Mr. J. Frank Perdue	1/3/2006
Council on Services for Aging and Adults with Physical Disabilities	Mr. Aaron J. Deede	1/21/2006
	Ms. Bonita M. Hitch	1/21/2006
	Ms. Michele H. Jones	1/21/2006
Council on Transportation	Mr. Robert P. Hopkins	12/27/2005
Delaware Bicycle Council	Ms. Judith A. Jeffers	12/27/2005
Delaware Board of Nursing	Ms. Martha M. Hopkins	11/19/2004
Delaware Commission on Interstate Cooperation	Mr. Mark T. Brainard	Pleasure of the Governor
Delaware Commission on Veterans Affairs	Mr. Paul V. Lardizzone	1/7/2006
Delaware Energy Task Force	Mr. David G. Bacher	Pleasure of the Governor
Delaware Heritage Commission	Ms. Cheyenne V. Luzader	12/27/2005
	Mr. John W. Paradee	12/27/2005
	Mr. Harvey B. Rubenstein	12/27/2005
	Mr. Samuel Shipley	12/27/2005
	Ms. Jean R. Smith	12/27/2005
	William H. Williams, Ph.D.	12/27/2005
Delaware Nursing Home Residents Quality Assurance Commission	McKinley Wardlaw, Jr., Ph.D.	1/3/2006
Delaware River Basin Commission	The Honorable John A. Hughes	Pleasure of the Governor
Delaware State Arts Council	Ms. Dawn M. Ellis	6/20/2003
Delaware State University Board of Trustees	Claibourne D. Smith, Ph.D.	1/17/2009
Diamond State Port Corporation Advisory Board	Mr. Paul R. Houck	1/15/2005
	Ms. Mary A. Thomas	1/15/2005
Judicial Nominating Commission	Ms. Phyllis M. McKinley	12/27/2005
	Mr. F. Michael Parkowski	12/27/2005
Pesticide Advisory Committee	Mr. William H. Meredith	12/27/2005
	Mr. David V. Morris	12/27/2005

---

---

**GOVERNOR'S APPOINTMENTS**

---

1239

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Pesticide Advisory Committee	Mr. Robert P. Mulrooney	12/27/2005
Public Integrity Commission	The Honorable Clifton H. Hubbard, Jr.	1/16/2010
State Board of Electrical Examiners	Mr. Steven G. Dignan Mr. Donald M. King Mr. Richard A. Strouse	1/21/2006 1/23/2006 12/6/2004
State Board of Plumbing Examiners	Ms. Dess S. Stokes	8/25/2003
State Board of Registration for Land Surveyors	Ms. Lena M. Corder Mr. Russel Y. Dolbeare Mr. Michael J. Early	1/3/2006 5/12/2003 1/3/2006
State Liaison Officer to the U.S. Nuclear Regulatory Commission	Harry Otto, Ph.D.	Pleasure of the Governor
Statewide Independent Living Council	Ms. Cheryl A. Hampson Ms. Daniese McMullin-Powell	12/27/2005 12/27/2005

**GENERAL NOTICES**

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

State <u>Delaware</u>		Fiscal Year <u>2003</u>	
<b>PART I – Implementation of All Eligibility Changes Made by the State Since FY 1995</b>			
#	Eligibility Change	Implementation Date	Estimated Impact on Caseload Since Change (positive or negative impact)
Changes Required by Federal Law			
1	Parents/caretakers must work after 24 months of assistance	March 1997	0
2	Teen parents must live in adult-supervised settings	Prior to FY 1995	0
3	Deny assistance for 10 years for fraudulently misrepresenting residence to obtain assistance in more than one State	March 1997	0
4	Deny assistance for fugitive felons, probation violators, or parole violators	March 1997	0
5	Deny assistance for certain individuals convicted of drug-related felonies	March 1997	0
6	Deny assistance to non-qualified aliens	March 1997	-88
<b>State-Implemented Changes</b>			
Changes Related to Income and Resources			
1	Fill-the-gap budgeting for earnings	October 1995	+542
2	Increased resource limit	October 1995	+274
Changes Related to Categorical or Demographic Eligibility Factors			
	None.		
Changes Related to Behavioral Requirements			
3	Contract of Mutual Responsibility sanctions	October 1995	-548
4	Sanctions for noncompliance with employment and training requirements	October 1995	-621
Changes Due to Full-Family Sanctions			
Other Eligibility Changes			
5	Work for your welfare requirement	October 1995	-989
6	Time limit	October 1995	-27
Estimated Total Net Impact on the Caseload of All Eligibility Changes		-1,458	
Total Prior Year Caseload		5,584	
<b>Estimated Caseload Reduction Credit</b>		39.8 percent (includes adjustment for excess MOE)	

State Delaware Fiscal Year 2003

**PART II – Application Denials and Case Closures, By Reason**

# GENERAL NOTICES

1241

Reason for Application Denials	Fiscal Year 1995 <sup>1</sup>		Fiscal Year 2002	
	Number	Percentage	Number	Percentage
Failure to comply with procedural requirements	18	31.6	2,075	25.3
Income exceeds standards	15	26.3	3,460	42.2
Application withdrawn	14	24.6	0	0.0
No eligible child	0	0	1,542	18.8
Resources exceed limits	6	10.5	314	3.8
Not deprived of support or care	1	1.8	0	0.0
Ineligible alien	1	1.8	134	1.6
Other	2	3.5	672	8.2
<sup>1</sup> Delaware's FY 1995 denial and closure numbers are based on the State's quality control sample				
Total Application Denials	57	100.1	8,197	100.0

Reasons for Case Closures	Number	Percentage	Number	Percentage
Failure to comply with procedural requirements	60	46.5	1,379	15.8
Earnings exceed standard of need	29	22.5	1,197	13.7
Voluntary withdrawal/recipient initiative	16	12.4	2,462	28.2
No longer eligible child	10	7.8	2,914	33.4
Moved or cannot locate	8	6.2	707	8.1
No longer deprived of support or care	3	2.3	0	0.0
Support increased from person inside or outside home	0	0	3	0.0
Resources exceed limits	0	0	60	0.8
Other cash income	2	1.6	0	0.0
Failure to comply with JOBS program requirements	0	0	0	0.0
Other	1	0.8	3	0
Total Case Closures	129	100.1	8,732	100.0

State <u>Delaware</u> Fiscal Year <u>2003</u>
<b>Part III – Description of the Methodology Used to Calculate the Caseload Reduction Estimates (attach supporting data to this form)</b>
See attachment.

State Delaware Fiscal Year 2003

2002. This caseload reduction number includes child-only cases, as instructed in ACF guidance.

## PART IV -- Certification

I certify that we have provided the public an appropriate opportunity to comment on the estimates and methodology used to complete this report and considered those comments in completing it. Further, I certify that this report incorporates all reductions in the caseload resulting from State eligibility changes and changes in Federal requirements since Fiscal Year 1995. (A summary of public comments is attached.)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(title)

### Delaware TANF Caseload Reduction Credit Report for FY 2003

#### Attachment 1 to Form ACF-202

#### Part III—Description of the Methodology Used to Calculate the Caseload Reduction Estimates

##### A. Actual Caseload Reduction and Adjustment for Excess MOE Funds

- Taking into account the pro rata reduction in the FY2002 caseload due to excess MOE spending, Delaware's average monthly TANF caseload declined by 39.8 percent between FY 1995 and FY

Delaware AFDC/TANF Caseload for FY 95 and FY 02	
FY 1995 monthly average caseload	10,775
FY 2001 monthly average caseload, actual (= 5,469 TANF + 115 SSP families)	5,584
FY 2001 monthly average caseload, adjusted for excess MOE spending	5,033
Caseload decline, FY1995 to FY 2002 (not including the effect of eligibility changes)	5,742
Sources: FY1995 and FY2002 TANF caseloads from ACF/OPRE; SSP caseload from DE DSS	

- The following table shows how the pro rata reduction for excess MOE was calculated.
  - Because Delaware served its two-parent caseload under a separate state program in FY 2002, and because the State met its all-family work participation rate requirement in FY 2002, the relevant spending floor is 75 percent of the basic MOE amount.
  - The pro rata reduction takes into account the use of federal TANF funds. The pro rata reduction is calculated as the State excess MOE divided by the average cost per case, where cost is the sum of State and federal TANF funds.
  - The end result is a pro rata reduction of 551 cases. This number is subtracted above from the actual FY 2002 monthly average caseload to yield the adjusted FY2002 caseload of 5,742.

Pro Rata Reduction for Excess MOE			
(a)	DE FY1994 spending	\$29,028,092	
(b)	MOE (75% of (a))	\$21,771,069	
(c)	DE FY2002 MOE spending	\$27,218,130	
(d)	Federal TANF block grant funds spent in FY2002	\$27,980,170	
(e)	Total TANF spending for FY2002	\$55,198,300	= (c) + (d)
(f)	Average spending per case	\$9,885	= (e) / FY2002 caseload = (e) / (5,469 TANF + 115 SSP)
(g)	Excess MOE for FY2002	\$5,447,061	= (c) - (b)
(h)	Cases funded by excess MOE	551	= (g) / (f)



**B. Changes Required by Federal Law****1. Parents/caretakers must work after 24 months of assistance or when job-ready**

- The estimated impact of this federal policy on Delaware's caseload is 0, because the State's "work for your welfare" requirement effectively supplants the federal policy. The caseload impact of the State policy is described below in Section C.5.

**2. Teen parents must live in adult-supervised settings to receive assistance**

- The estimated impact of this federal policy since FY 1995 is 0, because the policy has been codified in the State manual for many years prior to FY 1995.

**3. A State must deny assistance for 10 years to a person found to have fraudulently misrepresented residence in order to obtain assistance in more than one State**

- For fraudulently misrepresenting residence, Delaware removes the adult's needs from the grant, but allows children to receive assistance. Although the policy denies individuals rather than cases, it is possible that a case could be denied if removing an adult's needs reduces the payment standard for a case so that it is no longer greater than countable income. Delaware's automated TANF eligibility system is currently unable to identify such instances, if any exist.

**4. A State must deny assistance for fugitive felons, probation violators, or parole violators**

- For fugitive felons, probation violators, and parole violators, Delaware removes the adult's needs from the grant, but allows children to receive assistance. Although the policy denies individuals rather than cases, it is possible that a case could be denied if removing an adult's needs reduces the payment standard for a case so that it is no longer greater than countable income. Delaware's automated TANF eligibility system is currently unable to identify such instances, if any exist.

**5. A State must deny assistance for certain individuals convicted of drug-related felonies**

- For persons convicted of drug-related felonies, Delaware removes the person's needs from the grant, but allows children to receive assistance. Although

the policy denies individuals rather than cases, it is possible that a case could be denied if removing an adult's needs reduces the payment standard for a case so that it is no longer greater than countable income. Delaware's automated TANF eligibility system is currently unable to identify such instances, if any exist.

**6. Non-qualified aliens are ineligible for Federal TANF assistance**

- The total number of cases denied as non-qualified aliens since the federal policy took effect is 88. This includes denials in FY1998, FY1999, FY 2000, FY2001 and FY2002.
- The count of denied non-qualified aliens was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2002 if they had not been denied as non-qualified aliens. See Section D for a description of this adjustment.

**C. State-Implemented Changes****1. Fill-the-Gap Budgeting for Earnings**

- The average monthly number of cases in FY2002 that were subject to fill-the-gap budgeting for earnings is 542. This number is based on a monthly query to the Delaware Client Information System (DCIS) on all open cases with earnings. Cases were counted as subject to fill-the-gap budgeting for earnings in a month only if earnings minus applicable disregards were above the payment standard for the relevant family size.

**2. Increased Resource Limit**

- The average monthly number of cases open in FY2002 because of the increased resource limits is 274. This number is based on a count of the number of cases open in a month whose assets—cash plus vehicle—were above the previous limits and below the current limit.
- Some cases were subject to both the increased resource limit and fill-the-gap budgeting for earnings. To avoid such double-counting, the number of cases open because of the increased resource limit—274—*excludes* cases that were also open due to fill-the-gap budgeting.

**3. Sanctions for Noncompliance with Contract of Mutual Responsibility (CMR) Provisions**

- The average monthly number of cases closed in FY2002 because of CMR sanctions is 548. This number is based on monthly cumulative counts of cases closed due to CMR sanctions for FY 1996 through September 2002.
- The CMR sanction is a graduated fiscal sanction. Sanctions for noncompliance are initially \$50 and increase by \$50 every month until there is compliance, or until the sanction amount exceeds the grant amount. Cases are counted as closed due to CMR sanctions only when the sanction amount exceeds the grant amount.
- The CMR count was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2002 if they had not been closed due to CMR sanctions. See Section D for a description of this adjustment.

#### 4. Sanctions for Noncompliance with Employment and Training Requirements

- The average monthly number of cases closed in FY 2002 because of noncompliance with employment and training (E&T) requirements is 621.
- The sanction for noncompliance with E&T requirements is a 1/3 reduction of the grant amount for the first occurrence, a 2/3 reduction for the second occurrence, and permanent case closure for the third occurrence. Cases are counted as closed due to E&T sanctions only for the third occurrence.
- Because the E&T level 3 sanction is permanent, the number of cases closed due to E&T sanctions as of the beginning of FY2002 is a cumulative count of all cases closed prior to FY2002. To this number we add the average monthly number of cases closed due to E&T sanctions *during* FY2002.
- The E&T sanction count was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2002 if they had not been closed due to E&T sanctions. See Section D for a description of this adjustment.

#### 5. Work for Your Welfare Requirement

- The average monthly number of cases closed in FY 2002 because of noncompliance with the "Work for Your Welfare" work requirement is 989.
- The workfare count was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2002 if they had not been closed due to noncompliance with the workfare

requirement. See Section D for a description of this adjustment.

#### 6. Time Limit

- Prior to January 2000, Delaware limited receipt of Temporary Assistance to Needy Families (TANF) – for families in the Time Limited Program – to 48 cumulative months, subject to compliance with Contract of Mutual Responsibility and Work for Your Welfare requirements.
- Effective January 1, 2000 the time limit for receipt of TANF cash benefits is 36 cumulative months. Individuals found eligible for TANF prior to January 1, 2000 will still have a 48 month time limit even if they reapply for benefits after January 1, 2000.
- Thirteen (13) cases reached the four-year time limit during FY 2002. No cases had reached the newer three-year time limit by the end of FY 2002.

#### D. Impacts of Eligibility Changes: Adjusting for Cases that Would Have Left TANF for Other Reasons

- As noted in ACF's guidance for submitting caseload reduction credit information, "a State may adjust its estimate of the impact of a change over time to account for likely caseload decline that would have occurred due to other factors, such as earnings, not associated with any eligibility change." A given cohort of TANF cases will leave TANF over time, even absent sanctions and time limits. Most research shows a monotonic decline over time in the rate of TANF receipt for a given cohort, even when recidivism is accounted for.
- We estimated the rate at which cases would have left over time in the absence of eligibility changes *using TANF receipt rates for the control group from the random assignment evaluation of the State's ABC program*. The control group is close to an ideal counterfactual because control group members were not subject to the eligibility changes. In addition, the control group receipt rates are measured taking into account recidivism.
- More specifically, we used TANF receipt rates for control group cases that were *ongoing* at the point of random assignment, because cases that are sanctioned off or reach the time limit are ongoing cases at the time they are sanctioned or reach the time limit. Using TANF receipt rates for ongoing control group cases is more conservative than using TANF receipt rates for all control group cases, because exit rates are lower for ongoing cases.

- The TANF receipt rates for ongoing control group cases show that:
    - On average over the first year since random assignment, 5.1 percent of cases left TANF;
    - On average over the two years since random assignment, 7.1 percent of cases left TANF;
    - On average over the three years since random assignment, 15.4 percent of cases left TANF;
    - On average over the four years since random assignment, 43.3 percent of cases left TANF;
    - On average over the five years since random assignment, 63.3 percent of cases left TANF;
    - On average over the six years since random assignment, 79.0 percent of cases left TANF; and
    - On average over the seven years since random assignment, 88.7 percent of cases left TANF.
  
  - These net exit rates were applied to the counts of cases that closed due to eligibility changes to get the adjusted number of cases closed due to eligibility changes. For example, the average monthly number of cases closed due to CMR sanctions in FY1998 was 489. Using the control group net exit rates, we assume that 63.3 percent of these cases would have left for other reasons by the end of FY2002, so the adjusted number of cases closed due to CMR sanctions in FY 1998 was 179, which is  $489 \times (1 - .633)$ . A similar adjustment was made to cases closed due to sanctions during other years.
  - This approach has two limitations. First, ongoing control group cases became subject to welfare reform policies on average during follow-up quarter 6 or 7. Even so, few or no control group cases would have reached the “work for your welfare” two-year time limit before another eight quarters, meaning follow-up quarters 14 or 15. The second limitation is that, at this point follow-up data are available only through quarter 10. Consequently, net exit rates were extrapolated for quarters 11 through 20, because the adjustment requires exit rates for five full years.
-

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF FACILITIES MANAGEMENT**

**Public Notice**

**Regulations for the Annual Prequalification of  
Contractors and Subcontractors**

The Department of Administrative Services (DAS) has drafted proposed Regulations for the Annual Prequalification of Contractors and Subcontractors pursuant to 29 **Del.C.** Section 6962(c)(5)(a). The proposed regulations establish the mechanism and standards by which the Department may assign classifications and maximum dollar limits to contractors and subcontractors that apply for annual prequalification pursuant to 29 **Del.C.** Section 6962(c). No existing or proposed regulations are affected by the proposed regulations herein.

**Invitation For Public Comment**

A public hearing will be held as follows:

Tuesday, March 25, 2003, 10:00 AM  
Department of Administrative Services  
Division of Facilities Management  
Thomas Collins Building, First Floor  
540 South DuPont Highway  
Dover, De 19901

For information and directions, please call Natalie Curran at (302) 739-5644

Written comments on these proposed regulations should be sent to:

Robert J. Furman  
Division of Facilities Management  
Thomas Collins Building  
540 South DuPont Highway, Suite 1  
Dover, DE 19901

Written comments will be accepted until the conclusion of the public hearing on March 25<sup>th</sup>.

---

**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF ELECTRICAL EXAMINERS**

**Public Notice**

The Delaware Board of Electrical Examiners in accordance with 24 **Del.C.** §1406(a)(1) has proposed

changes to its rules and regulations. The rules make it clear that experience may be supported by a tax form W-2 only when an affidavit by the supervisor or employer is not available. In addition, the changes give inspection agencies the responsibility for confirming that a person requesting an inspection is licensed under the chapter or otherwise permitted to perform the work to be inspected. The Division of Professional Regulation will provide current lists of licensees quarterly to the agencies to facilitate confirming the status of a licensee. The rules also provide that an inspection agency shall notify the Board of any violation, and the Division of Professional Regulation will send the notice of violation to the other inspection agencies and any local building inspector having jurisdiction over the structure.

A public hearing will be held at 9:00 a.m. on April 2, 2003 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

---

**DIVISION OF PROFESSIONAL REGULATION  
COUNCIL ON REAL ESTATE APPRAISERS**

**Public Notice**

The Delaware Council on Real Estate Appraisers has proposed to revise provisions of its rules and regulations. The proposal puts licensed trainees on the biennial renewal cycle and specifies the continuing education requirements. All licensees and certificate holders who have been licensed more than 12 months must submit evidence of continuing education for renewal. The requirement for the 7hr. USPAP course will be implemented as required by the Appraisal Subcommittee.

A public hearing will be held on April 15, 2003 at 10:00 in Conference Room A on the second floor of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904 where members of the public can offer comments. Anyone wishing to receive a copy of the Proposed rules and regulations may obtain a copy from Dana Spruill, Administrative Specialist, Division of Professional

Regulation, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Individuals may submit written comments at the above address. The final date for receipt of written comments will be at the public hearing.

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

---

## **DEPARTMENT OF AGRICULTURE**

### **HARNESS RACING COMMISSION**

**PLEASE TAKE NOTICE**, that pursuant to 3 Del. C. § 10005 and 29 Del. C. § 10115, the Department proposes to amend Rule 7.3.9 and Rule 7.6.6.3. The Commission will accept written comments from March 1, 2003 through April 28, 2003. The Commission will hold a public hearing on the proposed rule amendment on April 29, 2003 at 10:00 a.m. at Harrington Raceway, Harrington, DE. Written comments should be submitted to John Wayne, Administrator of Racing, Delaware Harness Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901.

The Commission proposes to amend the Rules as follows: 1) amend Rule 7.6.6.3 to delete the phrase "after the recall point is passed"; and 2) amend Rule 7.3.9 to provide a more detailed procedure for the cancellation of races due to weather conditions.

---

## **DEPARTMENT OF AGRICULTURE**

### **STANDARDBRED BREEDER'S FUND**

#### **Public Notice**

#### **Standardbred Breeder's Fund Regulations**

The Department proposes these amendments to the Standardbred Breeder's Fund Regulations pursuant to 29 Del. C. § 4815 (b) (3) b.2.D and 29 Del. C. § 8103 (8). Its purpose in proposing these amendments is to comply with Delaware Harness Racing Commission Rules, to make the program language more specific under certain racing conditions, to promote fairness, and to allow the races to be contested within the normal racing card at Harrington Raceway and Dover Downs.

These proposed amendments to the regulations will be considered at a public hearing scheduled for Friday, March 7, 2003 at 1:00 P.M. at the Delaware Department of Agriculture Building in Conference Room 1. Copies of the proposed amendments may be obtained from Ms. Judy Davis-Wilson, Director, Delaware Standardbred Breeder's Fund by calling (302) 698-4610. Public comments may be

submitted in writing to Ms. Davis-Wilson on or before March 7, 2003. Also, written submissions and/or oral comments are welcomed at the public hearing. The Delaware Department of Agriculture is located at 2320 South DuPont Highway, Dover, Delaware.

---

## **DEPARTMENT OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, March 21, 2003 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

---

## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF PUBLIC HEALTH**

#### **Public Notice**

These proposed regulations, "Regulations Governing Public Drinking Water Systems," will replace by revision the current "Regulations Governing Public Drinking Water Systems," previously adopted May 14, 1971 and most recently amended May 10, 2002

#### **Nature Of Proceedings**

The Department is proposing to adopt new U.S. Environmental Protection Agency (EPA) requirements for public drinking water systems. The new requirements include the Lead/Copper Rule Minor Revisions, the Filter Backwash and Recycle Rule, the Radionuclides Rule and additional requirements of the Arsenic Rule. The Department is also setting proficiency testing requirements for laboratories that conduct drinking water analyses for public drinking water systems. The Department is requiring that any major sanitary defects noted during sanitary surveys must be corrected within 45 days. In addition, the Department would like to take comment on how best to establish regulatory limits for interim health effect levels for unregulated contaminants.

#### **Notice Of Public Hearing**

The Office of Drinking Water, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss proposed revisions to the "State of Delaware Regulations Governing Public Drinking Water Systems." The public hearing will be held on April 1, 2003 at 4:00 PM in the Emergency

Preparedness Training Center, Suite 4-g, Blue Hen Corporate Center, 655 S. Bay Road, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

Office of Drinking Water  
Blue Hen Corporate Center, Suite 203  
655 Bay Road  
Dover, DE 19901  
Telephone: (302) 739-5410

Anyone wishing to present his or her oral comments at this hearing should contact Mr. Edward Hallock at (302) 739-5410 by March 28, 2003. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by April 4, 2003:

Dave Walton, Hearing Officer  
Division of Public Health  
PO Box 637  
Dover, DE 19903

---

### **DIVISION OF PUBLIC HEALTH**

#### **Public Notice**

These regulations, "State of Delaware Regulations Governing Public Pools," replace by revision the current "State of Delaware Regulations Governing Public Pools" previously adopted on May 22, 1958 and most recently amended April 22, 1997.

#### **Nature Of Proceedings**

The proposed changes in the "State of Delaware Regulations Governing Public Pools" cover three main areas. First, any pools that share the same recirculation/filtration/disinfection system must have separate systems for each pool within three years. Second, any pool that is a maximum of four feet deep can be monitored by an attendant instead of a lifeguard. Finally, an approved pool operator must monitor all pools. This proposed change will require that each pool facility have a copy of the Division of Public Health certificate, issued to their approved operator, available for viewing by representatives of the Division. Also, the proposed changes include minor wording changes for the purpose of clarification along with the deletion of language that is either redundant or unnecessary.

#### **Notice Of Public Hearing**

The Health Systems Protection Section, Division of Public Health of the Department of Health and Social

Services, will hold a public hearing to discuss the proposed changes to the State of Delaware Regulations Governing Public Pools. This public hearing will be held on March 28, 2003 at 1:30 PM in the 3rd floor conference room of the Jesse Cooper Building, located on Federal and Water Streets, Dover, Delaware.

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

Health Systems Protection Section  
Jesse Cooper Building  
417 Federal Street  
Dover, Delaware 19901  
Telephone: (302) 744-4546

Anyone wishing to present his or her oral comments at this hearing should contact Mike Joyce at (302) 739-5410 by close of business March 26, 2003. Anyone wishing to submit written comments as a supplement to, on in lieu of, oral testimony should submit such comments by close of business March 31, 2003 to:

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

---

### **DIVISION OF SOCIAL SERVICES**

#### **Public Notice**

#### **Transitional Medicaid Program**

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

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

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

---

**DEPARTMENT OF INSURANCE****Notice Of Public Hearing**

Insurance Commissioner Donna Lee H. Williams hereby gives notice that a public hearing will be held on Wednesday, March 26, 2003, at 10:00 a.m. in the Hearing Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amendments to Regulation 1310 (formerly Regulation 80) relating to the Standards For Prompt, Fair And Equitable Settlement Of Claims For Health Care Services

The purpose for amending Regulation 1310 is to re-define certain terms and to reduce the number of days in which a health insurer may pay a clean claim from 45 to 30. Additionally, the regulation will be re-numbered to conform to the format required by the Registrar of Regulations. This is a second hearing to consider amendments to the regulation resulting from public comment on the regulation as originally proposed.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 *Del. C.* Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than Tuesday March 25, 2003, at 2:00 p.m. and should be addressed to Deputy Attorney General Michael J. Rich, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or give an oral statement must notify Michael J. Rich at (302) 739-4251, Ext. 171 no later than Tuesday, March 25, 2003.

---

**DEPARTMENT OF LABOR  
DIVISION OF INDUSTRIAL AFFAIRS****Clean Indoor Air Act Regulations  
Notice of Public Comment**

Interested parties are invited to present their views at the public hearing which is scheduled as follows:

9:00 a.m., Monday, March 24, 2003  
Division of Motor Vehicles  
Second Floor Conference Room  
Public Safety Building  
303 Transportation Circle  
Dover, DE 19901

Interested parties can obtain copies of the proposed

regulations at no charge by contacting the Office of Labor Law Enforcement at:

4425 North Market Street  
Wilmington DE 19802  
or by telephone at (302) 761-8318.

---

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION  
SAN # 2003-01****TITLE OF THE REGULATION:**

Regulation 38 - Emission Standards For Hazardous Air Pollutants For Source Categories

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE  
AND ISSUES:**

In April 2002, the EPA promulgated an amendment to the section 112(j) requirements in 40 CFR Part 63 Subpart B. In May 2002, Air Quality Management Section promulgated similar section 112(j) requirements. Soon after EPA's promulgation, the Sierra Club sued EPA for several reasons, but the primary issue was EPA's delaying the submittal of the second of a two-part MACT application until 24 month following the submittal of the Part 1 MACT application, which was due on May 15, 2002.

On November 26, 2002, these parties settled that suit. The settlement agreement requires EPA to revise the section 112(j) requirements, including the Part 2 MACT application submittal date, and to have those agreed-upon revisions finalized no later than April 27, 2003.

This proposed amendment would revise existing Subpart B of Regulation 38 – EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES to reflect negotiated changes that the EPA must implement as a result of the November 2002 settlement. The amendment to Subpart B proposes to revise the Part 2 MACT application submittal dates and provides new requirements for requesting applicability determinations consistent with that settlement. In addition, several other minor changes in language are proposed to improve clarity.

**NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed amendment will extend through March 31, 2003. Interested parties may submit comments in writing during this time frame to: Jim Snead, Air Quality Management Section, 715



Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Monday, March 24, 2003 beginning at 6:00 PM in the DNREC Auditorium in the Richardson and Robbins Building, located at 89 Kings Highway, Dover, DE.

**PREPARED BY:**

James R. Snead (302) 323-4542 February 4, 2003

**DIVISION OF AIR AND WASTE MANAGEMENT**  
**AIR QUALITY MANAGEMENT SECTION**  
**SAN # 2002-17**

**TITLE OF THE REGULATION:**

Regulation 38 - "Emission Standards For Hazardous Air Pollutants For Source Categories"

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

The Department is proposing to amend Regulation 38 by adopting by reference the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production found at 40 CFR Part 63 Subpart RRR.

Subpart RRR addresses the emissions of hazardous air pollutants (HAPs) emitted by secondary aluminum production facilities; establishes emission limitations and work practice standards; and defines the compliance, notification, monitoring, record keeping and reporting requirements. Owners or operators of a facility which performs one or more of the following processes may be affected: scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations (i.e., melting, holding, sweating, refining, fluxing, or alloying), recovering aluminum from dross, inline fluxing, or dross cooling.

**NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed amendment will extend through March 31, 2003. Interested parties may submit comments in writing during this time frame to: Mark A. Prettyman, Air Quality Management Section, 156 S. State St., Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, March 27, 2003, beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE.

**PREPARED BY:**

Mark A. Prettyman (302) 739-4791 February 6, 2003

**DIVISION OF FISH & WILDLIFE**

**SAN# 2003-4**

**TITLE OF THE REGULATIONS:**

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

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

To comply with the recreational size limits, daily creel or bag limits and seasons included in Amendment #6 to the Interstate Fishery Management Plan for Striped Bass as adopted by the Atlantic States Marine Fisheries Commission on February 24, 2003, Delaware must select from among the following options:

Option 1: Maintain existing minimum size limits, and possession limits (one striped bass between 24 and 28 inches total length and one greater than or equal to 28 inches total length).

Option 2: Establish a new minimum size limit of 28 inches total length, and a two fish daily possession limit.

Option 3: Maintain existing size and possession limits (one striped bass between 24 and 28 inches total length and one greater than or equal to 28 inches total length) with a closed season to be defined that is in compliance with Amendment #6 of the Interstate Fishery Management Plan for Striped Bass.

**NOTICE OF PUBLIC COMMENT:**

Individuals may present their opinions and evidence and/or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment will be held at the Department of Natural Resources and Environmental Control Auditorium 89 Kings Highway, Dover DE at 7:30 PM on Friday March 21, 2003. The record will remain open for written comments until 4:30 PM on March 31, 2003.

**DIVISION OF FISH & WILDLIFE**

**SAN# 2002-25**

**TITLE OF THE REGULATIONS:**

Tidal Finfish Regulation 10. WEAKFISH SIZE LIMITS; POSSESSION LIMITS; SEASONS

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

To comply with the recreational size and possession limits included in Amendment #4 to the Interstate Fishery Management Plan for Weakfish as adopted by the Atlantic



States Marine Fisheries Commission (ASMFC) at its annual meeting held November 21, 2002, Delaware must select from among the following minimum size and daily harvest limit options for recreational fishermen: option 1) 7 weakfish/day at 12 inches, option 2) 8 at 13 inches, option 3) 9 at 14 inches or option 4) 10 weakfish at any minimum size equal to or greater than 15 inches.

For commercial fishing, closure days shall be in effect each year as in previous years as required in the ASMFC Interstate Fishery Management Plan for Weakfish. On the closure days it shall be unlawful to fish with any gill net or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than hook and line: The closure dates shall include the following: every weekend day (defined as 12:01 AM on Friday through midnight Sunday) in both May and June, plus contiguous weekdays (defined as 12:01 AM Monday through midnight Thursday) at the beginning of May and the end of June, such that the total number of closure days add up to 34 days. The exact dates of the closures shall be distributed in advance to all holders of gill net permits and published annually in the Delaware Fishing Guide.

**NOTICE OF PUBLIC COMMENT:**

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment will be held at the Department of Natural Resources and Environmental Control Auditorium 89 Kings Highway, Dover DE at 7:30 PM on Friday March 21, 2003. The record will remain open for written comments until 4:30 PM on March 31, 2003.

---

**DELAWARE RIVER BASIN  
COMMISSION**

**25 STATE POLICE DRIVE  
P.O. BOX 7360  
WEST TRENTON, NJ 08628-0360**

The **Delaware River Basin Commission** will meet on Wednesday, March 19, 2003 in West Trenton, New Jersey. For more information contact Pamela M. Bush, Commission Secretary and Assistant General Council, at (609) 883-9500 ext. 203.

---

---

# SUBSCRIBE TO THE OFFICIAL SOURCE OF COMPLETE INFORMATION ON DELAWARE STATE REGULATIONS

## THE DELAWARE REGISTER OF REGULATIONS



A single-source document for regulatory information, including proposed and adopted text of state regulations, all emergency regulations, Governors Executive Orders and Appointments, Attorney General Opinions, General Notices and notices of public hearings and open meetings of state agencies.

**PUBLISHED MONTHLY - \$135.00 PER YEAR**

-----  
YES, PLEASE ENTER MY SUBSCRIPTION FOR THE DELAWARE REGISTER AT \$135/YEAR.  
**You will be billed upon receipt of your order.** Subscription period runs from January to December. Mid-year subscriptions will be prorated at \$11 per issue. Back issues are available at \$12 per issue. Subscription fees are non refundable.

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

ORGANIZATION \_\_\_\_\_ CITY \_\_\_\_\_

PHONE \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ EMAIL \_\_\_\_\_

Please clip and return to: **REGISTRAR OF REGULATIONS  
LEGISLATIVE HALL, DOVER, DELAWARE 19903  
FAX: 302-739-3895**

---

---

# Visit The Delaware General Assembly On The Web!

## 142<sup>nd</sup> Delaware General Assembly

Legislative Hall, Dover, DE. 19901 Phone: (302) 744 4114



[Home](#) - [Contact Us](#) - [Permissions](#) - [Disclaimer](#) - [FAQs](#) - [Site Map](#) - [Related Links](#) - [Copyright](#)

State Senate

House of Representatives

Redistricting

Bill Tracking

Online Publications

General Information

Legislative Divisions

Contact Information

Meeting Notices & Agendas

Bill Tracking Archives

*Delaware became the first state on December 7, 1787 by being the first state to ratify the new United States Constitution. Delaware's first constitution was adopted on September 20, 1776, with subsequent versions adopted in 1792, 1831 and the current version in 1897.*



*Delaware's lawmaking body, is comprised of a State House of Representatives, whose 41 members are elected for two-year terms, and a State Senate, whose 21 members are elected for four-year terms. Half of the Senate seats are contested in each general election.*

COMMITTEE HEARINGS

WHAT'S NEW

## The General Assembly Website features:

- Current legislative information
- Information on both the Senate and House of Representatives
- Access the Delaware Code
- Access to the Delaware Register of Regulations
- Information on the legislative process
- Various reports and publications

The General Assembly Website is located at:

**<http://www.legis.state.de.us>**



# LEGISLATIVE BILL SUBSCRIPTION SERVICES

Order Form (please print or type)

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

ORGANIZATION \_\_\_\_\_ CITY \_\_\_\_\_ FAX \_\_\_\_\_

PHONE \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ EMAIL \_\_\_\_\_

Please check the specific service(s) to which you wish to subscribe :

<u>SERVICES</u>	<u>ANNUAL COST</u>
<b>One copy of all legislation introduced:</b>	
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$110.00
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$850.00
<b>One copy of all legislation signed by the Governor:</b>	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$215.00
<b>One copy of House and Senate calendars:</b>	
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$110.00
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$850.00
<b>One copy of all Governor's Advisories:</b>	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$30.00
<b>Daily Legislative Agendas and weekly Standing Committee Notices:</b>	
<input type="checkbox"/> Via Fax - - - - -	\$135.00

\* Subscribers who choose to pick up their materials at Legislative Hall are requested to do so at least once a week, due to limited on-site file space. Thank you.

If you have any questions about our subscription services, please contact the Division of Research by dialing, toll-free, (800) 282-8545 (in state) or via E-Mail at [jeffrey.hague@state.de.us](mailto:jeffrey.hague@state.de.us). Please dial (302) 744-4114 if you are calling from outside Delaware.

Please return this order form to the Division of Research at P.O. Box 1401, Legislative Hall, Dover, Delaware, 19903, or fax it to (302) 739-3895 as soon as possible. (Don't forget to make a copy for your own files). You will be billed upon our receipt of your order. Your service(s) will begin, promptly, when payment is received and the General Assembly convenes. Thank you for using the Subscription Services of the Division of Research.

---

---

# ACCESS THE DELAWARE CODE ON-LINE!



## Online Delaware Code

- [The Delaware Constitution](#)
- [Title 1 - General Provisions](#)
- [Title 2 - Transportation](#)
- [Title 3 - Agriculture](#)
- [Title 4 - Alcoholic Liquors](#)
- [Title 5 - Banking](#)
- [Title 6 - Commerce and Trade](#)
- [Title 7 - Conservation](#)
- [Title 8 - Corporations](#)
- [Title 9 - Counties](#)
- [Title 10 - Courts and Judicial Procedures](#)
- [Title 11 - Crimes and Criminal Procedure](#)
- [Title 12 - Decedents' Estates and Fiduciary Relations](#)
- [Title 13 - Domestic Relations](#)
- [Title 14 - Education](#)
- [Title 15 - Elections](#)
- [Title 16 - Health and Safety](#)
- [Title 17 - Highways](#)
- [Title 18 - Insurance Code](#)
- [Title 19 - Labor](#)
- [Title 20 - Military and Civil Defense](#)
- [Title 21 - Motor Vehicles](#)
- [Title 22 - Municipalities](#)
- [Title 23 - Navigation and Waters](#)
- [Title 24 - Professions and Occupations](#)
- [Title 25 - Property](#)
- [Title 26 - Public Utilities](#)
- [Title 27 - Religion](#)
- [Title 28 - Sports and Amusements](#)
- [Title 29 - State Government](#)
- [Title 30 - State Taxes](#)
- [Title 31 - Welfare](#)

Find  in the section label

- Up-to-date version of the Code reflecting recent legislative enactments
- Comprehensive full text search capabilities.

**Visit the Delaware Code On-Line at:**

**<http://www.delcode.state.de.us/>**